

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte OLEG SALTYKOV

Appeal 2008-2293
Application 10/610,449
Technology Center 2600

Decided: July 29, 2008

Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and KARL D. EASTHOM, *Administrative Patent Judges*.

HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final rejection of claims 1, 2, 5 to 8, 11 to 14, and 17 to 21.

The disclosed invention relates to a hearing instrument in which a receiver assembly is tethered to the housing of the hearing instrument. The tether is affixed to the receiver assembly at a point that is not coaxial with

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respect to a receiver tube in the hearing instrument (Figure 1: Specification 1, 4, and 5).

Claim 1 is representative of the claimed invention, and it reads as follows:

1. A hearing instrument, comprising:
 - a housing;
 - a receiver assembly;
 - a receiver tube connected to the receiver assembly and attached to the housing; and
 - a receiver mounting assembly affixed to the receiver assembly and the housing, where the receiver mounting assembly is a tether exhibiting properties of resilience and compliance, the tether being affixed to the receiver assembly at a point not coaxial with respect to the receiver tube.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Voroba	US 4,870,688	Sep. 26, 1989
Arndt	US 5,204,917	Apr. 20, 1993
Stonikas	US 6,728,384 B2	Apr. 27, 2004 (filed Jun. 30, 2000)

The Examiner rejected claims 1, 2, 5, 7, 8, 11, 13, 14, 17, 20, and 21 under 35 U.S.C. § 102(b) based upon the teachings of Voroba.

The Examiner rejected claim 19 under 35 U.S.C. § 103(a) based upon the teachings of Voroba and Arndt.

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The Examiner rejected claims 6, 12, and 18 under 35 U.S.C. § 103(a) based upon the teachings of Voroba and Stonikas.

Turning first to the anticipation rejection, the Examiner contends that the tether in Voroba is:

(the resilient anchor comprising the main body portion of cushion 72, neck 78 and tab 73 as in Figs. 1 and 2 which is affixed to the receiver module 70 and housing core 20) exhibiting properties of resilience and compliance, the tether being affixed to the receiver assembly at a point not coaxial with respect to the receiver tube (See Figs. 1 and 2 and col. 8, lines 22-43).

(Ans. 3 and 4).

Appellant contends that neither the cushion 72 nor the extraction tab 73 on the cushion 72 is affixed to the housing, and that neither the cushion nor the tab is a tether as set forth in the claims on appeal (App. Br. 4; Reply Br. 1 and 2).

Voroba describes a hearing instrument that comprises a housing 12, a receiver assembly 70, a receiver tube 76 connected to the receiver assembly and attached to the housing via annular flange 74 (Figs. 1 and 2; col. 8, ll. 9 to 35). The receiver 70 is encased in a cushion 72 to minimize vibration feedback, and the cushion 72 is provided with an extraction tab 73 (col. 8, ll. 36 to 40). The cushion 72 and the receiver 70 are secured in housing 12 in a grommet-like fashion, and the receiver 70 and cushion 72 can be removed from the housing, if necessary, via use of the extraction tab 73 (col. 8, ll. 40 to 43). The extraction tab 73 is affixed to the receiver assembly 70, but it is

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not affixed to the housing 12. Inasmuch as the extraction tab 73 is not affixed to the housing 12, it can not function as a tether (i.e., it is not a restraint that allows something to move about a stationary point).

Thus, the anticipation rejection of claims 1, 2, 5, 7, 8, 11, 13, 14, 17, 20, and 21 is reversed because each and every limitation in the claims is not found either expressly or inherently in the cited reference to Voroba. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

Turning lastly to the obviousness rejections of claims 6, 12, 18, and 19, these rejections are reversed because the teachings of Arndt and Stonikas do not cure the noted shortcoming in the teachings of Voroba, and because the Examiner's articulated reason for combining the teachings of Arndt and Stonikas with those of Voroba do not support a legal conclusion of obviousness. *KSR Int'l v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741 (2007).

The decision of the Examiner is reversed.

REVERSED

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tdl/gw

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