

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PETER RAE SHINTANI and HIROFUMI USUI

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Appeal 2006-3341  
Application 10/266,491<sup>1</sup>  
Technology Center 2600

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Decided: February 12, 2007

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*Before:* KENNETH W. HAIRSTON, ALLEN R. MACDONALD and JAY P. LUCAS, *Administrative Patent Judges.*

LUCAS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from the twice rejection of claims 22 to 31. The Board has jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> Application filed October 8, 2002. Applicant claims the benefit under 35 U.S.C. § 120 of application 09/243,752, filed February 03, 1999. The real party in interest is Sony Corporation.

The Examiner rejected claims 22 to 31 under 35 U.S.C. § 103(a).

The independent claims under appeal read as follows:

22. A method of displaying information on a monitor of a high definition television (HDTV), comprising:  
receiving at least one TV signal at a receiver circuit including a digital tuner;  
generating on-screen display (OSD) information in the receiver circuit;  
transmitting the OSD information to the HDTV along with a digital transport stream representing at least the one TV signal;  
processing the digital transport stream in the HDTV to extract the OSD information from the digital transport stream; and  
displaying the OSD information on the monitor of the HDTV.
30. A receiver circuit including a digital tuner connectable to a video monitor, comprising:  
means for receiving at least one TV signal;  
means for generating on-screen display (OSD) information;  
means for transmitting the OSD information to a HDTV along with a digital transport stream representing at least the one TV signal, the digital transport stream being processable in the HDTV to extract the OSD information from the digital transport stream, whereby the OSD information can be displayed on the monitor of the HDTV.

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

Auld	US 5,818,533	Oct. 6, 1998
Van Der Meer	US 6,661,467	Dec. 9, 2003

Appellants contends that the claimed subject matter would not have been obvious over the prior art of record. More specifically, Appellants contend that the Examiner erred in rejecting the claims over Van Der Meer, as the reference fails to demonstrate elements of the claims, and the Examiner improperly took official notice of those elements. (See Br. 2.)

The Examiner contends that Van Der Meer teaches all of the claimed elements, except for an enumerated few that are implicitly part of the prior art, thereby rendering the claims obvious over the prior art. Examiner presents the Auld reference in support of his taking official notice.

(Examiner's Answer, 3 *ff.*)

We affirm.

### ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether all of the claimed elements are either explicitly taught by the prior art, as exemplified by Van Der Meer, or can be officially noticed as described by the Examiner.

### FINDINGS OF FACT

Appellants' invention relates to the set-top boxes (STB) that have proliferated along with the number of televisions in our houses. The STBs typically receive a television signal from a cable, a satellite antenna, a DVD player or some other audio-visual source and prepare the signal for display to the attached television of the user. The invention also relates to on-screen displays, which show text on the screen that may be used for subtitles, or, along with the user's remote control, may guide the user in controlling the functions of the STB or television.

Appellants have described this embodiment of their invention in the following manner:

In other embodiments, the OSD information for the STB is transmitted out of the STB along the digital transport stream, along with the HD digital data, via a high speed digital interface, such as IEEE1394. The HDTV demultiplexes and decodes the digital transport stream to extract the OSD information for display on the HDTV monitor. Thus, functions in the STB can be accessed from the displayed OSD information. Specification 5, last paragraph.

This application is a continuation of application number 09/243,752, which issued as U.S. patent number 6,490,002 ('002). The claims in the '002 patent addressed an embodiment of the invention using a separate analog signal path containing the OSD information. In the instant application, there is a single path containing both the TV signal, and the OSD information. In the claims under appeal, only claims 28 and 31 indicate that the OSD information is sent from the receiver in analog form.

In Figure 5 of the Van Der Meer patent we find a device receiving at least one TV signal in a receiver circuit. The signal is described as a digital MPEG2 video, audio and graphics signal, the latter being commonly used for subtitles in television programming.

The Examiner took official notice that the HDTV of claim 22<sup>2</sup> could be read on the MPEG2 receiver and display of Van Der Meer. In support of that official notice, Examiner presented the Auld patent, which states in column 2, line 33: "The MPEG-2 standard is similar to the MPEG-1 standard, but includes extensions to cover a wider range of applications,

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<sup>2</sup> Claim 22 reads in relevant part: "A method of displaying information on a monitor of a high definition television (HDTV)... .

including interlaced digital video such as high definition television (HDTV).” The MPEG2 designation is used consistently throughout the teachings of Van Der Meer. We thus find that the official notice of the examiner is supported by his evidence of the prior art.

The Appellants point out that the receiver circuit of Van Der Meer does not explicitly present a digital tuner, as claimed<sup>3</sup>. Van Der Meer indicates in relevant part that “The transmitter receives a baseband video signal in YUV format and an associated audio signal AUD and comprises a MPEG2 video encoder 101 and MPEG2 audio encoder 102 for encoding said video and audio signal into packetized elementary streams PSV and PSA, respectively.” (Column 9, line 25-30). In Van Der Meer column 1, line 20 it states, “Meanwhile the MPEG2 ... digital television standard will be applied worldwide for the broadcast of digital television program to the end-user by satellite, cable, terrestrial networks and by packaged media such as tape or disc.” Examiner, in his rejection of May 19, 2004, indicates “In any event, the examiner takes Official Notice that using digital tuner for receiving television signals and HDTV monitor for displaying television signals is well known in that art for their high signal quality output characteristics.” As Van Der Meer is clearly considering the input to be potentially from “broadcast of digital television program to the end-user by satellite, cable, terrestrial networks” as quoted from his column 1, it is not erroneous for the Examiner to take the official notice of a digital tuner.

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<sup>3</sup> Claim 22 reads in relevant part: “... receiving at least one TV signal at a receiver circuit including a digital tuner;”

We find the other elements as claimed to be within the teachings of Van Der Meer when read as detailed in the Examiner's rejection. The OSD is generated in elements 103 and 104. Item TS represents the digital transport stream conveying the video, audio and OSD information to the TV in Figure 6. The OSD information is extracted and processed in elements 206, 207, 208 and 209 and displayed on element 205.

The limitations of the dependent claims have not been argued. However we find the limitations in claims 28 and 31 confusing, as in these claims the transport stream is described as being digital, and yet these claims indicate that the OSD information is sent in analog form to the TV. We can only suppose that the claim is to be interpreted to indicate that the OSD information is created in analog form, and stays in that form only until being converted to digital MPEG2. Or perhaps these claims are holdovers from the patented parent of this case which has an analog channel for the OSD information.

#### PRINCIPLES OF LAW

For guidance, the board relies on the following authorities in this review.

On appeal, Appellants bear the burden of showing that the Examiner has not established a legally sufficient basis for a rejection on obviousness under 35 U.S.C. 103. *United States v. Adams*, 383 U.S. 39 (1966); *In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick, Co.*, 464 F.3d 1356, 1360-1361, 80 USPQ2d 1641, 1645 (Fed. Cir. 2006).

Concerning official notice, we look to Zurko: “With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.” *In re Zurko* 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir., 2001)

#### ANALYSIS

Appellants have focused the remarks in their Brief on the elements of the claims that are not explicitly named in the Van Der Meer reference. The Examiner took official notice that the HDTV and the digital tuner were common in this technology at the time of the invention, and supported that position with teachings of the Auld reference and the common understanding that digital television circuits usually included a digital tuner. Remarks in the Van Der Meer reference itemized in the Findings of Fact concerning digital processing of MPEG2 signals further supported the Examiner’s view.

We conclude that claims 22 through 27, and 29 and 30 are properly rejected under 35 U.S.C. 103(a) for being obvious over Van Der Meer. Claims 28 and 31, as interpreted above regarding the “analog” limitation, are also properly rejected for the same reason.

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Application 10/266,491

### CONCLUSION OF LAW

On the record before us, Appellants have not sustained their burden of establishing that that Examiner's rejection is erroneous.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

### DECISION

The Examiner's rejection of claims 22 through 31 is affirmed.

### AFFIRMED

JL

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