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

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte BERNARDUS JOHANNES PRONK

Appeal 2007-1786
Application 10/121,365[1]
Technology Center 3700

Decided: June 22, 2007

Before: WILLIAM F. PATE, III, TERRY J. OWENS, and STUART S. LEVY, *Administrative Patent Judges.*

LEVY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 (2002) from a final rejection of claims 1-7. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

Appellant invented a medical imaging device, method, and computer program for use in a safety critical environment. (Specification 1.) In

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[1] Application filed April 12, 2002. The real party in interest is Koniklijke Phillips Electronics N.V.

particular, one or more peripheral devices are provided with a separate emergency control means which are arranged to allow the peripheral apparatus provided with emergency control means to operate independently from the central control unit. (Specification 1-2.)

Claim 1 is the only independent claim under appeal. Claim 1 reads as follows:

> 1. A medical device comprising:
> a central control unit for controlling the medical imaging device;
> a plurality of peripheral apparatus for the operation of the medical imaging device, the plurality of peripheral apparatus in operative communication with the central control unit, one or more of the peripheral apparatus being provided with emergency control means which are arranged to allow the peripheral apparatus to operate independently from the central control unit; and
> an emergency control unit for controlling the emergency control means independently from the central control unit.

The Examiner rejected claims 1-3 and 5 under 35 U.S.C. § 102(b) as being anticipated by Ishii[2].

The Examiner rejected claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable over Ishii.

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

Ishii[3]	JP Hei3-109648	May 9, 1991

With regard to the rejection of claims 1-3 and 5 under 35 U.S.C.

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[2] We rely upon the English language translation dated July 2006, from Schreiber Translations, Inc.

[3] Although the translation of the reference refers to the inventor as Ishio, we will refer to the inventor as Ishii to be consistent with the Answer (p. 2) and the Brief (p. 3).

§ 102(b) Appellant contends that claim 1 is not anticipated by Ishii because Ishii is directed to backup computing processors and is not directed to emergency control means and an emergency control unit which allow operation independent of a central control unit. (Br. 4.) Appellant explains that "[c]laim 1 requires, in part, one or more of the peripheral apparatus being provided with emergency control means which are arranged to allow the peripheral apparatus to operate independently from the central control unit." (*Id.*) According to Appellant, (Br. 4) "Ishii teaches that the operating peripheral apparatus is always under the control of the CPU 11." It is argued, (*id.*) that if both the control unit and emergency control means are satisfied by CPU 11 then it is not possible that the emergency control means of Ishii are arranged to allow the peripheral apparatus to operate independently from the central control unit. Appellant further contends that claim 1 requires, *inter alia*, an emergency control unit for controlling the emergency control means independently from the central control, and that since the Office Action states that in Ishii, the central control unit and the emergency control unit are one and the same, Ishii does not teach or suggest an emergency control unit for controlling the emergency control means *independently from the central control*.

The Examiner contends that the CPU of Ishii functions as both a central control unit and an emergency control unit. (Answer 3.) The Examiner argues that given the fact "that the peripheral apparatus can operate in response to the control signals from the emergency control unit, which is part of the CPU 11, it inherently operates independently from the normal action deciding means, which is also part of CPU 11." (Answer 4.)

With regard to the rejection of claims 4, 6, and 7, the Examiner's position can be found on pages 4 and 5 of the Answer. These claims have not been argued by Appellant.

We reverse.

ISSUE

With regard to the rejection of claims 1-3 and 5 under 35 U.S.C. § 102(b), the issue is whether Ishii, expressly or under the principles of inherency, anticipates the language of claim 1. With regard to the rejection of claims claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being obvious over Ishii, the issue is whether the Examiner has articulated a prima facie case of obviousness of these claims.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427, 7 USPQ2d 1152, 1156 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Appellant invented a medical imaging device, method, and computer program for use in a safety critical environment. (Specification 1.)

2. One or more peripheral devices are provided with a separate emergency control means which are arranged to allow the peripheral apparatus provided with emergency control means to operate independently from the central control unit. (Specification 1-2.)

From our review of Ishii, we make the following findings of fact:

3. "The present invention relates to the Medical image processor used for X ray CT apparatus, MRI apparatus and the like, and to the medical image processor with emergency treatment function particularly when a snag takes place." (Ishii 2).
4. In Ishii, 11 is a central processing unit, and 12 and 13 are first and second computing units, respectively. (Ishii 5.)
5. Central processing unit 11 controls the entire image processor which contains the first and second computing units 12 and 13. (*Id.*)
6. Central processing unit combines the normal action deciding means (which decides whether or not the computing units 12, 13 are operating normally), and the computing function replacement control means which replaces the faulty computing unit with the other computing unit. (*Id.*)
7. From the description in Ishii, we find that Ishii describes a single central processing unit 11 that controls two computing units 12 and 13. If the central processing unit determines that one of the computing units is faulty, the system switches to the other computing unit to process the data.

PRINCIPLES OF LAW

Initially we note that anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of inherent properties that may be possessed by the prior art

reference. *See Verdegaal Bros. Inc. v. Union Oil Co.*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987).

A claimed invention is unpatentable if the differences between it and the prior art are "such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art." 35 U.S.C. § 103(a) (2000); *In re Kahn*, 441 F.3d 977, 985 (Fed. Cir. 2006) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 13-14, 148 USPQ 459, 465 (1966)). In *Graham*, the Court held that that the obviousness analysis begins with several basic factual inquiries: "[(1)] the scope and content of the prior art are to be determined; [(2)] differences between the prior art and the claims at issue are to be ascertained; and [(3)] the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17, 148 USPQ at 467. After ascertaining these facts, the obviousness of the invention is then determined "against th[e] background" of the *Graham* factors. *Id*. at 17-18, 148 USPQ at 467.

The Supreme Court has provided guidance for determining obviousness based on the *Graham* factors. *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (April 30, 2007). "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* 127 S.Ct. at 1739, 82 USPQ2d at 1395. "In determining whether the subject matter of a patent claim is obvious, neither the particular motivation nor the avowed purpose of the patentee controls. What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103." *Id.* 127 S.Ct. at 1741-42, 82 USPQ2d at 1397.

ANALYSIS

We begin with the rejection of claims 1-3 and 5 under 35 U.S.C. § 102(b) as being anticipated by Ishii. As Appellant has only argued claim 1, we select claim 1 as representative of the group. From facts 3-7 we find that Ishii describes a single central processing unit, and does not describe an emergency control unit for controlling the emergency control means independently from the central control unit, as recited in claim 1. In other words, since Ishii only describes a single central processing unit, the reference does not describe, expressly or inherently, a second control unit, and therefore does not describe am emergency control unit separate from the central control unit. In Ishii, there are two separate computing units 12, 13. Upon failure of one of the computing units, as determined by the central processing unit, the processing is shifted to the other computing unit. As stated by the Examiner (Answer 3) the central processing unit of Ishii functions as both a central control unit and an emergency control unit. If the CPU of Ishii carries out both functions, it cannot be reasonably said that the emergency control unit controls the emergency control means independently from the central control unit. Accordingly, we are in agreement with Appellant, for the reasons set forth in the Brief and Reply Brief (pp. 4-6) that Ishii fails to anticipate claim 1. It follows that we cannot sustain the anticipation rejection of claim 1-3, and 5.

We turn next to the rejection of claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable over Ishii. We cannot sustain the rejection of these claims because the Examiner has not explained, nor do we conclude that the deficiencies of Ishii would have been obvious to an artisan.

CONCLUSION OF LAW

On the record before us, we hold that the Examiner has failed to establish that Ishii anticipates claims 1-3 and 5, or that Ishii renders obvious claims 4, 6, and 7.

DECISION AND ORDER

The Examiner's rejection of claims 1-3 and 5 under 35 U.S.C. § 102(b) is reversed. The Examiner's rejection of claims 4, 6, and 7 under 35 U.S.C. § 103(a) is reversed.

REVERSED

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