

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* BRET DAVID HAWKINS

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Appeal 2007-1948  
Application 10/116,401  
Technology Center 2600

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Decided: December 17, 2007

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*Before* JOSEPH L. DIXON, ALLEN R. MACDONALD, and JOHN A. JEFFERY, *Administrative Patent Judges.*

MACDONALD, *Administrative Patent Judge.*

DECISION ON APPEAL  
STATEMENT OF THE CASE

Appellant appeals a Final Rejection of claims 1, 3-7, and 9-18 under 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b).

According to Appellant, Appellant invented a method, apparatus, and television signal receiver for displaying auxiliary information, such as closed captioning, based on a comparison between a parameter of an audio program portion and a reference level. (Spec. 2:22-29 and 4:30-32.)

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Claim 1 is exemplary and is reproduced below:

1. A method for controlling display of video information in television signal processing apparatus (12) comprising the steps of:

monitoring an audio program portion of a television signal;

modifying a video signal representing a video program portion of the television signal by enabling display of auxiliary information pertaining to the television signal in response to the monitoring of the audio program portion; and

setting a reference level; and wherein

the step of monitoring the audio program portion comprises the step of comparing a parameter of the audio program portion to the reference level.

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

Forler US 5,327,176 Jul. 5, 1994

Claims 1, 3-7, and 9-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Forler.

We affirm.

## ISSUE

The Examiner finds that Forler discloses all limitations of claim 1. (Answer 3-4). Appellant alleges that Forler does not disclose a modifying step comprising “modifying a video signal representing a video program portion of the television signal by enabling display of auxiliary information

pertaining to the television signal in response to . . . comparing a parameter of the audio program portion to the reference level.” (Br. 8-9 and Reply Br. 4-6.) In particular, Appellant alleges that the modifying step distinguishes over Forler’s disclosure by requiring display of closed-caption data based on monitoring of the audio program portion of the television signal and not based on monitoring of a user controlled volume setting. (*Id.*)

We find that the issue that is dispositive with respect to all claims on appeal is whether the modifying step requires comparing an audible volume level of the audio program portion to the reference level.

#### FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

##### *Forler*

1. Forler discloses “a television signal processing system includes a video signal processing channel 100 and an audio signal processing channel 150 for processing respective ones of a video component VIDEO IN and an audio component AUDIO IN of an input television signal.” (Col. 2, ll. 26-32.)
2. Forler discloses “closed captioning function is automatically enabled *when the audio response is inhibited* in some manner other than by completely disabling it. For example, the closed captioning function may be automatically enabled when the audio response is reduced in volume to a preset level.” (Emphasis added) (Col. 5, ll. 28-33.)

## PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). “[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

## ANALYSIS

### *Claim 1*

The modifying step includes a comparing step comprising “comparing a parameter of the audio program portion to the reference level.” Reading the comparing step in view of the Specification, the “parameter of the audio

“program portion” represents an audio level of an audio portion associated with a video signal. (Spec. 5:15 – 6:4). Appellant’s Specification states that the reference level refers to a volume level:

enabling decoding and display of auxiliary information such as closed captioning when the level of the audio out signal drops below a reference (or parameter or threshold) level or value. The *reference level* could be a set level, e.g. 5 dB, or as part of enabling the active closed captioning feature, a user could establish the reference level by, for example, using the remote control to set the *volume to a level that produces the desired volume* while in the set-up mode of operation.

(Emphasis added) (Spec. 8:8-14.)

The reference level is either a level measured in decibels (dB) or a volume produced while in set-up mode. A decibel is a measurement of an intensity of *audible* sound. A desired volume *produced* while in set-up mode also involves an audible sound. The reference level is therefore a level of audible sound. Accordingly, the comparing step involves comparing an audible volume level of the audio program portion to an audible volume level of the reference level. Accordingly, we construe the modifying step to require comparing an audible volume level of an audio signal to an audible volume level of a reference level.

Forler discloses that a television signal processing system includes a video signal processing channel 100 and an audio signal processing channel 150 for processing video and audio components. (FF 1.) Forler discloses that closed captioning is displayed when the “audio response” is inhibited in *some manner* other than by completely disabling the audio response. (FF 2.)

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We find that Forler discloses displaying closed captioning based on whether the audible volume level of an audio signal is below a threshold volume level. Accordingly, we find that Forler discloses the modifying step.

Accordingly, we find that the Appellant has not met the burden of showing that the Examiner erred by finding that Forler anticipates claim 1.

#### *Other claims*

As to claims 7 and 13, Appellant makes substantially the same arguments of Examiner error as for claim 1. (Br. 7-13 and Reply Br. 3-14.) Therefore, as to the rejection of those claims, Appellant has not shown Examiner error for the same reasons discussed *supra* with respect to claim 1.

As to dependent claims 3-6, 9-12, and 14-18, Appellant relies on arguments for patentability of independent claims 1, 7, and 13. (*Id.*) Therefore, as to the rejection of those claims, Appellant has not shown Examiner error for the same reasons discussed *supra* with respect to claim 1.

#### OTHER ISSUES

Should there be further prosecution, we request that the Examiner review claims 7, 9, and 10 for the presence of informalities.

Claim 7 recites, in pertinent part, “means (150) for comparing a parameter of an audio program portion of a television signal” but both “audio program portion” and “television signal” are introduced earlier in the claim. We suggest that the cited portion of claim 7 be amended to recite

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“means (150) for comparing a parameter of *the* audio program portion of *the* television signal.”

In an amendment to the claims filed November 29, 2005 and the claims presented in the Appeal Brief, the following informalities were introduced. Claim 9 recites “settil lg,” when it should recite “setting.” Claim 10 recites “a, television signal.” The comma should be removed between “a” and “television signal.”

#### CONCLUSION OF LAW

We conclude that:

- (1) Appellant has not shown that the Examiner erred by finding claims 1, 3-7, and 9-18 anticipated by Forler under 35 U.S.C. § 102(b) and
- (2) Claims 1, 3-7, and 9-18 are not patentable.

#### DECISION

The Examiner's rejection of claims 1, 3-7, and 9-18 under 35 U.S.C. § 102(b) is affirmed.

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

AFFIRMED

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