

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHARLES P. BINZEL and MARCIA J. OTTING

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Appeal 2007-2992  
Application 10/639,899  
Technology Center 2600

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Decided: December 18, 2007

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*Before:* JOSEPH F. RUGGIERO, ROBERT E. NAPPI, and  
KEVIN F. TURNER, *Administrative Patent Judges.*

TURNER, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from final rejections of claims 1, 2, 4, 6-17, and 19-27. We have jurisdiction under 35 U.S.C. § 6(b).

Appellants disclose systems and methods for broadcasting a message in an emergency situation to a targeted audience through the use of wireless communication devices. (Specification 1: 7-8). This is accomplished through an indicator sent to the wireless communication devices which

allows for the overriding or bypassing of a message handling setting.  
(Specification 4:13-29).

The independent claim 1, which is deemed to be representative, reads as follows:

1. A method in a wireless communication device for communicating contents of a broadcast message, the method comprising:

receiving an emergency status indicator associated with the broadcast message;

determining whether the emergency status indicator indicates the broadcast message is an emergency message;

overriding or bypassing a user selected message handling setting of the wireless communication device in response to determining that the emergency status indicator indicates the broadcast message is an emergency message; and

communicating the contents of the broadcast message.

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

Roche	US 2003/0197615 A1	Oct. 23, 2003
Kolrud	US 2004/0203562 A1	Oct. 14, 2004

The Examiner rejected claims 1, 2, 4, 6-9, 11-17, 19, 20 and 22-26 under 35 U.S.C. § 102(b) as anticipated by Kolsrud. The Examiner also rejected claims 10, 21 and 27 under 35 U.S.C. § 103(a) as unpatentable over Kolsrud and Roche.

Appellants contend that the Examiner erred in indicating that the claimed subject matter would have been anticipated or obvious. More

specifically, Appellants have argued that allowing a user to program options as disclosed in Kolsrud is not the same as the claimed overriding or bypassing user selected message handling settings. (Br. 6). The Examiner finds that Kolsrud teaches this functionality. (Answer 13-14 ).

We affirm.

#### ISSUE

Have Appellants shown that the Examiner erred in finding claims 1, 2, 4, 6-17, and 19-27 anticipated or rendered obvious in view of the cited prior art references?

#### FINDINGS OF FACT

1. As disclosed in the instant application, a wireless communication network that provides communication with a plurality of wireless portable communication devices and sends a broadcast message in response to an emergency situation. The communication device evaluates the broadcast message based on an emergency status indicator. If the broadcast message is determined to be an emergency message, then the overriding function is activated and a user selected message handling setting is overridden or bypassed. (Specification 3:17 – 4:32; Figs. 1-3, elements 100, 104, 106, 108, 204, 206, 302, 306, and 308).

2. The Specification discloses that “[t]he overriding function is designed to override or bypass any *conflicting* user selected message handling setting such that the broadcast message is received, and the contents of the broadcast message are *communicated without delay*.” (Specification 4:26-29, emphasis added).

3. Kolsrud discloses that an emergency broadcast station generates a signal representing an emergency broadcast message that contains a frequency of an accessible main emergency channel at the emergency broadcast station, and a priority level classifying the emergent or impending disaster-related situation. The signal is transmitted to base stations, which in turn send the signal to the users. The users tune to the frequency of the channel provided to receive the emergency broadcast message. (Abstract).

4. The emergency signal, in Kolsrud, is incorporated into the system, and can include an interrupt flag. This interrupt flag can be directed to a particular memory location which would contain a user's programming choice as to what to do (i.e. cut off conversation, beep, etc.). For mobile phones not having a low-frequency tuning capability, a 1-800 number could be displayed on a display screen to allow the user to retrieve the emergency broadcast message. (¶ [0022]-[0023]).

5. The cellular phone may be programmed to handle various priority levels differently, depending on the severity, thus overriding a setting of the device before the message was received. For example, when a signal including higher levels 4 and 5 is received, the cellular phone immediately interrupts any current or ongoing cellular phone communications. (¶ [0024]-[0025]).

6. Roche discloses a virtual roll call and recovery management system that allows any organization to locate their staff and allocate resources to their staff in the event of a disaster. The Emergency Broadcast Message can contain a hypertext link to system, so the user can click on the link in the email message to access the system's login page. (Abstract; ¶ [0046]).

## PRINCIPLES OF LAW

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458 (Fed. Cir. 1984). In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565 (Fed. Cir. 1992).

The Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the prima facie case with argument and/or evidence. *In re Mayne*, 104 F.3d 1339, 1342 (Fed. Cir. 1997). “Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented 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 to which said subject matter pertains.’” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007).

The claims on appeal should not be confined to specific embodiments described in the Specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (*en banc*). During ex parte prosecution, claims must be interpreted as broadly as their terms reasonably allow since applicants have

the power during the administrative process to amend the claims to avoid the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

## ANALYSIS

Appellants argue that allowing a user to program options as disclosed in Kolsrud is not the same as the claimed overriding or bypassing user selected message handling settings. We note that independent claim 1 recites, in part, “overriding or bypassing a user selected message handling setting,” independent claim 11 recites, in part, “overriding a user selected message handling setting,” and independent claim 22 recites, in part, “the message handler override module configured to “override or bypass a user selected message handling setting.” In each recitation, a single user selected message handling setting is overridden, but the independent claims do not specify that one user selected message handling setting cannot be overridden in favor of another user message handling setting.

In other words, if the phone is in one setting before the broadcast message and passes into another setting after the emergency indicator is positively evaluated, then we find that the first setting has been overridden or bypassed. This is disclosed in Kolsrud, (Findings of Fact 5), where the cellular phone may be programmed to handle various priority levels differently. For example, Kolsrud details that any ongoing telephone conversation may be immediately interrupted based on the received emergency message. (Findings of Fact 5).

We also agree with the Examiner that the instant Specification discloses that the overriding occurs with respect to any *conflicting* user selected message handling setting. (Findings of Fact 2). Thus, the

implication is that non-conflicting message handling settings are not overridden. We find Appellants' emphasis on the user's programming choice as what to do, as detailed in Kolsrud, to be immaterial, because the instant Specification details that a user can set message handling settings. (Findings of Fact 1). As long as one message handling setting is bypassed in response to the emergency message, even if the user can set each setting, we find that disputed limitations of claims 1, 11, and 22 are met. Since Appellants have not separately argued the claims dependent on claims 1, 11, and 22, we affirm the rejection of claims 1, 2, 4, 6-9, 11-17, 19, 20, and 22-26.

With respect to claims 10, 21, and 27, Appellants argue that the rejection of those claims should be overturned based on the perceived flaws in the anticipation rejection. Appellants have not argued that any particular elements of claims 10, 21, and 27 are not disclosed by the combination of Kolsrud and Roche. Thus, we affirm the rejection of claims 10, 21, and 27 as we affirm the rejections of claims 1, 2, 4, 6-9, 11-17, 19, 20, and 22-26.

## CONCLUSION OF LAW

We conclude that Appellants have not shown that the Examiner erred in rejecting claims 1, 2, 4, 6-17, and 19-27 and we affirm the Examiner's rejections of those claims under 35 U.S.C. §§ 102(b) & 103(a).

## DECISION

The decision of the Examiner is affirmed.

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

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AFFIRMED

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