

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANK J. KOZAK

Appeal 2007-3068
Application 10/867,545
Technology Center 3600

Decided: April 16, 2008

Before LINDA E. HORNER, DAVID B. WALKER, and BIBHU R.
MOHANTY, *Administrative Patent Judges*.

WALKER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134(a) from the final rejection of claims 15-20. Appellant presented oral argument on April 10, 2008.

Representative claim 15 reads as follows:

15. A geographic database that represents road segments, the geographic database comprising:

data entities that represent road segments;

wherein each data entity that represents a road segment that has an at-grade railroad crossing located thereon includes data indicating the at-grade railroad crossing and the location thereof along the road segment.

The references set forth below are relied upon as evidence of obviousness:

| | | |
|--------|-----------------|---------------|
| Ozaki | US 6,243,646 B1 | Jun. 5, 2001 |
| Mollet | US 6,688,561 B2 | Feb. 10, 2004 |

Claims 15, 16, and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ozaki. Claims 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ozaki in view of Mollet.

“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), *cert. denied*, 484 U.S. 827 (1987).

“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 question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of ordinary skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1,

17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”)

In rejecting claims under 35 U.S.C. § 103(a), the examiner bears the initial burden of establishing a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *Id.* at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

The Examiner found that Ozaki teaches a geographic database that represents road segments, comprising data entities that represent road segments, wherein each data entity that represents a road segment that has an at-grade railroad crossing thereon includes data indicating the crossing and location thereof along the road segment (Answer 4, citing Ozaki, Figs. 13A-13E, col. 8, l. 36 – col. 9, l. 3). Appellant argues that Ozaki fails to disclose data indicating the location of the at-grade railroad crossing along the road segment as required by independent claim 15 (Br. 4). We agree.

Ozaki teaches a vehicle navigation system that includes caution data, which “serves to direct increased attention to a driver for a railroad crossing, a tunnel, etc., and the data indicates information regarding existence of a railroad crossing, an entrance of a tunnel, an exit of a tunnel, a road width point or no caution.” (Ozaki, col. 8, ll. 57-61). Ozaki does not teach the location of an at-grade railroad crossing along a road segment. Ozaki thus

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does not anticipate claim 15 or claims 16 and 20, which depend therefrom, because it does not teach each and every element as set forth in claims 15, 16, and 20.

Claims 17-19 depend from claim 15, and therefore include the limitation of data indicating the location of the at-grade railroad crossing along the road segment. As stated above, Ozaki does not disclose this limitation. Mollet is directed to a system and method for remote monitoring of grade crossing warning equipment, but also provides no teaching of data indicating the location of an at-grade railroad crossing along a road segment. The combination of Ozaki and Mollet therefore does not teach or suggest each of the limitations of claims 17-19. The Examiner thus has failed to make a prima facie case of obviousness of claims 17-19 over Ozaki in view of Mollet.

The decision of the Examiner is reversed.

REVERSED

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