

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW M. VESEL

Appeal No. 95-2980
Application 08/048,343¹

ON BRIEF

Before THOMAS, HAIRSTON and FLEMING, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed April 15, 1993.

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Appellant has appealed to the Board from the examiner's final rejection of claims 1, 3 to 6, 8 to 12, 14 and 16 to 19, which constitute all the claims pending in the application.

Representative claim 9 is reproduced below:

9. An integrity monitor for TCAS mutual suppression comprising:

enable suppression means for enabling suppression;

interrogation means for interrogating own transponder, said interrogation means interrogating at regular intervals for discovering intermittent suppression failures;

decision means for deciding whether a reply has been received from said interrogation means; and,

transmission means for transmitting results received from said decision means.

The following references are relied on by the examiner:

Stelling	4,970,510	Nov. 13,
1990		
Marino et al. (Marino)	5,177,447	Jan. 05,
1993		
Ybarra et al. (Ybarra)	5,208,591	May 04,
1993		

(filed Apr. 19, 1991)

All claims on appeal stand rejected under 35 U.S.C. § 103. The examiner applies the collective teachings of appellant's admitted prior art at specification pages 1 and 2, further in view of Stelling and Marino as to claims 1, 3 to 5,

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8 to 11, 14 and 16 to 18, with the addition of Ybarra as to claims 6, 12 and 19.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and the answer for the respective details thereof.

OPINION

We reverse both rejections under 35 U.S.C. § 103.

The subject matter of each independent claim 1, 9 and 14 on appeal in part relates directly to the logic set forth in the flow diagram of Fig. 2 beginning at element 17 and the enablement of a suppression means associated with the Traffic Alert and Collision Avoidance System (TCAS) disclosed. The steps further include the interrogation only of the plane's own transponder (except for claim 1) and further logical decisions once a reply is received after the interrogation is sent to analyze whether this enable suppression means functions properly or does not function at all.

The examiner considers Stelling to teach self testing of TCAS systems generally to determine if they are performing appropriately. The examiner recognizes, however, that Stelling does not show testing of the suppression signal means

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to determine if it is working correctly. The examiner in turn relies upon Marino for the general teachings that it is known, here in the automotive test system environment, to isolate various portions of an electronic control system such as in automobiles for testing them to determine faulty components. The examiner characterizes this as a process of elimination. The examiner takes the view that based on Marino's general teachings of a process of elimination by isolating vehicle systems in a test environment, it would have been obvious to have applied these general scientific reasoning or teaching principles to the combination of appellant's admitted prior art and Stelling.

We must reverse the rejection because no reference of record teaches or suggests or even indicates the desirability of testing the suppression signal means of a TCAS system even in the manner broadly set forth in each independent claims 1, 9 and 14 on appeal.

Certainly, Marino does not teach such and the examiner's position recognizes that Stelling does not show the testing of a signal suppression means associated with TCAS systems. The examiner views Stelling's teachings as being equivalent to

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steps 11 to 16 of appellant's disclosed flowchart Fig. 2. However, we note that such is apparently admitted to be a part of the prior art as expressed in the specification at p. 4, lines 4 through 11 and p. 5, lines 5 through 10. We are therefore left with what amounts to, in our view, a prohibited hindsight analysis of the examiner utilizing Marino's general teachings of computerized sequential testing of a device under test. Alternatively, we do not see any rationale that the artisan would have derived from the collective teachings of the three references relied upon that would have led him to modify Stelling's teachings to perform any test of the suppression signal means of his own TCAS system.

In view of the foregoing, the decision of the examiner rejecting claims 1, 3 to 5, 8 to 11, 14 and 16 to 18 under 35 U.S.C. § 103 must be reversed. As such, and because Ybarra fails to correct these deficiencies, the additional rejection

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of dependent claims 6, 12 and 19 must also be reversed.

Therefore, the decision of the examiner is reversed.

REVERSED

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JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
KENNETH W. HAIRSTON))
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
MICHAEL R. FLEMING)	
Administrative Patent Judge)	

John R. Rafter

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