

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(2) is not binding precedent of the Board.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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KATSUHIKO UCHIYAMA

Appeal No. 96-0241
Application 07/617,740¹

HEARD: Feb. 2, 1998

Before KRASS, LEE, and TORCZON, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 6, all the claims pending in the application.

The invention is directed to a business transaction data accumulation system wherein business transaction data is accumulated even if a disconnection develops on a communication line connecting the accumulating device to a point-of-sale (POS) terminal. More specifically, each POS terminal has therein a failure detecting means for detecting when

¹ Application for patent filed November 26, 1990.

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there is a failure on the communication line between the POS terminal and the accumulating device. When such a failure is detected, the business transaction data from that POS terminal is recorded at the POS terminal and, at the end of the day, the medium upon which the business transaction data was recorded is brought into the accumulating device where the data is read, accumulated and placed into a storage device.

Independent claim 1 is reproduced as follows:

1. A business transaction data accumulating system comprising:

a plurality of business transaction data entry means for entering of data about business transactions, and for outputting said entered data;

a business transaction data accumulating means for accumulating the business transaction data entered through any of said business transaction data entry means; and

a communication line for connecting said plurality of business transaction data entry means to said business transaction data accumulating means and for transmitting said entered data to said business transaction data accumulating means, wherein

each of said business transaction data entry means includes

a failure detecting means for detecting any failure that occurs at least on said communication line prior to said business transaction data entry means outputting said data, and

a recording means for recording, on a recording medium, the business transaction data entered through said business transaction data entry means upon detection of any failure by said failure detecting means.

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The examiner relies on the following references:

Takahashi	4,750,120	Jun. 7, 1988
Kubota	5,056,090	Oct. 8, 1991

(filed May 9, 1989)

Claims 1 through 6 stand rejected under 35 U.S.C. ' 103 as unpatentable over Takahashi in view of Kubota. In a new ground of rejection entered in the principal answer, the examiner also rejects claims 1 through 5 under 35 U.S.C. ' 103 over Takahashi, alone.

Reference is made to the briefs and answers for the respective positions of appellant and the examiner.

OPINION

We have carefully reviewed the evidence before us, including the evidence of obviousness relied upon by the examiner as support for the rejections and appellant's arguments thereagainst.

It is our view, after consideration of the record before us, that the examiner has failed to present a prima facie case of obviousness. Accordingly, we reverse.

The examiner points out that Takahashi discloses a plurality of business transaction data entry systems, data accumulation means and a communication line for connecting the business transaction data entry systems to the accumulating means but admits that Takahashi lacks a teaching of a failure detecting

means and a recording means in the business transaction data entry systems. Thus, the examiner turns to Kubota in one rejection for the disclosure of data check circuits for detecting errors in transmitted data. The examiner then concludes, erroneously, in our view, that "checking errors on data inherently involves the checking of a communication line over which the data is being transmitted" [page 4-principal answer].

In the new ground of rejection, relying on Takahashi, alone, the examiner reasons that because failure detecting means are well known, it would have been obvious to "incorporate a failure detecting means to check the communication line since the communication line is the essential link in transmitting and receiving data" [page 6-principal answer] and because recording means are well known, it would have been obvious "to record or store business transaction data upon detecting failure in a communication to have a continuous record of all the data for future utilization" [page 6-principal answer].

The problem with the examiner's rationale with regard to the rejection of claims 1 through 6 under 35 U.S.C. ' 103 in view of Takahashi and Kubota is that checking errors on data is not, inherently, a check on the failure of a communication line. It is, of course, possible that a data error might be the result of a failed communication line. But a data error may also be the result of noise, parity error, alignment error, etc. Inherency

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may not be established by probabilities or possibilities.

Hansgirg v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939).

Moreover, independent claim 1 requires not only detecting any failure on the communication line, but also that detection takes place "prior to" the data entry means transmitting its data. Further, in response to an error detection prior to transmission, recording means within the data entry terminals record the data. There is no suggestion of the claimed failure detecting means or the claimed recording means or of the claimed interaction of these elements in either Takahashi or Kubota or in the combination thereof. As claimed, it is clear that the instant invention is interested in detecting failure of the communication line at the POS terminals and of recording data at those terminals if there is a detected error in the communication line. If, somehow, Takahashi was combined with Kubota, it would appear to us that, if anything, there may be a data check performed at the data collection system C of Takahashi but there would have been no reason to check for failures in the communication line at the electronic cash registers of Takahashi and then, upon such failure detection, to store business transaction data at the cash register terminals.

Turning to the new ground of rejection under 35 U.S.C. ' 103, relying on Takahashi, alone, the deficiencies of Takahashi

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are explained supra. However, the examiner takes the position here that because the failure detecting means and recording means are "well known in the art" [page 6-principal answer], it would have been obvious to "incorporate a failure detecting means to check the communication line since the communication line is the essential link in transmitting and receiving data" and to "record...upon detecting failure in a communication to have a continuous record of all the data for future utilization" [page 6-principal answer].

While the examiner's rationale has a certain appeal of simplicity to it, justifying such rationale by contending that one would, of course, wish to detect whether a communication line had failed and, upon such failure detection, would clearly not want to send data over a faulty line so such data should be stored for future use or transmission, the trouble with the rationale is that it is one of impermissible hindsight. Only appellant's own disclosure, and not the applied reference, taught what the examiner contends to have been obvious. This is clearly an improper basis for a finding of obviousness.

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The examiner's decision rejecting claims 1 through 6 under
35 U.S.C. ' 103 is reversed.

REVERSED

Errol A. Krass)	
Administrative Patent Judge)	
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Jameson Lee)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
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