

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(2) is not binding precedent of the Board.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 JOSEPH A. PROFETA

Appeal No. 96-1290
Application 08/042,719¹

ON BRIEF

Before HAIRSTON, KRASS, and BARRETT, Administrative Patent
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of
claims 1 through 34, all the claims pending in the application.

The invention pertains to a guided fire control system for a
manually aimed gun.

Representative independent claim 1 is reproduced as follows:

1. A fire control system comprising:
a manually aimed gun having a sighting device;

¹ Application for patent filed April 5, 1993.

means for acquiring a target, said acquiring means disposed at a location remote from said gun; and

means for determining a trajectory of the target with respect to the gun and providing information relating to the target to the sighting device of the gun such that an operator of the gun can aim the gun with respect to the sighting device to hit the target when the gun is fired, said determining means being in communication with said acquiring means and the sighting device.

The examiner relies on the following references:

Voles	4,370,914	Feb. 1, 1983
Moore	4,531,052	Jul. 23, 1985
Boeck et al.(Boeck)	4,622,458	Nov. 11, 1986
Frohock, Jr.	4,787,291	Nov. 29, 1988
Jaquard et al. (Jaquard)	4,922,801	May 8, 1990

Claims 1 through 34 stand rejected under 35 U.S.C.

' 103. As evidence of obviousness, the examiner cites Frohock, Jaquard and Boeck with regard to claims 1 through 10 and 23 through 34, adding Moore with regard to claims 11 through 19 and additionally adding Voles with regard to claims 20 through 22.

Reference is made to the brief² and answer for the respective positions of appellant and the examiner.

OPINION

We have carefully considered the evidence before us and, based on that evidence, we will not sustain the rejection of claims 1 through 34 under 35 U.S.C. ' 103.

² Appellant also filed a FAX (Paper No. 12), which might be considered a supplemental brief, indicating Contraves USA as the real party in interest and that there are no known related appeals or interferences. For purposes of our discussion and reference to "the brief," we consider the brief filed June 21, 1995 (Paper No. 10) to be the sole "brief" in the case.

The claims all call for a manually aimed gun or guns and acquiring a target, wherein the means for acquiring the target is remote from the gun or guns. Frohock is clearly not directed to manually aimed guns and Boeck does not mention guns at all. Therefore, it would appear that any combination with Boeck, in order to arrive at the claimed invention, could only have been made through impermissible hindsight.

The most relevant reference appears to be that of Jaquard which does appear to disclose a manually fired gun. The problem with Jaquard, however, is that it does not disclose the claimed "means for acquiring a target, said acquiring means disposed at a location remote from said gun."³

The examiner points to column 1, lines 57-59 of Jaquard, which states:

Thus a function is provided equivalent to that of a stabilized remote aiming control station operating as a master station for a weapon system.

The examiner points to this section ostensibly to show that Jaquard at least suggests that the acquiring means may be remote from the gun. Appellant argues [principal brief, page 24] that this section of Jaquard actually teaches away from the claimed invention because Jaquard's invention is taught for a remote aiming control station which is no longer needed with Jaquard's gun because of Jaquard's use of a camera.

³ This language is taken from independent claim 1 but the other independent claims include comparable language.

We do not agree with appellant's assessment that Jaquard "teaches away" from the claimed invention. While the invention of Jaquard is taught to be a substitute for, or an alternative to, a stabilized remote aiming control station, a reference is good for all that it teaches and Jaquard clearly suggests that remote aiming control stations were part of the prior art even if Jaquard chose not to use them.

The problem with Jaquard is that the "remote" language employed at the portion of the specification cited by the examiner is speculative. While a control system may have been known to be remote from the gun, there is no teaching or suggestion that such a control system included a "means for acquiring a target," as claimed. The control system, or "station," cited by Jaquard is a "remote aiming control station." The instant claims call for "acquiring a target," wherein the acquiring means is at a location "remote" from the gun. A remote aiming control station does not, necessarily, include a remote means for acquiring a target. While it is possible that a remote control means, mentioned as being known by Jaquard, may include a means for acquiring a target, as recited in the instant claims, such a conclusion would require a resort to speculation on our part. We will not substitute speculation for a clear suggestion by the prior art in order to sustain a rejection based on 35 U.S.C. ' 103.

If the remote aiming control system of Jaquard was, in fact, known to include a means for acquiring a target, as claimed, the examiner should have found evidence of such a control system. In any event, while Jaquard appears closely related to the claimed subject matter, we will not speculate as to what Jaquard meant by the disclosure of providing a function that is "equivalent to that of a stabilized remote aiming control station operating as a master station for a weapon system." We do not find a clear teaching or suggestion, in the applied references, of providing a "means for acquiring a target, said acquiring means disposed at a location remote from said gun," as claimed.

The other applied references to Moore and Voles are not seen to provide for the deficiencies noted supra with regard to Frohock, Jaquard and Boeck.

Accordingly, the examiner's decision rejecting claims 1 through 34 under 35 U.S.C. ' 103 is reversed.

REVERSED

Kenneth W. Hairston)	
Administrative Patent Judge)	
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Errol A. Krass)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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