

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MING-CHIANG LI

Appeal No. 96-3023
Application No. 08/439,284¹

ON BRIEF

Before URYNOWICZ, HAIRSTON and LEE, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 20.

The disclosed invention relates to a radar system that stores initially transmitted RF signals, and that uses the

¹ Application for patent filed May 11, 1995. According to the appellant, the application is a continuation of Application No. 08/018,388, filed February 17, 1993.

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stored RF signals as a reference for comparison with reflected RF signals.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A radar system comprises:
 - a transmitter;
 - an antenna subsystem;
 - an optical fiber RF storage subsystem;
 - a coherent RF receiver;

wherein the transmitter comprises means for generating RF signals; wherein the antenna subsystem comprises means for transmission of generated RF signals and for receiving reflection of RF signals; wherein the optical fiber RF storage subsystem comprises means for storing a portion of generated RF signals from the transmitter; wherein the coherent RF receiver comprises means for processing the reflected RF signals from the antenna subsystem by using the stored RF signals from the optical fiber RF storage subsystem as a reference.

All of the claims on appeal stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 20 of appellant's U.S. Patent No. 5,294,930.

Reference is made to the briefs (paper numbers 11, 13 and 19²), the final rejection, and the answers for the respective positions of the appellant and the examiner.

² All of the other Supplemental Briefs were not entered by the examiner.

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OPINION

The obviousness-type double patenting rejection is reversed because the claims on appeal are not unpatentable over claims 1 through 20 in U.S. Patent No. 5,294,930.

The examiner indicates (final rejection, page 3) that "[a]lthough the conflicting claims are not identical, they are not patentably distinct from each other because while not exactly claimed the optical fiber RF storage is disclosed in the '930 patent." The disclosure of an optical fiber RF storage in the patent is of no import in an obviousness-type double patenting rejection because "the patent disclosure may not be used as prior art." In re Vogel, 422 F.2d 438, 441, 164 USPQ 619, 622 (CCPA 1970).

We agree with appellant (paper number 13, pages 3 and 4) that the claimed invention is concerned with using a stored RF signal as a "reference" for comparing or "processing" reflected RF signals or sequential RF signals, and that no such operation occurs in the claimed invention in U. S. Patent No. 5,294,930.

A detailed analysis of the two sets of claims reveals that the claims on appeal are not concerned with "two antenna

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subsystems," a "processing center," "optical RF link systems" that link the "two antenna subsystems" to the "processing center, and an "object" that forms a "triangle" with the "two antenna subsystems."

Appellant concludes (paper number 13, page 4) that:

The apparatus as defined by the claims of the instant invention is different in structure from that defined by the claims of the invention No. 5,294,930. Appellant respectful [sic, respectfully] submits that Examiner . . . did not see explicit differences in the claimed structure of the instant invention from that of invention No. 5,294,930. Appellant further submits that Examiner did not examine the independent claims as [a] whole. Instead he picks only common pieces and throws away many distinct parts.

We agree. In summary, the rejection is reversed because the examiner has not provided a prima facie case to support the conclusion that the claimed invention is an obvious variation of the patented invention.

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DECISION

The decision of the examiner rejecting claims 1 through 20 under the judicially created doctrine of obviousness-type double patenting is reversed.

REVERSED

STANLEY M. URYNOWICZ, Jr.)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
KENNETH W. HAIRSTON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JAMESON LEE)	
Administrative Patent Judge)	

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Appeal No. 96-3023
Serial No. 08/439,284

Judge HAIRSTON

Judge URYNOWICZ

Judge LEE

Received: 19 Aug 98

Typed: 19 Aug 98

DECISION: REVERSED

Send Reference(s): Yes No
or Translation(s)

Panel Change: Yes No

3-Person Conf. Yes No

Remanded: Yes No

Brief or Heard

Group Art Unit:

Index Sheet-2901 Rejection(s): _____

Acts 2: _____

Palm: _____

Mailed:

Updated Monthly Disk: _____

Updated Monthly Report:
