

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEFFREY J. SIMMONS

Appeal No. 97-1384
Application 08/068,357¹

ON BRIEF

Before URYNOWICZ, KRASS and LEE, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed May 27, 1993.

Appeal No. 97-1384
Application 08/068,357

This is a decision on appeal from the final rejection of claims 1, 3, 7 through 9, 11 through 13 and 15, the only claims remaining in the application.

The invention pertains to the establishment of a radio frequency communication link between a controller and a remote controller system.

Representative independent claim 1 is reproduced as follows:

1. A radio frequency data link to establish communications between a controller and a remote controllable system, comprising:

interface means for producing command signals indicative of desired system functions;

transmitting RF means for receiving the command signals and responsively generating radio frequency signals representative of the command signals, the transmitting RF means including an RF modem having a serial number;

a remote controllable system, including:

a switch being selectable to a plurality of positions, each switch position representing a predetermined ID number that identifies the remote controllable system;

receiving RF means for receiving the radio frequency signals and responsively converting the radio frequency signals into control signals, the receiving RF means including an RF modem having a serial number, wherein the radio frequency signals include information representing the serial number of the transmitting RF modem and the predetermined ID number associated with the receiving remote controllable system; and

Appeal No. 97-1384
Application 08/068,357

logic means for receiving the control signals, performing the desired function, and producing a reply signal that indicates the serial number of the receiving RF modem to establish point-to-point communication between the transmitting and receiving RF modem pair.

The examiner relies on the following references:

Kirchner et al. (Kirchner)	4,665,519	May 12, 1987
Rubin	4,788,543	Nov. 29, 1988
Nelson et al. (Nelson)	4,852,122	Jul. 25, 1989
La Mura et al. (La Mura)	5,157,222	Oct. 20, 1992
Caswell et al. (Caswell)	5,231,273	Jul. 27, 1993

(filed Apr. 9, 1991)

Claims 1, 3, 7 through 9, 11 through 13 and 15 stand rejected under 35 U.S.C. 103. As evidence of obviousness, the examiner cites Nelson in view of Caswell and Rubin with regard to independent claims 1 and 9, adding La Mura to this combination with regard to claims 3, 13 and 15 and adding Kirchner to the original combination with regard to claims 7, 8, 11 and 12.

Rather than reiterate the arguments of appellant and the examiner, reference is made to the briefs and answers for the respective details thereof.

OPINION

At the outset, we note that, in accordance with appellant's grouping of claims at page 3 of the principal brief, claims 3, 7, 8 and 13 will stand with independent claim 1 and

Appeal No. 97-1384
Application 08/068,357

claims 11, 12 and 15 will stand or fall with independent claim 9.
Thus, we will consider only independent claims 1 and 9.

The examiner's position, in a nutshell, is stated at
page 2 of the supplemental answer [Paper No. 18]:

Nelson teaches a radio data link or a plurality of RF modems having means for producing the command signals and logic means for producing a reply signal. Caswell teaches a system wherein each of the RF modems comprises a predetermined serial number for properly tracking information during data exchanges and Rubin teaches a received message having IDs of the transceiver and the intended receiver. Therefore, the Nelson modem system modified by Caswell and Rubin would have provided at [sic] the claimed subject matter [sic, matter] which [sic, in which] a modem system for broadcasting a replay [sic, reply] signal that [sic] includes the serial number of the receiving modem.

Appellant does not contradict the examiner's application of Nelson. Therefore, the teaching by Nelson of "a radio data link or a plurality of RF modems having means for producing the command signals and logic means for producing a reply signal" is not in dispute.

Rather, appellant makes three arguments:

1. Rubin does not teach broadcasting the serial number of the transmitting RF modem.

Appeal No. 97-1384
Application 08/068,357

2. None of the references teaches broadcasting a reply signal that includes the serial number of the receiving RF modem

3. None of the references teaches having a switch that has a plurality of positions representing a plurality of ID numbers.

With regard to the first argument, Appellant contends [principal brief, page 5], pointing to column 5, lines 13-19 of Rubin, that the identifier code indicated by the legend ID in Rubin does not represent the sending transceiver but, rather the identifier represents the user's preassigned identification number.

While Rubin clearly does provide for a preassigned identification number for the user, appellant appears to have misinterpreted the language of Rubin at column 5, lines 6-10. We can agree with appellant that the language "ID of the sender," at column 7, line 12 of Rubin, in a vacuum, is not clear. Such language could refer to the ID of a user or to the ID of a sending, i.e., transmitting, unit. However, at column 5, lines 6-10, Rubin states:

The addition of an identifier code for the intended recipient of the message to be sent is indicated by legend T0. The addition of an identifier of the transceiver 20 sending the message is also indicated by legend ID,

Appeal No. 97-1384
Application 08/068,357

Accordingly, Rubin clearly teaches that both the receiver and the transmitter are, or may be, given identifier codes, or serial numbers. Therefore, contrary to appellant's position, we view Rubin as fairly suggesting the broadcasting of a serial number of the transmitting RF modem.

Going on to appellant's second argument, appellant argues that even if Rubin is interpreted (as we do) as broadcasting the serial number of the sending transceiver, Rubin does not teach producing a reply signal that includes the serial number of the receiving transponder.

Again, we disagree with appellant. As the examiner contends, when one takes the teachings of the references as a whole, with Nelson teaching a general radio data link with logic means for producing a reply signal, Caswell teaching that each RF modem comprises a predetermined serial number and Rubin teaching received messages having IDs of both the transmitter and the intended receiver, the artisan would clearly have been led to include, in the reply signal of Nelson, the serial number, or ID, of the receiving transponder. Moreover, any reply signal from a receiver, which is a transceiver acting in its receiver mode, may fairly be considered as a signal from a transceiver acting in its transmitter mode. As explained supra, Rubin fairly suggests the

Appeal No. 97-1384
Application 08/068,357

broadcasting of the sending transceiver ID, or serial number. Therefore, when the receiver is sending a reply signal, it is acting in a sending unit capacity and the art fairly suggests including the sending unit ID in that signal. But the ID of this sending unit, i.e., the transceiver in its transmitter mode, is the ID of the receiver, i.e. the transceiver in its receiver mode, since it is simply the ID of the transceiver regardless of the mode of the transceiver. Accordingly, contrary to appellant's position, the cited art does suggest producing a reply signal that includes the serial number of the receiving transponder.

When we come to appellant's third argument, regarding the claimed "switch," we agree with appellant that the applied references would not have suggested the claimed "switch being selectable to a plurality of positions, each switch position representing a predetermined ID number that identifies the remote controllable system."

The examiner identifies the keyboard 50 in Rubin as corresponding to the claimed switch and, in response to appellant's argument that keyboard 50 is not used to change its ID number, the examiner contends [supplemental answer, page 3]

Appeal No. 97-1384
Application 08/068,357

that such a "change" in ID number is not part of the claimed subject matter.

The claim language clearly calls for the switch being "selectable" to a plurality of positions and that each position represents a predetermined ID number identifying the remote controllable system. Therefore, the examiner must show that the prior art suggests at least the capability of changing the ID number of the remote controllable system by selecting one of a plurality of switch positions.

Although Rubin suggests, at column 5, lines 6-10, quoted supra, that the intended recipient has an identifier code, and Rubin also suggests, at column 5, lines 43-45, that the keyboard 50 may be used to identify the number of the intended recipient, the examiner has failed to identify any portion of Rubin, and we are unaware of any such portion, which indicates that that number of the intended recipient is anything but fixed. To assume that the identification number of the intended recipient in Rubin is variable, or changeable, is to resort to speculation. Speculation may not constitute the rationale for a conclusion of obviousness under 35 U.S.C. 103.

Accordingly, since claims 1, 3, 7, 8 and 13 include the "switch" limitation, we will not sustain the rejection of these

Appeal No. 97-1384
Application 08/068,357

claims under 35 U.S.C. 103. We will, however, sustain the rejection of claims 9, 11, 12 and 15, which do not include this limitation, under 35 U.S.C. 103.

The examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Appeal No. 97-1384
Application 08/068,357

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