

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision entered today was not written for publication and is not binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte SCOTT CHRISTIE

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Appeal No. 1998-1257  
Application 08/337,095<sup>1</sup>

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ON BRIEF

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Before SCHAFER, LEE and MEDLEY, Administrative Patent Judges.  
LEE, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's rejection of appellant's claims 7-26. No claim has been allowed. Claims 1-6 have been canceled. The real party in interest is Audiovox Corporation.

**References relied on by the Examiner**

Tomoda et al. (Tomoda) 1988	4,763,121	Aug. 9,
Kurozu et al. (Kurozu)	5,157,389	Oct. 20,

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<sup>1</sup> Application for patent filed November 10, 1994.

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1992 Lindmayer et al. (Lindmayer) 11, 1994	5,355,525	Oct.
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### **The Rejection on Appeal**

Claims 7-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lindmayer.

Claim 21 stands rejected under 35 U.S.C. § 103 as being unpatentable over Lindmayer and Kurozu.

Claims 22-26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lindmayer, Kurozu, and Tomoda.

### **The Invention**

The claimed invention is directed to an apparatus and method for remotely controlling a vehicle security system. Claims 7, 14, 18, 21 and 25 are independent claims, of which claims 7, 18 and 21 are reproduced below:

7. An apparatus for remotely controlling a vehicle security system, the apparatus comprising:

a transmitter for transmitting a first signal which changes a security status of the vehicle security system and a second signal which does not change the security status of the vehicle security system, said transmitter transmitting said first signal throughout a first range and transmitting said second signal throughout a second range, said first range being smaller than said second range.

18. A method for remotely controlling a security system, the method comprising the steps of:

transmitting a first signal which changes a security status of the security system throughout a first range; and

transmitting a second signal that does not change the

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security status of the security system throughout a second range which is greater than the first range.

21. A control unit for controlling a security system having an audible actuation indicator, the control unit comprising:

a transmitter for transmitting signals to the security system for controlling a disarming/arming operation of the security system and for actuating the audible actuation indicator to generate a sound; and

an actuator for actuating the transmitter to transmit the signals to the security system, the actuator being adapted to selectively prevent the audible actuation indicator from sounding.

#### Opinion

We reverse the rejection of claims 7-20 and affirm the rejection of claims 21-26.

#### A. The rejection of claims 7-20

A reversal of any rejection on appeal should not be construed as an affirmative indication that the appellant's claims are patentable over prior art. We address only the sufficiency of the findings and rationale as set forth by the examiner and on which the examiner's rejection is based.

Claims 7-20 require the transmission of a first signal which changes the security status of the vehicle security system and a second signal which does not change the status of the vehicle security system. Also, the claims require that

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the range of transmission of the first signal is smaller than  
that of the

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second signal. According to the appellant's specification, this differentiation in range of transmission combats and deters unauthorized code-grabbing or interception of the security code.

The examiner relied on Lindmayer for teaching the remote transmission of two signals to a vehicle, one of which changes the status of the vehicle security system. The problem, however, is that according to Lindmayer, the range of transmission of the signal changing the vehicle's locking and anti-theft security status is greater than that of the second signal which does not affect the status of the vehicle's locking and anti-theft functions. In column 3, lines 39-44, Lindmayer states:

Thereby, the receivable output power of the hand-held transmitter and its range when controlling the convenience function (KB) are clearly reduced compared to its relatively large range for the control of the locking (ZV) and the anti-theft (EDW) functions.

The appellant is correct that Lindmayer teaches the exact opposite of the appellant's claimed feature concerning the range of transmission of the control signals.

The examiner improperly ignored a critical difference between the appellant's claimed invention and the disclosure

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of Lindmayer. According to the examiner, it is sufficient that Lindmayer discloses the concept of using two remotely transmitted control signals one of which affects the security status of the vehicle and the other one does not. As for which signal should have a greater range of transmission, the examiner simply concludes that "that would be a matter of design choice by the artisan" (Answer at 7). To characterize a feature as a design choice is not meaningful in a proper analysis of obviousness under 35 U.S.C. § 103. Essentially, every feature is a design choice. Some choices and selections take the invention as a whole out of the scope of obviousness, and some do not.

The mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992); In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor. Para-Ordnance Mfg. Inc. v. SGS Importers Int'l

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Inc., 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995), cert. denied, 117 S.Ct. 80 (1996).

The examiner has articulated no motivation, based on the teachings of the prior art, for making the range of transmission of the control signal affecting the status of the vehicle's security system smaller than that of the other control signal. That omission is especially troublesome here when Lindmayer discloses just the opposite. The examiner also states (Answer at 7): "using the signals for a different function is not novel." That statement is plainly erroneous. The combination recited by the appellant's claims is indeed novel, on the record developed by the examiner. Lindmayer's remotely transmitted signal affecting the status of the vehicle locking or anti-theft functions does not have a smaller or shorter range than that of the other signal.

For the foregoing reasons, the rejection of appellant's claims 7-20 cannot be sustained.

B. The rejection of claims 21-26

The appellant's arguments are not commensurate in scope with independent claims 21 and 25, neither of which specify any relationship between the range of transmission of the

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signal affecting the status of the vehicle's security system and the other remotely transmitted signal. Moreover, neither claim 21 nor 25 recites a second remotely transmitted signal which does not affect the status of the vehicle's security system. The same is true with respect to claims 22-24 which depend from claim 21 and claim 26 which depends from claim 25.

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With respect to the features recited in claims 21-26 regarding the actuation or prevention of actuation of an audible indicator, the appellant's appeal brief does not advance any pertinent argument to demonstrate that the rejections should be overturned. Accordingly, the appellant has shown no basis for a reversal of the rejection of claims 21-26. It is the appellant's burden to demonstrate error in the examiner's rejection. That burden has not been met in the case of claims 21-26. We sustain the rejection of claims 21-26.

#### **Conclusion**

The rejection of claims 7-20 under 35 U.S.C. § 103 as being unpatentable over Lindmayer is reversed.

The rejection of claim 21 under 35 U.S.C. § 103 as being unpatentable over Lindmayer and Kurozu is affirmed.

The rejection of claims 22-26 under 35 U.S.C. § 103 as being unpatentable over Lindmayer, Kurozu, and Tomoda is affirmed.

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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**

RICHARD E. SCHAFER	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JAMESON LEE	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
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SALLY C. MEDLEY	)	
Administrative Patent Judge	)	

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