

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JOHANNES L. BAKX

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Appeal No. 1998-3389  
Application No. 08/386,794

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ON BRIEF

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Before HAIRSTON, HECKER, and GROSS, Administrative Patent Judges.  
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 to 6.

The invention relates to a scanning device for tracking the centerline of an information track on an optical record carrier in a dual track pitch tracking system. During scanning, a read spot is focused on the track centerline during first and second modes of operation.

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

1. A scanning device for tracking the centerline of a track on a record carrier which has parallel, optically detectable tracks at more than one possible track pitch, the device comprising:

an optical system for applying a main read spot of radiation onto a track of the record carrier, and for applying a first auxiliary spot of radiation and a second auxiliary spot of radiation onto the record carrier at positions on either lateral side of the track,

a radiation-sensitive main detector, a radiation-sensitive first auxiliary detector and a radiation-sensitive second auxiliary detector for receiving light reflected from the main read spot, first auxiliary spot and second auxiliary spot, respectively, the main detector, the first auxiliary detector and the second auxiliary detector each having at least a first and a second sub-detector which each produces a detector signal; and

a tracking control system for controlling, in response to a tracking error signal, a position of the main read spot with respect to the record carrier to follow a centerline of the track, which tracking control system can be brought into a first operating state at one track pitch and a second operating state at another track pitch, the tracking control system including:

first tracking error signal generating means for generating, when the tracking control system operates in the first operating state, a push-pull signal which represents a combination of mutual differences between the detector signals produced by the sub-detectors of the main detector, the first auxiliary detector and the second auxiliary detector as the tracking error signal; and

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second tracking error signal generating means for generating, when the tracking control system operates in the second operating state, a signal which represents a difference between the sums of the detector signals produced by the sub-detectors of the first auxiliary detector and the second auxiliary detector as the tracking error signal.

The references relied upon by the examiner are:

Philips	GB1434834	May 5, 1976
Yoshio et al. (Yoshio)	5,216,652	Jun. 1, 1993
Jongenelis et al. (Jongenelis)	5,235,583	Aug. 10, 1993

Claims 1 to 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jongenelis in view of Yoshio or the Philips references.

#### **OPINION**

We have carefully considered the entire record before us and we will sustain the 35 U.S.C. § 103(a) rejection of claims 1 to 6.

In Jongenelis, the scanning spot is kept "on the centerline of a track to be scanned in the first mode" (column 1, lines 23 and 24).

According to the appellant (Brief, page 4), "Jongenelis et al. identify the primary objective of their invention to be the

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elimination of the drawbacks of the prior art discussed in the 'Background of the Invention' portion of their patent, which Jongenelis et al. believed to be due to the use of centerline tracking when reading in an optical record carrier of a second type in a second mode of operation." Therefore, the Jongenelis reference discloses that the use of centerline tracking during both modes of operation is well known in the art. As the previous passage from the Brief demonstrates, the appellant readily admits that such is the case. The appellant is correct in his characterization of the preferred embodiments of the Jongenelis invention that they teach away from using centerline tracking in both modes of operation, but it is also clear that centerline tracking for both modes of operation is disclosed in the Background of the Invention portion of Jongenelis and is claimed in this instant application (Brief, pages 4 to 6). In making a distinction between the acknowledged prior art and the preferred embodiments, Jongenelis discloses that "[t]he electric circuit gives the tracking servosystem an electrical offset so

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that the read spot will not follow the centerline [in the second mode], but instead follows the edge of the track" (column 2, lines 23 to 26). This statement is further evidence that centerline tracking for both modes of operation is in the Background portion of Jongenelis.

The appellant also states (Brief, page 5) that:

it is important to recognize that Yoshio et al. are only concerned with a single mode of operation (i.e., reading only a single type of optical record carrier having a single track pitch). Thus, Yoshio et al. is not a "dual-track-pitch" tracking system, but rather, is a particular type of "single-track-pitch" tracking system which uses a novel mixing of different signals to produce a "composite" tracking error signal which is designed to overcome errors which are encountered when the optical disk is radially inclined and/or the lens in the optical system is displaced off the optical axis.

We agree. Yoshio does not disclose a dual track pitch system in the same vein as the claimed invention. In reference to the Philips patent, the appellant argues that Philips does not disclose "a 'dual-track-pitch' tracking system" but rather another "particular type of 'single-track-pitch' tracking system" (Brief page 5). We agree with appellant for the same reasons as

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previously stated. Thus, the teachings of the other references are merely cumulative to those already found in Jongenelis.

Although the examiner has not provided adequate motivation to combine the references in the 35 U.S.C. § 103(a) rejection, we will still sustain the rejection based upon the teachings of Jongenelis. In affirming a multiple reference rejection under 35 U.S.C. § 103, the Board may rely on one reference alone in an obviousness rationale without designating it as a new ground of rejection. In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961); In re Boyer, 363 F.2d 455, 458, n.2, 150 USPQ 441, 444, n.2 (CCPA 1966).

The appellant has not argued any other inadequacies of the references in this matter. 37 C.F.R. § 1.192(a) states that "[a]ny arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and

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Interferences, unless good cause is shown." Thus, arguments not made are considered arguments that are waived.

**DECISION**

The decision of the examiner rejecting claims 1 to 6 under 35 U.S.C. § 103(a) is affirmed.

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

**AFFIRMED**

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
STUART N. HECKER	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

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