

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MARTIN K. JONES

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Appeal No. 1999-0091  
Application No. 08/762,052

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ON BRIEF

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Before BARRETT, FLEMING, and GROSS, Administrative Patent Judges.  
GROSS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 22, which are all of the claims pending in this application.

Appellant's invention relates to an advanced notification system for notifying a system user of impending arrival of a vehicle at a vehicle stop. The system provides a distinctive telephone ring sound at the user's telephone interface. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. An advance notification method for notifying a user of an impending arrival of a vehicle at a vehicle stop, comprising the steps of:

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(a) monitoring travel of said vehicle; and

(b) initiating a telephone call to a user telephone interface associated with said user before said vehicle reaches said vehicle stop to thereby indicate impending arrival of said vehicle at said vehicle stop; and

(c) causing said user telephone interface to exhibit a distinctive telephone ring sound that is associated with said advance notification method.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Greer	4,350,969	Sep. 21, 1982
Oprea	5,323,456	Jun. 21, 1994
Reyes et al. (Reyes)	5,361,296	Nov. 01, 1994
Ross	5,444,444	Aug. 22, 1995

(filed May 14, 1993)

Claims 1 through 5, 8 through 12, 16 through 18, 21, and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ross in view of Oprea.

Claims 6, 7, 13, 14, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ross in view of Oprea and Reyes.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over Ross in view of Oprea and Greer.

Reference is made to the Examiner's Answer (Paper No. 20, mailed September 22, 1997) for the examiner's complete reasoning in support of the rejections, and to appellant's Brief (Paper No. 18, filed August 11, 1997) and Reply Brief (Paper No. 21, filed December 1, 1997) for appellant's arguments thereagainst.

OPINION

As a preliminary matter, we note that appellant indicates on pages 3-4 of the Brief that the claims do not stand or fall together. Appellant proposes four groups of claims: I) claims 1 through 5, 8 through 12, 21, and 22, II) claims 16 through 18, III) claims 6, 7, 13, 14, 19, and 20, and IV) claim 15, and argues each group separately in accordance with 37 C.F.R. § 1.192(c)(7). However, claims 21 and 22 include subject matter argued for the second group of claims. Therefore, we will treat the claims substantially according to appellant's grouping, with claims 21 and 22 included in group II, and with claims 1, 16, 6, and 15 as representative of the four groups.

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellant and the examiner. As a consequence of our review, we will affirm the obviousness rejection of claims 1 through 14, 19, and 20 and reverse the obviousness rejection of claims 15 through 18, 21, and 22.

Regarding the first group of claims, appellant asserts (Brief, page 5) that Ross "provides no teaching whereby specific schedule status information is provided to the rider via a telephone call without the rider actually answering the telephone call and listening to a voice message, as is clearly set out in

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claims 1 and 8." Appellant makes a similar argument in the Reply Brief at pages 2-3. However, representative claim 1 does not preclude the rider's answering the telephone. The distinctive telephone ring sound recited in the claim indicates the source of the telephone call, thus alerting the user that the vehicle is calling, but does not prevent the user from answering the phone and listening to a voice message. Further, although Ross suggests that the user must answer the phone, as the user would otherwise have no other way of knowing the source of the telephone call, a special ringing sound, as suggested by Oprea, would allow the user to determine the source of the call without answering the phone. Thus, there would be incentive to combine Ross with Oprea, contrary to appellant's assertion (Reply Brief, page 3).

Appellant further states (Brief, page 5) that Ross discloses that the call is placed from the vehicle, which limits the number of calls that can be initiated. However, claim 1 includes no limitations regarding location from which the call is placed.

In addition, appellant argues (Brief, pages 5-6 and 6-7) that Oprea fails to disclose using different ringing frequencies or cadences to notify a user of a pending arrival of a vehicle in an advanced notification system. Appellant also states (Brief, page 7) that while Oprea suggests numerous applications for

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distinctive ringing signals, no prior art uses such a signal in an advanced notification system. Appellant should remember that the rejection is under 35 U.S.C. § 103 rather than under 35 U.S.C. § 102. Appellant "cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426, 208 USPQ 871, 882 (CCPA 1981).

Appellant contends (Brief, page 6) that the references do not provide sufficient motivation for a combination under 35 U.S.C. § 103 and further asserts (Reply Brief, page 3) that the references teach away from a combination thereof. We disagree. As indicated by the examiner (Answer, page 3), Oprea discloses using a distinctive ring for a telephone to announce a call from a particular source. We agree with the examiner (Answer, page 4) that, in view of Oprea, it would have been obvious to one of ordinary skill in the art to use a distinctive ring in the system of Ross to announce the call from the vehicle to warn the user of the vehicle's impending arrival. The level of the skilled artisan should not be underestimated. See *In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985). With a distinctive ring, the user would not have to answer the phone to know that the vehicle is nearby. Alternatively, the distinctive ring would notify the user when the vehicle is

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calling and allow the user to avoid answering other calls. In any event, Oprea's suggestion to use a distinctive ring to announce a particular source is sufficient motivation to establish a *prima facie* case of obviousness. Accordingly, we will affirm the rejection of claim 1 and the claims grouped therewith, claims 2 through 5, and 8 through 12.

As to representative claim 16 for the second group of claims, appellant (Brief, page 8) is correct that Ross initiates the calls to the riders from the vehicle, rather than from a base station. The examiner recognizes this difference and explains (Answer, page 5) that Ross uses a remote base station for monitoring the vehicle's progress and for storing information such as users' telephone numbers. Also, Ross employs the system for notifying passengers for an airplane. The examiner contends that the skilled artisan would have realized that the number of passengers could be a large number of people and that in view of Ross's disclosure, it would have been obvious to the skilled artisan to use the base station to initiate the calls to more easily reach the large number of users.

We agree with appellant (Reply Brief, page 4) that the examiner has engaged in hindsight reconstruction. Although the base station of Ross has all of the information and facilities to make the calls to the users/passengers, there is no teaching or

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suggestion in either of the references to reroute the calls to the passengers through a base station. The Federal Circuit states that "[t]he 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, 1783-4 n.14 (Fed. Cir. 1992), *citing In re Gordon*, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984). Without some suggestion in the prior art to make the modification, we cannot sustain the rejection of claims 16 through 18, 21, and 22.

Representative claim 6 requires that the distinctive ringing sound include at least two rings having different time durations. The examiner states (Answer, page 6) that "[i]t would have been obvious to use known specific distinctive ringing as taught by Reyes ... to provide an acoustically pleasing sound to a user." Appellant responds (Brief, page 10) that there's no motivation to combine the specific ringing sounds of Reyes with the system of Ross as modified by Oprea. We disagree. Oprea teaches generally the use of distinctive rings. Oprea lists a few types of distinctive rings that can be used, but the teachings are more general and should not be considered as being limited to the types of rings that are discussed. Nonetheless, Oprea discloses

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(column 1, lines 22-30) that one way of creating a distinctive ring is to vary the cadence. Cadence refers to the rhythmic flow of a sequence of sounds. Reyes discloses known ways of modifying the ringing sound of a telephone in which the rings have different time periods, or a variation in the cadence. We find that it would have been obvious to the skilled artisan in view of the combined teachings of Reyes and Oprea to use a variation in the time periods for the distinctive ring. Consequently, we will sustain the rejection of claim 6 and the claims grouped therewith, claims 7, 13, 14, 19, and 20.

As to claim 15, appellant argues (Reply Brief, pages 6-7) that the examiner has engaged in impermissible hindsight. Specifically, appellant contends that the references fail to provide motivation for using an odometer in evaluating the location of the vehicle. Claim 15 includes a base station for calling the user telephone. We have found above that the combination of Ross and Oprea fails to teach such a limitation. The additional reference to Greer fails to remedy this deficiency. Therefore, we cannot sustain the rejection of claim 15.

#### CONCLUSION

The decision of the examiner rejecting claims 1 through 22 under 35 U.S.C. § 103 is affirmed with respect to claims 1

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through 14, 19, and 20 and reversed with respect to claims 15  
through 18, 21, and 22.

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

AFFIRMED-IN-PART

LEE E. BARRETT	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
MICHAEL R. FLEMING	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
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	)	
ANITA PELLMAN GROSS	)	
Administrative Patent Judge	)	

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