

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

UNITES STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS MCGEE, NEVENKA DIMITROVA
and JAN HERMAN ELENBAAS

Appeal No. 2005-0686
Application No. 10/298,968

ON BRIEF

Before DIXON, SAADAT, and MACDONALD, **Administrative Patent Judges**.

MACDONALD, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on Appellants' Request for Rehearing.

REQUEST FOR RECONSIDERATION DENIED.

With full consideration being given to Appellants' remarks¹, we find no basis upon which to grant Appellants' request.

Appellants present two arguments in the remarks. Firstly, Appellants argue at pages 1-2 that the "specification clearly recites that the threshold based on the 'perceived content' is different than the threshold based on a 'category.'" Appellants' support for this position is that Appellants' "specification discloses at least two mechanisms for setting or adjusting a threshold" and Appellants' specification uses the word "alternatively" to show that the disclosed mechanisms differ. These two points we accept as correct. However, Appellants' argument fails when arguing that the disclosed mechanisms differ because one "bases the threshold on the category of video" while the other "bases the threshold on the perceived content of the video." Rather, the disclosed mechanisms differ because each in its totality is functionally and structurally different. For reasons that escape this panel, Appellants have not included any of these structural differences in the apparatus claims. Instead, Appellants recite the "threshold memory which receives a threshold" which is a common structure to all the differing mechanisms.

Appellants' second argument fails on its face. The argument that the decision² of this panel ignores elements of Claim 11 fails given Appellants own discussion of this panel's "intended use" analysis in the decision. Clearly the decision does not ignore the limitation if that limitation is specifically discussed. Perhaps Appellants are attempting to argue that the decision errs in that it should have given more weight to the intended use limitation. While such an argument would make more sense, we do not see this specific language in the request before

¹ Request for reconsideration at pages 1-3.

² Mailed June 10, 2005.

us. Nor do we see any argument from Appellants of how such an intended use limitation structurally (or functionally) changes the apparatus of claim 11.

As was stated in the decision at page 5, “we find the ‘perceived content’ and ‘category’ are the same.” Nothing in Appellants’ request points out a structural limitation in the claims that distinguishes among the disclosed mechanisms or over the prior art.

Conclusion

In view of the foregoing discussion, we grant Appellants’ request for rehearing to the extent of reconsidering our decision, but we deny Appellants’ request with respect to making any change thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

REQUEST FOR RECONSIDERATION DENIED

JOSEPH L. DIXON)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
MAHSHID D. SAADAT)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
)	
)	
ALLEN R. MACDONALD)	
Administrative Patent Judge)	

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