

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THEODOR I.E. KAMALSKI

Appeal No. 2000-0252
Application No. 08/735,159

ON BRIEF

Before LALL, DIXON, and LEVY, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 2 through 10, all the pending claims in this application.

According to appellant, the subject invention concerns a radio broadcasting system in which various program signals are transmitted on different carrier frequencies for selected reception in a receiver in the radio broadcasting system. In addition to the various program signals, the radio broadcasting system is arranged to transmit a data signal separate and

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different from the various program signals, this data signal being received by the receiver separately from the various program signals. Ordinarily, this data signal contains information concerning a program signal indicated in the data. However, in the instant invention, the data signal comprises data of a data service and information pertaining to the data service. For example, the information pertaining to the data service may include an identification of the data service, alternate frequencies on which this data service is available, the coverage area of the data service, etc. The following claim is illustrative of the invention.

2. A radio broadcasting system comprising a transmitter and a receiver for transmitting and receiving at least one program signal and a data signal, the data signal comprising information pertaining to an indicated program signal, characterized in that said system is the RDS system, and the data signal further comprises data of a data service and information pertaining to said data service.

The examiner relies on the following references:

Henze	5,404,588	Apr. 4, 1995
Mankovitz	5,559,550	Sep. 24, 1996
Lanzetta et al. (Lanzetta)	5,581,576	Dec. 3, 1996
		(filed Jan. 12, 1995)

Claims 2, 5, and 7 through 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lanzetta in view of Mankovitz.

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Claims 3, 4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lanzetta in view of Mankovitz and Henze.

Rather than repeat the arguments of appellant and the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have, likewise, reviewed the appellant's arguments set forth in the brief.

We reverse.

In rejecting claims 2, 5 and 7 through 10 (answer at pages 3 and 4), the examiner acknowledges that Lanzetta patent fails to teach a data signal characterized in that the data signal for the comprised data of a data service and information pertaining to said data service. However, the examiner points to column 15, lines 41-53 of Mankovitz for supplying the deficiency of Lanzetta. In interpreting the meaning of the recited "data service," the examiner asserts (answer at pages 6 and 7) that a data service can be viewed as a broadcasting station where the data of a data service and the information pertaining to that data service is simply what Mankovitz stated in column 15, lines 41-53.

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Appellant argues (brief at pages 4 and 5) that Mankovitz provides only the program listings as the scheduled listing data embedded in the vertical blanking interval signal and that there is no information concerning this data service or any other data service.

As pointed out by the Federal Circuit, we must first establish the scope of the claim. "[T]he name of the game is the claim" *In re Hiniker Co.*, 150 F.3d 1362, 1369, 47 USP2d 1523, 1529 (Fed. Cir. 1998). Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994). Thus, we look first to the language of independent claims 2 and 7 through 10.

The examiner and appellant diverge on the definition of the data service recited in these claims. We look to the specification as originally filed for the definition of the data service. Specifically, appellant discloses (id. at page 4) that the invention provides a data service, which includes supplementary information on the data service. This supplementary information may comprise information on the service itself, for instance:

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an identification of data service,
an identification of the service provided,
an identification of the area coverage of the data
service.

Furthermore, appellant discloses (id. at pages 7 and 8, and Figures 3A-3N) that the data service comprising of supplementary information can be described in various forms as illustrated in Figures 3A-3N. Appellant concludes (id. at page 9) that the various addresses (Figures 3I, 3J, 3G and 3H, respectively) can be reserved for transferring information for linking the data service to data services provided on other networks. To counter this evidence by appellant regarding the meaning of a data service, the examiner has not provided any factual evidence to support his own different interpretation of a data service. Therefore, we decide to use appellant's interpretation of the data service.

Keeping in mind this definition of the data service, we first review the rejection of claims 2, 5 and 7 through 10 over Lanzetta in view of Mankovitz.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness (see *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993); *In re Oetiker*, 977 F.2d 1443, 1446,

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24 USPQ2d 1443, 1445 (Fed. Cir. 1992)), which is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art (see ***In re Bell***, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993)).

With the above understanding of the metes and bounds of the claimed subject matter, we find that the examiner has failed to meet his burden of presenting a prima facie case of obviousness. We find that Mankovitz fails to teach or suggest the data service recited in the claims. From the examiner-cited column 15, lines 41-53 of Mankovitz, it is clear that Mankovitz provides in the vertical blanking interval (Figure 16) a data signal which may be considered merely a data service, but there is no information concerning this data service or any other data service in the vertical blanking interval signal. Therefore, we conclude that

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the examiner has not made a prima case in rejecting claims 2, 5 and 7 through 10 over Lanzetta and Mankovitz.

The examiner rejects claims 3, 4 and 6 (answer at pages 4 and 5) over Lanzetta in view of Mankovitz and Henze. However, since Henze does not cure the deficiency of the combination of Lanzetta and Mankovitz, and noting that these claims contain at least the limitations recited in independent claim 2, we also do not sustain the rejection of claims 3, 4 and 6 over Lanzetta in view of Mankovitz and Henze.

The decision of the examiner rejecting claims 2 through 10 under 35 U.S.C. § 103 is reversed.

REVERSED

Parshotam S. Lall)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Joseph L. Dixon)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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