

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAUREN LEE POST

Appeal No. 2000-1309
Application 08/821,938

ON BRIEF

Before THOMAS, JERRY SMITH, and FLEMING, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-25, which constitute all the claims in the application. An amendment after final rejection was filed on June 14, 1999 but was denied entry by the examiner.

The disclosed invention pertains to a method and apparatus for processing a data stream including audio and video data where high data rates and throughput is required. Thresholds are employed to control the processing of the video and audio

data in the stream.

Representative claim 1 is reproduced as follows:

1. A method in a data processing system for dynamically synchronizing a data stream, the method comprising:

receiving the data stream;

parsing the data stream into packets for form a plurality of packets, wherein the plurality of packets includes audio packets and video packets;

comparing the plurality of packets to a threshold as packets are added to the plurality of packets; and

selectively decoding of audio packets and video packets based on a result from the comparison of the plurality of packets to the threshold.

The examiner relies on the following references:

Maturi et al. (Maturi)	5,559,999	Sep. 24, 1996
Rosenau et al. (Rosenau)	5,598,352	Jan. 28, 1997
Glaser et al. (Glaser)	5,793,980	Aug. 11, 1998 (filed Nov. 30, 1994)

Claims 1-20 and 22-25 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Glaser in view of Maturi with respect to each of these claims, and the examiner adds Rosenau for a second rejection of claims 22-25. Claims 21-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Rosenau.

Rather than repeat the arguments of appellant or the examiner, we make

reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not support any of the rejections made by the examiner. Accordingly, we reverse.

We consider first the rejection of claims 1-20 and 22-25 under 35 U.S.C. § 103 based on Glaser and Maturi. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the

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prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered [see 37 CFR § 1.192(a)].

The claims within this rejection stand or fall together in three groups which are represented by claims 1, 6 and 9 [brief, page 8]. The examiner essentially finds that Glaser teaches the invention of claim 1 except that Glaser does not disclose parsing a

data stream including video and audio packets. The examiner cites Maturi as teaching the parsing of a data stream into video and audio blocks. The examiner finds that it would have been obvious to the artisan to provide the parsing operation as taught by Maturi in the processing system of Glaser [answer, pages 4-7].

With respect to representative claim 1, appellant argues that Glaser does not teach comparing both video and audio packets to a threshold as claimed. Appellant also argues that the time stamp comparison of Maturi is completely different from the claimed comparison of the plurality of packets to a threshold as packets are added to the plurality of packets as claimed. Appellant notes that comparing data contained within a packet to a threshold is not suggestive of comparing a plurality of packets to a threshold value.

The examiner points to Figure 4B of Glaser and Figure 10 of Maturi and states that the prior art fully suggests and teaches the limitation disclosed and claimed by appellant [answer, pages 15-18].

We will not sustain the examiner's rejection of representative claim 1 because the examiner has failed to establish a prima facie case of obviousness. We agree with appellant that neither the ramp-up determination of Glaser nor the time synchronization determination of Maturi teaches the claimed step of comparing the plurality of packets to a threshold as packets are added to the plurality of packets and the step of selectively decoding audio and video packets based on a result of this comparison.

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Although the comparing and decoding steps might be viewed as relatively broad, these steps are nevertheless different from the operations disclosed by Glaser and Maturi. The examiner has at best found teachings involving comparisons and decoding of data, but these findings do not teach or suggest the specific steps of comparing and decoding as recited in claim 1. Therefore, we do not sustain the examiner's rejection of representative claim 1.

Since representative claims 6 and 9 contain limitations similar to the recitations of claim 1, we do not sustain the rejection of claims 6 and 9 for the same reasons discussed above. Therefore, the rejection of claims 1-20 and 22-25 under 35 U.S.C. § 103 based on Glaser and Maturi is reversed. With respect to the rejection of claims 22-25 under 35 U.S.C. § 103 based on Glaser, Maturi and Rosenau, since Rosenau does not overcome the basic deficiencies in the combination of Glaser and Maturi discussed above, we also do not sustain this second rejection of claims 22-25.

We now consider the rejection of claims 21-25 under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Rosenau¹. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital

¹ Claims 22-25 are dependent claims which respectively depend from independent claims 1, 6, 19 and 20. Since none of these independent claims was rejected on Rosenau, we fail to see how the examiner found anticipation with respect to these dependent claims based on Rosenau.

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Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner indicates how he reads independent claim 21 on the disclosure of Rosenau [answer, pages 13-15]. Appellant argues that Rosenau does not disclose comparing a threshold to the audio and video packets themselves, but instead, Rosenau discloses comparing a system timing threshold with decoding time data which is contained within a data packet. Appellant argues that the comparison of time stamps in Rosenau does not meet the recitations of comparing audio and video packets to first and second thresholds as packets are added to the plurality of packets as claimed [brief, pages 16-17].

We agree with the position argued by appellant. The time code comparison of Rosenau is not the same as the claimed comparing of audio and video packets to a first and second threshold as claimed and halting the parsing of the data stream based on these comparisons. Therefore, we do not sustain the examiner's rejection of claim 21 as anticipated by the disclosure of Rosenau.

In summary, we have not sustained any of the examiner's rejections of the

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claims on appeal. Therefore, the decision of the examiner rejecting claims 1-25 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	BOARD OF PATENT
JERRY SMITH)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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)	
MICHAEL R. FLEMING)	
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JS:yr

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