

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte BRIAN BOESCH and JON L. ROBERTS

Appeal No. 2004-0205
Application No. 09/591,167

ON BRIEF

Before FRANKFORT, STAAB and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 5,7-9, 13 and 15-21, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellants' invention relates to an electronic training aid for animals which can be used wherever the trainer and animal go. The training aid includes a portable transmitter carried by the trainer and a receiver worn by the animal. When the receiver

detects that the animal and animal-worn receiver are greater than a predetermined distance from the transmitter, by detecting that the signal strength of the signal from the transmitter is below a predetermined level, an audible signal or physical encouragement, such as a shock, is provided to the animal. A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Weinstein	5,067,441	Nov. 26, 1991
Janning et al. (Janning)	6,166,643	Dec. 26, 2000 (filed Sep. 30, 1999)

Claims 5, 7-9, 13 and 15-21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Weinstein in view of Janning.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 20) for the examiner's complete reasoning in support of the rejection and to the brief (Paper No. 18) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

Each of appellants' claims requires a "portable" transmitter and claims 19 and 20 further require that the portable transmitter be carried by a trainer. It is apparent from a reading of both the examiner's position and appellants' position that the issue in dispute in this appeal focuses on the term "portable." For an understanding of that term in the context of appellants' invention, we thus turn to appellants' specification, which states on page 6 that

what would be truly useful would be a system that comprises a form of "electronic leash" or training device which can be variably preset by an animal owner and operated in automatic mode to help train and control an animal when the owner and animal are moving such as when the owner is walking the animal. Such a system and method would allow the training of an animal to take place regardless of the location of the owner. Such a system would allow an owner to train an animal in the animal's own backyard and, when the owner and animal are in another location other than the home. Such a system would be portable and operate without the need of a connection to household current at all times.

On the basis of this disclosure, we understand the term "portable" as used in appellants' claims to mean "that can be used anywhere because operated by self-contained batteries"¹ and thus as a system (transmitter) which operates without the need of a connection to household current at all times, as exactly set forth in appellants' specification, rather than simply "capable of being carried or moved about" as posited by the examiner on page 6 of the answer.

¹ Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988).

Weinstein discloses an electronic system for restricting animals to defined areas. The system utilizes a fixed position transmitter T which transmits an RF signal to a mobile receiver mounted in the collar on a dog D via an antenna A. The antenna A may be separate from or an integral part of the transmitter T (column 15, lines 7-12). Like appellants' claimed training aid and method, when the receiver detects that the field strength of the RF signal is below a predetermined level, thereby indicating that the receiver and the dog wearing the receiver are outside the safe zone S around the antenna, the dog receives an audible warning signal. When the detected signal level falls below a second level, thereby indicating that the dog is outside the boundary Z around the antenna, the dog receives a shock.

Weinstein's disclosure in column 11, lines 22-46, indicates that Weinstein contemplates that the transmitter T be connected to the household utility lines. Weinstein thus lacks disclosure of a "portable" transmitter as called for in appellants' claims.

Janning discloses a method and apparatus for controlling the whereabouts of an animal which uses a different approach from that of appellants and Weinstein. Specifically, Janning's system uses transmitters 17, such as a portable transmitter worn by a child 31, which emit RF signals and a receiver/stimulator unit 14 worn by a dog which administers stimuli to the dog when the receiver detects the RF signal, thereby indicating that the dog is within a prohibited distance from the transmitter. In other words, Janning's system is designed to keep the dog outside a predetermined zone

around the transmitter, while appellants and Weinstein seek to keep the dog or other animal within a predetermined zone around the transmitter. As explained by Janning in column 4, Weinstein's approach is hampered by the disadvantage of requiring significant amounts of power to be able to broadcast a sufficiently strong signal to the most remote portions of the intended perimeter boundary and thus does not lend itself to battery operation. Janning's system, in contrast, requires transmission of a signal only through the prohibited zone, which is presumably typically much smaller than a confinement perimeter zone.

We share appellants' view that Janning would not have suggested making the transmitter T of Weinstein portable and, in fact, suggests that this would not be feasible because transmitters in remote broadcast systems like those of Weinstein do not lend themselves to the battery operation required for portability. Rather, Janning would have suggested to one of ordinary skill in the art a different and less power-consuming approach wherein a stimulus is administered to the dog when the dog roams within a protected zone around the transmitter rather than when the dog wanders outside a confinement perimeter zone around a transmitter.

For the reasons discussed above, we conclude that the combined teachings of Weinstein and Janning would not have suggested appellants' animal training aid and method with its portable transmitter as recited in claims 5, 7-9, 13 and 15-21. The examiner's rejection is thus not sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 5, 7-9, 13 and 15-21 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JENNIFER D. BAHR)	
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