

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 47

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUVERNE R. PETERSON

Appeal No. 94-3790
Application 08/032,758¹

ON BRIEF

Before THOMAS, HAIRSTON and KRASS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

¹ Application for patent filed March 17, 1993. According to the appellant, this application is a continuation of Application 07/785,895, filed October 30, 1991, now abandoned, which is a continuation of Application 07/504,776, filed April 4, 1990, now abandoned.

Appeal No. 94-3790
Application 08/032,758

ON REQUEST FOR RECONSIDERATION

Appellant requests that we reconsider our decision of June 16, 1997, wherein we affirmed the examiner's decision rejecting claims 21 to 25 and 27 to 30 under 35 U.S.C. § 102.

At the outset, we address the two declarations attached to the request for reconsideration. Both declarations are identical from two different individuals and essentially set forth that which has been argued by appellant in the request for reconsideration. Moreover, the basic argument presented in each of these three documents is apparently the same as basically presented in the principal brief and reply brief filed before our original opinion. Even though there does not appear to be any substantive showing of good and sufficient reasons why these declarations were not earlier presented within the requirements of 37 CFR § 1.195, we have still considered them because of this consistency. Appellant's arguments in the request for reconsideration as well as those more particular arguments set forth in both declarations reflect an understanding of Lofgren which is consistent with our understanding when we rendered our original opinion.

Appeal No. 94-3790
Application 08/032,758

Appellant's brief, reply brief and this reconsideration request as well as its attached two declarations essentially in some manner appear to assert that the delay means in Lofgren's patent operates in such a manner that the rising signal edges are not delayed independent of the falling signal edges and that the falling signal edges are not delayed independent of the rising signal edges. Appellant's position continues to explain that if the delay of Lofgren's rising signal edges is increased then the delay of the falling signal edges is also increased and vice versa. Request at top of page 2.

This language the examiner did not agree with in the answer nor did we in our original opinion. We went through great effort in our original opinion to explain how the presently claimed invention was not consistent with appellant's disclosure and the arguments of the brief associated with the claim were not consistent with what the claim said. Appellant's request for reconsideration and the declarations appear to ignore the understanding which we and the examiner went through great length to convey to appellant. In fact, the declarations completely ignore and make no

Appeal No. 94-3790
Application 08/032,758

reference to the subject matter of independent claim 21 on appeal. The examiner repeatedly indicated in the answer that appellant read too much into the language of independent claim 21 and we repeated as much at page 7 of our original opinion. Furthermore, appellant has not given any recognition of the paragraph bridging pages 10 and 11 of our original opinion which indicates in another form the breadth of the claim language recited in independent claim 21.

The questioned language is reproduced at the bottom of page 3 and the top of page 4 of our original opinion. It states (emphasis added):

and a delay means which propagates said input clock signal from said input terminal to an output terminal such that said first type signal edges are delayed independent of said second type edges between said input and output terminals for a time interval which is varied in continuous fashion by the magnitude of said control signal.

We stated at page 8 of our original opinion the following (emphasis added):

The above quoted delay means clause says nothing about the first type signal edges being delayed independently of any

delay for or associated with the second type or falling edges. Different or separate circuit elements are not necessarily recited in the claim for the disclosed two different delays as asserted at page 3 of the brief in the Summary of the Invention thereof. Essentially, only one delay is recited in claim 21. That is, the first type signal edges are delayed for "a time interval" at the end of the above quoted delay means clause. There is no corresponding delay recited for the second or falling type signal edges.

The claimed first type and second type signal edges (that is, for example, rising and falling edges, respectively) are not recited in claim 21 to be separately controlled.

This language built upon the views expressed by the examiner in the answer as to what the examiner considers the claim 21 to say and not to say. More specifically, the assertion made at the top of page 2 of the request for reconsideration, being the same as originally asserted in the brief and reply brief, is that in Lofgren's delay the rising signal edges are not delayed independent of the falling signal edges and the falling signal edges are not delayed independent of the rising signal edges. We endeavored to explain in our original opinion that such a requirement must be set forth with claims

Appeal No. 94-3790
Application 08/032,758

that require two control terminals and two control signals to be based on the disclosed invention. However, our original analysis in our original opinion makes clear that only one control terminal and one control signal are recited and that only one delay is recited in claim 21. For these arguments of appellant to have merit, they must have corresponding language in claim 21 on appeal.

The additional assertion, made at the top of page 2 that if the delay of the rising signal edges in Lofgren is increased, then the delay of the falling signal edges is also increased, and vice versa, is a restatement of the above asserted position, which again, is not consistent with that which is recited in claim 21 on appeal. Claim 21 says nothing of the delay of the second type signal edges as we explained in our original opinion and the examiner explained in the answer.

One view of the operation of Lofgren's teachings is that the OSC clocking signal is delayed one clock cycle or one clock

period to yield DOSC. Thus, Lofgren's circuits operate in such a manner that the rising clock edge of OSC is delayed one clock cycle to yield DOSC. In one sense, the circuits in Lofgren may be viewed as keying-in-on or operating only with respect to the rising signal edges of OSC and DOSC and essentially ignore or operate irrespective to the falling signal edges of those OSC and DOSC signals. Therefore, they may be said to operate in an independent manner as claimed. The delay is a function of whether the DOSC signal leads or lags the OSC signal and in accordance with the control signals VCN and VCP. Claim 21 requires only one delay by means of one control signal by means of one control terminal.

In accordance with the view we expressed in our original opinion, the delay of the rising edges of succeeding OSC and DOSC signals meets the single delay required of the claim. No separate control terminal and no separate control signal and no separate amount of delay is required for the claimed second type control signal edges of claim 21 on appeal.

The claimed first type edges and second type edges are not stated in the claim to be rising and falling edges

Appeal No. 94-3790
Application 08/032,758

respectively and vice versa. The rising signal edges of OSC
of Lofgren

(perhaps the claimed first type edges or second type edges)
and the delayed rising signal edges of DOSC (perhaps the
claimed second type edges or first type edges) are compared in
Lofgren. Phase changes then occur based upon this comparison.

Furthermore, in the alternative, as urged by the
examiner, separate or different or independent circuit
elements (pump up and pump down, as well as VCR and VCN
signals in the figures) in Lofgren control the rising and
falling edges of clock OSC and of delayed clock DOSC. Again,
claim 21 does not recite that the first type signal edges are
delayed independently of the delay associated with the second
type edges only that "said first type signal edges are delayed
independent of said second type edges."

We have reconsidered our decision of June 16, 1997, in
light of appellant's arguments and appellant's request for

Appeal No. 94-3790
Application 08/032,758

reconsideration and its two attached declarations, but we decline to change our position set forth therein.

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

DENIED

JAMES D. THOMAS)
Administrative Patent Judge)

Appeal No. 94-3790
Application 08/032,758

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