

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(2) is not binding precedent of the Board.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. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCE

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***Ex parte*** PETER D. HORTENSIUS  
and HAAKEN B. WINBOM

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Appeal No. 95-4543  
Application 07/605,052<sup>1</sup>

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ON BRIEF

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Before MARTIN, BARRETT and CARMICHAEL, ***Administrative Patent Judges.***

CARMICHAEL, ***Administrative Patent Judge.***

***DECISION ON APPEAL***

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<sup>1</sup> Application for patent filed October 29, 1990.

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Application 07/605,052

This is an appeal from the final rejection of claims 1-6, 8-12, 14-16, and 18. The other remaining claims (Claims 7, 13, and 17) were allowed.

Claim 1 reads as follows:

1. A method for operating data processing means coupled to a communication network, comprising the steps of:

transmitting a message from a first network node over a wireless medium, the message being addressed to a second network node;

receiving the transmitted message with means for interfacing the wireless network medium to a wired medium having a physical conductor for conveying the message;

retransmitting with the interface means, as the message is received, the received message to the wired medium;

retransmitting with the interface means, as the message is received, the received message to the wireless medium;

receiving the retransmitted message with the first network node; and

comparing, with the first network node, the message being transmitted with the received retransmitted message to determine if they are the same and, if not, determining that a collision has occurred.

The examiner's Answer cites the following prior art:

|       |           |  |
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| Knapp | 4,975,926 | Dec. 4, 1990<br>(filed March 30, 1989) |
|-------|-----------|--|

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|----------------------|------------|--|
| Wilmoth              | 5,060,303  | Oct. 22, 1991<br>(filed Sept. 6, 1988) |
| Vacon et al. (Vacon) | W088/07794 | Oct. 6, 1988                           |

**OPINION**

Claims 1-6, 8-12, 14-16, and 18 stand rejected under 35 U.S.C. § 103 as unpatentable over Knapp in view of Vacon and Wilmoth. We reverse for the reasons given by Appellants amplified as follows.

The examiner found that Knapp disclosed the invention of Claim 1 except for the comparing step. In the final rejection, the examiner found that the comparing step was disclosed by Vacon and that it would have obvious to include it in Knapp.

Appellants correctly point out that Vacon does not disclose the comparing step. Rather, Vacon merely checks whether or not there are multiple transmissions being attempted simultaneously. If the answer is yes, Vacon declares that a collision has occurred.

In response, the examiner says that:

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There is only a limited number of ways to implement this operation of determining a successful transmission and an efficient and simple way is to . . . compare the transmitted message with the received message (received retransmitted message).

Supplemental Examiner's Answer at 3.

The mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992). In the present case, the examiner has not pointed to anything in the prior art that suggested the desirability of comparing the transmitted message with the received retransmitted message to determine a collision as claimed. The comparing step may well be "an efficient and simple way" to determine a successful transmission as posited by the examiner, but the examiner has not shown that it was suggested by the prior art.

The examiner reasonably relies on Wilmoth to show use of different frequencies. However, Wilmoth does not make up for the above-noted deficiencies.

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Thus, the rejection will not be sustained.

**CONCLUSION**

The rejection of claims 1-6, 8-12, 14-16 and 18 is  
not sustained.

**REVERSED**

JOHN C. MARTIN )  
Administrative Patent Judge )  
)  
)

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|        |                             | ) |               |
|        | JAMES T. CARMICHAEL         | ) |               |
|        | Administrative Patent Judge | ) |               |

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