

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(2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LEROY KUTA, ROBERT YOUNGQUIST,  
and MICHAEL KELLY

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Appeal No. 96-1890  
Application 08/111,176<sup>1</sup>

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ON BRIEF

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Before THOMAS, KRASS, and RUGGIERO, Administrative Patent  
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of  
claims 1 through 3, 6 through 11 and 18 through 20. Claims 4,

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<sup>1</sup> Application for patent filed August 24, 1993.

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5 and 12 through 17 have been withdrawn as directed to a nonelected invention.

The invention pertains to a method of identifying magnetic tape characteristics. More particularly, the invention employs patterns of magnetically polarized stripes on the tape. As the tape is driven past a read/write head, the head reads the pattern on the tape and decodes the information in the pattern. The tape drive then responds appropriately to the information in the reading/writing of data on the tape.

Representative independent claim 1 is reproduced as follows:

1. A method of providing information about characteristics of a length of magnetic tape to a magnetic tape drive having an arcuate scanning read/write head for reading/writing on arcuate data tracks which are substantially perpendicular to the length of the tape, comprising the steps of:

providing a length of magnetic tape in a magnetic recording drive, wherein the tape includes a pattern containing encoded information, wherein the pattern is positioned on at least one portion of the tape, the pattern comprising a plurality of magnetically polarized stripes parallel to the length of the tape and transversely spaced from each other across the width of the tape, wherein the stripes have a uniform and continuous direction of magnetic polarization in the plane of the tape and substantially perpendicular to the length of the tape, and wherein the pattern is long enough to provide for the arcuate scanning

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head to pass over the pattern several times;

passing the tape by the arcuate scanning read/write;

reading the pattern on the tape; and

using the magnetic tape drive to decode the information  
in the pattern.

The examiner relies on the following references:

Irby	2,876,295	Mar. 3, 1959
Keidl	4,313,140	Jan. 26, 1982
Moeller et al. (Moeller)	4,422,111	Dec. 20, 1983
Thomas	5,327,305	Jul. 5, 1994 (filed Aug. 14, 1992)
Akiyama (Japan)	58-114303	Jul. 7, 1983

Claims 1 through 3, 6 through 11 and 18 through 20 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Irby, Thomas and Akiyama with regard to claims 1, 7 and 9, adding Moeller to this combination with regard to claims 3, 6, 8, 10 and 18 through 20. The examiner cites Irby, Thomas, Akiyama and Keidl with regard to claim 2, adding Moeller to this combination with regard to claim 11.

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Reference is made to the brief<sup>2</sup> and answer for the respective positions of appellants and the examiner.

OPINION

We reverse.

The examiner contends, with regard to independent claims 1 and 7, that Irby's Figure 3 meets all of the limitations of the claims but for a showing of a pattern containing encoded information in a plurality of transversely spaced stripes parallel to the length of the tape having a transverse direction of magnetization, and reading and decoding the pattern information. Therefore, the examiner relies on Thomas which shows a pattern, in Figure 3, which contains encoded information in a plurality of transversely spaced stripes parallel to the length of the tape. Thomas also teaches the reading and decoding of pattern information. Therefore, the examiner concludes, it would have been obvious to modify the system of Irby by including the teachings of Thomas to use a pattern containing encoded information in a plurality of transversely spaced stripes parallel to the length of the

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<sup>2</sup> The reply brief, filed January 17, 1996, was refused entry by the examiner and has, accordingly, not been considered by us.

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tape, and reading and decoding the pattern information.

The combination of Irby and Thomas appears, to us, to be improper since the tape in Figure 3 of Thomas (having the stripes parallel to the length of the tape) appears to relate to linear recording whereas Irby is concerned with arcuate recording. Therefore, the skilled artisan would not have combined these disparate recording methods.

Nevertheless, and more importantly, independent claims 1 and 7, as well as claim 18, all require that the magnetically polarized stripes have a "uniform and continuous" direction of magnetic polarization in the plane of the tape and substantially perpendicular to the length of the tape. Neither Irby nor Thomas contains such a teaching or suggestion. The examiner relies on Akiyama for such a teaching. More specifically, the examiner points to Figure 3 of Akiyama for a teaching of recording transversely spaced stripes parallel to the length of the tape having a transverse direction of magnetization.

It is clear to us in reviewing Figure 3, as well as every other Figure of Akiyama, that Akiyama shows the direction of magnetic polarization as alternating rather than "uniform and

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continuous," as required by the instant claims. While the examiner apparently agrees that Akiyama teaches alternating magnetization directions [see bottom of page 10 of the answer], the examiner states that Akiyama "does not teach they *must* alternate." The examiner further contends [page 11-answer] that "since Akiyama can record alternating transitions, it can clearly record non-alternating transitions."

We find the examiner's reasoning to be faulty. While Akiyama does not teach that the magnetic polarization direction *must* alternate, it is clear that this is the only embodiment disclosed or suggested by Akiyama. Therefore, even if one *could* modify Akiyama to provide for non-alternating transitions, as opined by the examiner, the question arises as to why would the skilled artisan do so? Where is the suggestion to the skilled artisan to do so, other than the suggestion by appellants' own disclosure? A finding of obviousness, within the meaning of 35 U.S.C. § 103, requires more than that one "could" modify the prior art to arrive at the claimed subject matter. There must be a suggestion somewhere in the prior art or within the skill and knowledge

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of the artisan to do so. The examiner has provided us with no such suggestion for providing a "uniform and continuous" direction of magnetic polarization, as claimed. Accordingly, the examiner has not established a prima facie case of obviousness.

The references to Moeller and Keidl do not provide for the deficiencies of the principal references noted supra.

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The examiner's decision rejecting claims 1 through 3, 6 through 11 and 18 through 20 under 35 U.S.C. § 103 is reversed.

REVERSED

	James D. Thomas	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Errol A. Krass	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Joseph F. Ruggiero	)	
	Administrative Patent Judge	)	

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