

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD A. KIRKPATRICK II

Appeal No. 1997-0440
Application No. 08/582,237

ON BRIEF

Before KRASS, FLEMING, and LALL, Administrative Patent Judges.
LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of claims 1, 2, and 5 to 7. Claims 3, 14, 17 and 18 are indicated to be allowed. Claims 8 to 13 are canceled. The rejections of claims 4, 15 and 16 are withdrawn.

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The invention is directed to a circuit which limits the output of an amplifier to a value that is determined as a preselected percentage of a reference value. The invention achieves this by providing a current sourcing comparator that provides a current at its output which is independent of the voltage at its output. The magnitude of the current at the output of the current sourcing comparator is a function of the voltages at its inverting and noninverting inputs and is unaffected by the changing voltage at its output. The invention is further illustrated by the following claim below.

1. A circuit for providing a limited amplifier output, comprising:

a first source of a first signal;

a first amplifier having a first input and a first output, said first input being connected in electrical communication with said first source;

a second amplifier having a second input and a third input, said second amplifier having a second output, said second output being connected to said first input, said third input being connected to said first output, said second amplifier being a current sourcing comparator and said second output being connected to provide a current to said first input to prevent an increase in the magnitude of said first output;

a second source of a reference signal; and

first means for providing a second signal which is a first preselected percentage of said reference signal, said second signal being connected to said second input.

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The Examiner relies on the following references:

Veranth	3,822,408	Jul. 2, 1974
Beaudette	3,999,084	Dec. 21, 1976

Claim 5 stands rejected under 35 U.S.C. § 112, second paragraph. Claims 1, 2, and 5 to 7 stand rejected under 35 U.S.C. § 102 over Beaudette or Veranth.

Rather than repeat in toto the positions and the arguments of Appellant or the Examiner, we make reference to the brief and the answer¹ for their respective positions.

OPINION

We have considered the rejections advanced by the Examiner. We have, likewise, reviewed Appellant's arguments against the rejections as set forth in the briefs.

We affirm.

¹Our decision is based on the corrected answer [paper no. 19]. This case was remanded [paper no. 18] to the Examiner for clarification of his position. In the corrected answer, the Examiner withdrew some of the rejections, but did not introduce any new rejections. Appellant did not file any response to the new Examiner's answer. We have found that Appellant had indeed argued in his brief before the remand [paper no. 16] the rejections which the Examiner has maintained in his corrected answer. Thus, we consider the Appellant's brief filed before the remand in making this decision.

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Since there are rejections under 35 U.S.C. § 112, second paragraph and 35 U.S.C. § 102, we review the applicable laws before considering the specific rejections.

Rejection under 35 U.S.C. § 112, second paragraph

The second paragraph of 35 U.S.C. § 112 requires claims to set out and circumscribe a particular area with a reasonable degree of precision and particularity. In re Johnson, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In making this determination, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in light of the teachings of the prior art and of the particular application disclosure as it would be interpreted by one possessing the ordinary level of skill in the pertinent art. Id.

The Examiner's focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. § 112, second paragraph, is whether the claims meet the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. Some latitude in the manner of expression and the aptness of terms is permitted even though the claim language is not as precise as the Examiner might desire. If the scope of the

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invention sought to be patented cannot be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. § 112, second paragraph, is appropriate.

Thus, the failure to provide explicit antecedent basis for terms does not always render a claim indefinite. As stated above, if the scope of a claim would be reasonably ascertainable by those skilled in the art, then the claim is not indefinite. See Ex parte Porter, 25 USPQ2d 1144, 1146 (Bd. Pat. App. & Int. 1992).

Furthermore, Appellant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in In re Swinehart, 439 F.2d 210, 213, 169 USPQ 226, 229 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

Rejection under 35 U.S.C. § 102

We note that a prior art reference anticipates the subject of a claim when the reference discloses every feature

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of the claimed invention, either explicitly or inherently (see Hazani v. U.S. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984)).

We are further guided by the precedents of our reviewing court that, under 35 U.S.C. § 112, second paragraph, and under 35 U.S.C. § 102, limitations from the disclosure are not to be imported into the claims. In re Lundberg, 244 F.2d 543, 548, 113 USPQ 530, 534 (CCPA 1957); In re Queener, 796 F.2d 461, 463-64, 230 USPQ 438, 440 (Fed. Cir. 1986). We also note that the arguments not made separately for any individual claim or claims are considered waived. See 37 CFR § 1.192 (a) and (c). In re Baxter Travenol Labs., 952 F.2d 388, 391, 21 USPQ 2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art."); In re Wiechert, 370 F.2d 927, 936, 152 USPQ 247, 254 (CCPA 1967) ("This court has uniformly followed the sound rule that an issue raised below which is not argued in this court, even if it has been properly brought here by a reason

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of appeal, is regarded as abandoned and will not be considered. It is our function as a court to decide disputed issues, not to create them.")

Analysis

At the outset, we note that Appellant elects to have the claims stand or fall together [brief, page 2].

Claim 5 under 35 U.S.C. § 112, second paragraph

The Examiner asserts [answer, page 3] that "[i]n claim 5, the language therein is not at all understood nor seen to find support. Clearly, from the specification, the 'hall sensor' provides the 'first signal', but is separate from the circuit." The first statement seems to point to the lack of enablement under 35 U.S.C. § 112, first paragraph, and not to any thing under 35 U.S.C. § 112, second paragraph. However, the Examiner has not pursued any further the possibility of the lack of enablement, and we do not raise this issue. The second statement still does not form a basis for a rejection under 35 U.S.C.

§ 112, second paragraph. Appellant has illustrated [brief, pages 27 to 28] how claim 5 is to be read in the context of the disclosure. We find that the metes and bounds of claim 5 are clear in accordance with the precepts of 35 U.S.C. § 112,

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second paragraph, discussed above. Therefore, we do not sustain the rejection of claim 5 under 35 U.S.C. § 112, second paragraph. Claims 1, 2, and 5 to 7 under 35 U.S.C. § 102 over Beaudette

We consider claim 1 as the representative claim of the group. The Examiner has detailed the manner in which he reads the claimed structure on Beaudette [answer, page 4]. Furthermore, in response to Appellant's arguments [brief, pages 28 to 33], the Examiner has provided an explanation [answer, pages 10 to 11] as to how Beaudette meets the claimed limitation of "said second amplifier being a current sourcing comparator and said second output being connected to provide a current to said first input to prevent an increase in the magnitude of said output." We do not find any specific arguments by Appellant to counter the Examiner's specific analysis. Appellant only offers mere comments and an opinion, but these cannot take the place of specific factual counter evidence. Therefore, we agree with the Examiner that, in Beaudette, using the terminology for the circuit components as identified the Examiner, the second amplifier serves as a current source and a comparator and supplies its output (i.e., the second output at the node between resistors R2 and R3) to

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the first input at 12, and this input operates to keep the first output (i.e., E_o) from experiencing an increase in its magnitude, see the limited value E_2 for E_o in Fig. 2. The Examiner has thus made a prima facie case of anticipation. Appellant has not offered a specific rebuttal. Therefore, we sustain the anticipation rejection of claim 1, and its grouped claims 2 and 5 to 7 over Beaudette.

Claims 1, 2, and 5 to 7 under 35 U.S.C. § 102 over Veranth

We again take claim 1 as the representative of the group. The Examiner has presented [answer, page 4] the manner how he designates the various components of the circuit as the various claimed elements. For example, he identifies the second amplifier as comprising "15, R4, 23 and 24" [id.] and the second output as the signal at the node between 23 and 24 (answer, page 11). Thus, the Examiner asserts that the second output from the second "current sourcing comparator" 15 is in communication with the first input 12 of amplifier 14, and by definition, the first output (the output of amplifier 14) is clamped (see waveform 27), that is, it is kept from changing, or experiencing an increase. Thus, we conclude that the Examiner has established a prima facie case of anticipation.

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Appellant's arguments [brief, pages 28 to 33] are merely of general nature and can not serve as factual counter evidence against the Examiner's specific case of anticipation.

Therefore, we sustain the anticipation rejection of claim 1 and its grouped claims 2, and 5 to 7 over Veranth. In

summary, we have sustained the anticipation rejection of claims 1, 2, and 5 to 7 over Beaudette or Veranth, while we have not sustained the rejection of claim 5 under 35 U.S.C. § 112, second paragraph.

Accordingly, the decision of the Examiner rejecting claims 1, 2, and 5 to 7 is affirmed.

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

AFFIRMED

	Errol A. Krass)	
	Administrative Patent Judge)	
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	Michael R. Fleming)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
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