

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CALVERT T. HAWKES

Appeal No. 1997-4463
Application 07/988,712¹

ON BRIEF

Before URYNOWICZ, HAIRSTON, and BARRETT, Administrative Patent Judges.

BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed December 10, 1992, entitled "Method And Apparatus For Interactively Providing Information At Multiple Sites."

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This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 1-18.

We reverse.

BACKGROUND

The disclosed invention is directed to an interactive system for providing selected messages at multiple separate sites, such as in a store, museum, or historic attraction. The messages are stored at a central place, called a common source, and, in response to a operation of an input device, messages are output from the common source to an output device, such as a speaker, at the site. The sites have buffers with limited storage capacity. Messages are output from the common source to the site at a rate corresponding to the utilization rate at the site; that is, the buffers receive snippets of information from the common source at high speed and output this information to the output device at a much slower speed. The system reduces the need for processors and circuitry at the site.

Claim 1, the sole independent claim, is reproduced below.

1. An interactive system for providing from a common source selected site-specific messages at a plurality of separate sites comprising:

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means at said common source for addressably storing at least one site-specific message for each of said sites;

a plurality of output devices, at least selected ones of said sites having a said output device located thereat;

an input device located at each site, there being at least one input device corresponding to each output device;

means responsive to the operation of the input device for one of said sites for initiating the reading out of a message to be provided at the site from the means for addressably storing, the reading out of a message for each site for which the corresponding input device has been operated being initiated when the corresponding input device is operated and proceeding concurrently for all sites at a rate for each site which depends on an information utilization rate for the site; and

means for transmitting each readout message to the output device associated with the corresponding operated input device;

the output device outputting the selected message in response to receipt of the readout message.

The Examiner relies on the following prior art:

1989	Revesz et al. (Revesz)	4,888,709	December 19,
1990	Humble	4,964,053	October 16,
1993	Pfeiffer et al. (Pfeiffer)	5,198,644	March 30,
1992)			(filed April 16,

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Bullock et al. (Bullock) 5,351,186 September
27, 1994 (filed January 16,
1991)

Claims 3 and 4 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as his invention.

Claims 1-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Revesz and Humble.

Claims 1-18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Bullock and Pfeiffer. This is a new ground of rejection entered in the Examiner's Answer.

We refer to the Office action (Paper No. 14), the Final Rejection (Paper No. 17) (pages referred to as "FR__"), the Examiner's Answer (Paper No. 23) (pages referred to as "EA__"), and the Supplemental Examiner's Answer (Paper No. 25) (pages referred to as "SEA__") for a statement of the Examiner's rejection and to the Appeal Brief (Paper No. 22) (pages referred to as "Br__") and the Response (Paper No. 24) (pages referred to as "RBr__") for a statement of Appellant's arguments thereagainst.

OPINION

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35 U.S.C. § 112, second paragraph

The Examiner states (FR2):

3.1 The claim language is replete with language that is vague and indefinite. The following is a sample of the claim language that is vague and indefinite:

"operable in a different way" (claim 3, line 2) as to the meaning of a "different way" in this context.

Appellant argues only this language since it is the only specific problem raised by the Examiner. Appellant notes that claim 2, from which claim 3 depends, recites that there may be a number of different site-specific messages for each site. The specification discloses a number of ways in which the input device can be operated to select the site-specific messages, such as pressing a separate button for each message. "The language 'operable in a different way' thus means pressing a different button, moving a multi-position switch to a different switch setting or operating some other multi-state input device in a different way so as to place the device in a different state, for each desired message." (Br5.)

The Examiner does not respond to Appellant's arguments in the Examiner's Answer.

We conclude that claim 3 is definite for the reasons stated by Appellant. In addition, claim 4 gives a specific

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example of using a plurality of binary switches to operate in a different way for each message. The rejection of claims 3 and 4 is reversed.

35 U.S.C. § 103

Revesz and Humble

Revesz does not disclose (1) "an input device located at each site, there being at least one input device corresponding to each output device," (2) "means responsive to the operation of the input device for one of said sites for initiating the reading out of a message to be provided at the site from the means for addressably storing [at the common source]," and (3) "the reading out of a message for each site for which the corresponding input device has been operating being initiated when the corresponding input device is operated and proceeding concurrently for all sites at a rate for each site which depends on an information utilization rate for the site."

Appellant does not contest the Examiner's conclusion that it would have been obvious to add an input device to each site in Revesz (EA6). Thus, we do not address this limitation.

See 37 CFR § 1.192(c)(8)(iv) (1996) (arguments in the brief must identify and address the errors in the rejection).

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Appellant argues that "the Examiner has failed to cite any reference which shows or suggests either [1] storing all information to be outputted at a central site or [2] outputting information from such central site at a rate corresponding to the information utilization rate at the remote sites" (RBr4, numbers in brackets added).

The Examiner's rejection does not address the difference of outputting message information from a common source. As shown in Figure 3 of Revesz, the module 10 includes module memory 154 which stores data for the display 16, such as pricing information (e.g., col. 8, lines 6-8). Thus, messages to be provided at the site are read out from the module memory 154, not from a common source, such as computers 30, 32, or 36. The Examiner states that "[i]f the related product information were exclusively stored in central storage the rate control system claimed would be inherent" (EA6), but does not address why it would have been obvious to output messages from a common source instead of from the module at the site. Thus, the rejection fails to address an express claim limitation.

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The Examiner admits that Revesz does not disclose outputting information at a rate corresponding to the utilization rate, but reasons (EA5-6):

It would have been obvious to one of ordinary skill in the art at the time of the invention to output the information at a rate that corresponds to the rate at which the information is used because such a scenario is well known in the art and the logical method (if related product information is centrally stored); and this scenario offers no patentably distinct feature over the prior art. If the related product information were exclusively stored in central storage the rate control system claimed would be inherent because certainly the information delivery rate from the central storage would need to be controlled before outputted to the user. If not, the audible message would not be a desired smooth, intelligible sound.

In effect, the Examiner has dismissed the output rate limitation as obvious by reasoning that it was a "well known" and "logical" method and because it would be "inherent" in any central storage system to provide continuous messages, without providing any prior art evidence. The Examiner presents no evidence that "reading out of a message . . . at a rate for each site which depends on an information utilization rate for each site" was well known. While there may be many examples, it is the Examiner's duty to at least state what those examples are so that Appellant can challenge them.

"Assertions of technical facts in areas of esoteric technology

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must always be supported by citation to some reference work recognized as standard in the pertinent art." See In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970); accord In re Pardo, 684 F.2d 912, 917, 214 USPQ 673, 677 (CCPA 1982). See also In re Eynde, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) (court will not take judicial notice of the state of the art). Official Notice is intended for facts which are common knowledge or capable of unquestionable demonstration. See In re Knapp-Monarch Co., 296 F.2d 230, 232, 132 USPQ 6, 8 (CCPA 1961). See also In re Cofer, 354 F.2d 664, 668, 148 USPQ 268, 271-72 (CCPA 1966). It is the Examiner's responsibility to provide evidence, not just conclusions.

Further, we do not agree with the Examiner that the rate limitation is necessarily inherent in a common source system (assuming that a common source system would have been obvious). "The mere fact that a certain thing may result from a given set of circumstances is not sufficient [to establish inherency.]" In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981) (citations omitted) (emphasis added). As Appellant points out (Br9), Humble sends a full

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message to each station before proceeding to the next station. Certain conditions are required before the claimed output rate limitation is necessary, such as the memory at the site having a capacity less than the full length of the message, which conditions have not been addressed by the Examiner. The Examiner has failed to provide evidence that outputting information at a rate corresponding to the utilization rate would have been obvious.

In summary, the combination of Revesz and Humble does not teach or suggest: (1) "means responsive to the operation of the input device for one of said sites for initiating the reading out of a message to be provided at the site from the means for addressably storing [at the common source]," and (2) "the reading out of a message for each site . . . proceeding concurrently for all sites at a rate for each site which depends on an information utilization rate for the site." Therefore, the Examiner has failed to establish a prima facie case of obviousness. The rejection of claims 1-18 is reversed.

Bullock and Pfeiffer

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Bullock does not disclose "means responsive to the operation of the input device for one of said sites for initiating the reading out of a message to be provided at the site from the means for addressably storing [at the common source]" (emphasis added). The Examiner states that Bullock stores the message at the common site 16 and at each remote site 18 (SEA4). However, this does not address the claim limitation which requires the message to be read out from the common source, not just stored at the common source. It is clear that Bullock reads out the message from the local memory at the user unit, not from a common source at computer 16.

Bullock further does not disclose "the reading out of a message for each site . . . proceeding concurrently for all sites at a rate for each site which depends on an information utilization rate for the site."

The Examiner realizes that outputting the messages from the central processor at a rate that corresponds to the utilization rate is not performed because the site-specific messages are stored at the site (EA10). The Examiner states (EA10-11):

However, if the related product information were extensive (audio data can often require excessive

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memory), or repetitive among several products, central storage of the product information would become more cost efficient. If the related product information were exclusively stored in central storage the rate control system claimed would be inherent because certainly the information delivery rate from the central storage would need to be controlled before [being] outputted to the user. If not, the audible message would not be a desired smooth, intelligible sound.

The Examiner also points to Pfeiffer, Figure 4 and column 11, lines 62-68, for the teaching that "the information delivery rate to the controller would need to correspond to the utilization rate of the controller" (EA11).

Appellant points (Br8) out that the Examiner proposes making one level of modification, storing all information to be outputted at a central site, and then adds a second level of modification, the read-out rate for a site depending on the site information utilization rate, without any evidence or suggestion for such modifications in the references.

The Examiner's response (SEA4-6) appears to basically repeat the reasoning in the Examiner's Answer (EA10-11).

We must agree with Appellant that the Examiner has failed to provide any evidence of motivation to distribute the message information from a common source. The Examiner concludes that central storage would be more cost efficient.

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However, that some reason can be invented is not evidence of obviousness in the prior art. Central storage of messages is contrary to the teachings of Bullock. It appears that the motivation for the proposed modification comes from Appellant's disclosure.

In addition, Pfeiffer does not disclose outputting information from a processor at a rate that corresponds to the utilization rate at a certain location. Pfeiffer merely states that the bus bit rate must equal the clock speed of the controller (col. 11, lines 66-68). We agree with Appellant that this implies the data rates for a transmitter and a receiver must be matched, which has nothing to do with reading a message (or other kind of information) out of storage at a rate corresponding to the utilization rate somewhere else.

In summary, the combination of Bullock and Pfeiffer does not teach or suggest: (1) "means responsive to the operation of the input device for one of said sites for initiating the reading out of a message to be provided at the site from the means for addressably storing [at the common source]," and (2) "the reading out of a message for each site . . . proceeding concurrently for all sites at a rate for each site

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which depends on an information utilization rate for the site." Therefore, the Examiner has failed to establish a prima facie case of obviousness. The rejection of claims 1-18 is reversed.

CONCLUSION

The rejections of claims 3 and 4 under 35 U.S.C. § 112, second paragraph, is reversed.

The rejections of claims 1-18 under 35 U.S.C. § 103 are reversed.

REVERSED

STANLEY M. URYNOWICZ, JR.)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
KENNETH W. HAIRSTON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
LEE E. BARRETT)	
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