

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES S. RICHARDSON
and ARNOLD S. LIPPA

Appeal No. 1998-0640
Application 08/212,571¹

ON BRIEF

Before URYNOWICZ, KRASS and LALL, Administrative Patent Judges.

URYNOWICZ, Administrative Patent Judge.

Decision on Appeal

This appeal is from the final rejection of claims 1-11, all the claims pending in the application.

The invention pertains to a hearing aid. Claim 1 is illustrative and reads as follows:

A hearing aid apparatus for receiving and transmitting to the human sensory system an audio frequency signal for enabling human

¹ Application for patent filed March 16, 1994.

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sensing of information contained in said audio frequency signal comprising:

first transducer means for converting an audio frequency sound signal into an audio frequency electrical signal;

generating means for generating an ultrasonic frequency electrical carrier signal;

single sideband amplitude modulating means for amplitude modulating said audio frequency electrical signal onto said ultrasonic frequency electrical carrier signal to form a single sideband amplitude modulated electrical signal;

second transducer means for converting said single sideband, amplitude modulated electrical signal into a vibratory signal; and

applicator means for applying said vibratory signal to the human sensory system through physical interaction with the human body.

The references relied upon by the examiner as evidence of obviousness are:

Puharich et al. (Puharich '993)	3,170,993	Feb. 23, 1965
Puharich et al. (Puharich '246)	3,563,246	Feb. 16, 1971
Smith	4,686,705	Aug. 11, 1987

The appealed claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Puharich '246 in view of Smith and Puharich '993.

The respective positions of the examiner and the appellants with regard to the propriety of these rejections are set forth in the final rejection (Paper No. 7) and the examiner's answer and supplemental answer (Paper Nos. 14 and 16) and the appellants' brief and reply brief (Paper Nos. 13 and 15).

Opinion

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After consideration of the positions and arguments presented by both the examiner and the appellants, we have concluded that the rejection should not be sustained. We do not agree with the examiner's position at page 4 of the answer with respect to claims 1 and 10 that,

...it would have been obvious to one skilled in the art to provide the method and the apparatus for selecting a single sideband (the upper sideband or lower sideband) from the double sideband signal of the Puharich ('246) system, as taught by Smith, in order to reduce a bandwidth for the transmitting signal. This would save the frequency bandwidth in the spectrum.

As noted by appellants, Puharich '246 does not pertain to a communication system wherein modulated carrier signals are transmitted from a transmitter to a receiver over the airwaves or through wires. Puharich '246 discloses an electrotherapy method wherein a modulated electrical signal is applied directly to the patient. There is no need to reduce bandwidth in the '246 system since it is not a communication system, and thus does not operate under communication channel bandwidth limitations because it does not compete with other signals for space in the available electromagnetic frequency spectrum. Accordingly, one skilled in

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the art would not have been motivated to modify the Puharich '246 patent in view of Smith as proposed by the examiner since to do so would solve no problem and serve no purpose. 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, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

Whereas we will not sustain the rejection of claims 1 and 10, the only independent claims, over the prior art for the above reason, we will not sustain the rejection of dependent claims 2-9 and 11 over that same art.

REVERSED

STANLEY M. URYNOWICZ, JR.)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ERROL A. KRASS)	
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
)	

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PARSHOTAM S. LALL)
Administrative Patent Judge)

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