

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERNARD C. NELSON
and CARLOS M. LUGTU

Appeal No. 1998-3342
Application No. 08/540,943

ON BRIEF

Before KRASS, DIXON, and BARRY, Administrative Patent Judges.
BARRY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the rejection of claims 1-6. We reverse.

BACKGROUND

The invention at issue in this appeal tracks records. Businesses expend financial and personnel resources to find and manage records. In a hospital, for example, patients who are critically ill can best be treated when their physicians

have their complete medical records in hand. Lost or misplaced

records are unavailable to the physicians. The cost of and time for finding the records is expensive and potentially life-threatening. Even when conditions are not life-threatening, losses are incurred when extra tests are given, diagnoses are delayed, and billing is delayed because records cannot be found.

The invention at issue attaches transmitter tags to records and uses receiver base stations (RBSs) in communication with a host computer. The tags are preprogrammed with a tag identification number used to associate the record to be tracked with a particular tag. The RBSs are positioned to provide a reception range overlap area for positively tracking the records as they travel through different reception regions. The sensitivity of each RBSs' receiver may be adjusted to control the size of its reception range.

Claim 1, which is representative for our purposes,
follows:

1. In a radio frequency tracking system comprising a plurality of transmitters and a receiver, the receiver having an antenna, a method comprising the step of:

adjusting a reception range of the antenna by changing attenuation of signals applied to the receiver, by the steps including;

if the reception range is less than a desired reception range, decreasing attenuation;
and

if the reception range exceeds the desired reception range, increasing attenuation.

The prior art of record applied on in rejecting the claims follows:

Sasaki	4,553,105	Nov. 12,
1985.		

Claims 1-6 stand rejected under 35 U.S.C. § 103 as being obvious over Sasaki. Rather than reiterate the arguments of the appellants or examiner in toto, we refer the reader to the brief and answer for the respective details thereof.

OPINION

In deciding this appeal, we considered the subject matter on appeal and the rejections made by the examiner. Furthermore, we duly considered the arguments and evidence of the appellants and examiner. After considering the record, we are persuaded that the examiner erred in rejecting claims 1-6. Accordingly, we reverse.

We begin by noting the following principles from In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

In rejecting claims under 35 U.S.C. Section 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).... "A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." In re Bell, 991 F.2d 781, 782, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA 1976)).

Regarding claims 1-6, the examiner alleges, "Sasaki shows a radio receiver that includes circuitry for adjusting the sensitivity of the receiver by decreasing attenuation when the

reception range is less than a desired reception range, and increasing attenuation if the reception range exceeds the desired reception range, col. 1, col. 2, lines 10-36."

(Examiner's Answer at 4.) With this allegation in mind, we consider the appellants' arguments regarding the following group of claims:

- claims 1 and 4
- claims 2, 3, 5, and 6.

We start with the first group.

I. Claims 1 and 4

The appellants argue, "Sasaki does not teach ... setting the reception range of a receiver." (Appeal Br. at 8.)

"[T]he main purpose of the examination, to which every application is subjected, is to try to make sure that what each claim defines is patentable. [T]he name of the game is the claim'" In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998)(quoting Giles S. Rich, The Extent of the Protection and Interpretation of Claims--American Perspectives, 21 Int'l Rev. Indus. Prop. & Copyright L. 497, 499, 501 (1990)). Here, claims 1 and 4

specify in pertinent part the following limitations:

"adjusting a reception range of the antenna by changing attenuation of signals applied to the receiver by the steps including; if the reception range is less than a desired reception range, decreasing attenuation; and if the reception range exceeds the desired reception range, increasing attenuation" Accordingly, claims 1 and 4 require decreasing or increasing attenuation of signals applied to a receiver if the reception range of an associated antenna is less or more, respectively, than a desired reception range.

The examiner fails to show a teaching or suggestion of the limitations in the prior art of record. "Obviousness may not be established using hindsight or in view of the teachings or suggestions of the inventor." Para-Ordnance Mfg. v. SGS Importers Int'l, 73 F.3d 1085, 1087, 37 USPQ2d 1237, 1239 (Fed. Cir. 1995)(citing W.L. Gore & Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1551, 1553, 220 USPQ 303, 311, 312-13 (Fed. Cir. 1983)). "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed

invention is rendered obvious." In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) (citing In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991)). "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." Id. at 1266, 23 USPQ2d at 1784 (citing In re Gordon, 733 F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)).

Here, Sasaki teaches, "[i]n both FIG. 2 and FIG. 3 a first variable attenuator (ATT1) 4 is inserted between the first stage amplifier 1 and the interstage circuit 2 and a second variable attenuator (ATT2) 5 is inserted between the interstage circuit 2 and last stage amplifier 3." Col. 3, ll. 15-20. Although ATT1 and ATT2 decrease or increase attenuation of signals, the decrease or increase is not based on whether the reception range

of an associated antenna is less or more than a desired reception range. To the contrary, the reference's variable attenuators are adjusted "to achieve a linear input-output characteristic over a wide range of input signal levels." Col. 2, ll. 13-14.

Because Sasaki adjusts its attenuators to achieve a linear input-output characteristic, we are not persuaded that teachings from the prior art would have suggested the limitations of "adjusting a reception range of the antenna by changing attenuation of signals applied to the receiver by the steps including; if the reception range is less than a desired reception range, decreasing attenuation; and if the reception range exceeds the desired reception range, increasing attenuation" Therefore, we reverse the rejection of claims 1 and 4 as being obvious over Sasaki. We proceed to the second group of claims.

Claims 2, 3, 5, and 6

The appellants argue, "Appellant repeats the arguments for claim 1 regarding attenuation and overlap. Further

Appellant can find no teaching in Sasaki of overlapping reception ranges." (Appeal Br. at 9.) Claims 2 and 5 specify in pertinent part the following limitations: "adjusting sensitivity of the receiver by attenuating signals received by the antenna, wherein the reception ranges for the plurality of receivers are adjusted to overlap to permit continuous tracking of the plurality of transmitters within the reception ranges." Similarly, claims 3 and 6 specify in pertinent part the following limitations: "an attenuator, inserted between a receiver of the plurality of receivers and its associated antenna for adjusting the reception range which the antenna receives, wherein the reception range of each of the plurality of receivers is adjustable for controlling overlap of reception ranges." Accordingly, claims 2, 3, 5, and 6 require adjusting reception ranges of antennae to control overlap of reception ranges of respective associated receivers.

The examiner fails to show a teaching or suggestion of the limitations in the prior art of record. As explained regarding the first group of claims, Sasaki's variable attenuators are adjusted to achieve a linear input-output

characteristic over a wide range of input signal levels rather than to adjust a reception range of an antenna. Because Sasaki adjusts its attenuators to achieve a linear input-output characteristic, we are not persuaded that teachings from the prior art would have suggested the limitations of "adjusting sensitivity of the receiver by attenuating signals received by the antenna, wherein the reception ranges for the plurality of receivers are adjusted to overlap to permit continuous tracking of the plurality of transmitters within the reception ranges" or "an attenuator, inserted between a receiver of the plurality of receivers and its associated antenna for adjusting the reception range which the antenna receives, wherein the reception range of each of the plurality of receivers is adjustable for controlling overlap of reception ranges." Therefore, we reverse the rejection of claims 2, 3, 5, and 6 as being obvious over Sasaki.

CONCLUSION

In summary, the rejection of claims 1-6 under 35 U.S.C.
§ 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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LANCE LEONARD BARRY)
Administrative Patent Judge)

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SCHWEGMAN, LUNDBERG & WOESSNER
P.O. BOX 2938
MINNEAPOLIS, MN 55402