

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD F. BERLINER
JOHN P. KUHN, SCOTT A. RAWSON
and ANTHONY D. WHALEN

Appeal No. 95-1783
Application 08/069,957¹

HEARD: June 10, 1998

Before JERRY SMITH, BARRETT and CARMICHAEL, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed May 28, 1993.

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This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-4, which constitute all the claims in the application.

The disclosed invention pertains to a method and apparatus for detecting the presence of a motor vehicle in a detection zone. A plurality of sound transducers are spatially arranged to detect sounds of motor vehicles within the detection zone. Spatial and frequency discrimination circuitry determines when a motor vehicle is within the detection zone.

Representative claim 1 is reproduced as follows:

1. An apparatus for detecting the presence of a motor vehicle (105) in a detection zone (107), said apparatus comprising:

a first electro-acoustic transducer (201) for receiving a first acoustic signal radiated from said motor vehicle and for converting said first acoustic signal into a first electric signal that represents said first acoustic signal;

a second electro-acoustic transducer (203) for receiving a second acoustic signal radiated from said motor vehicle and for converting said second acoustic signal into a second electric signal that represents said second acoustic signal;

spatial discrimination circuitry (305) for creating a third electric signal, based on said first electric signal and

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said second electric signal, that substantially represents the acoustic energy emanating from said detection zone;

frequency discrimination circuitry (317) for creating a fourth signal based on said third signal; and

interface circuitry (119) for creating an output signal based on said fourth signal such that said output signal is asserted when said motor vehicle (105) is within detection zone (107) and whereby said output signal is retracted when said motor vehicle (105) is not within said detection zone (107).

The examiner relies on the following references²:

Hendricks	3,047,838	July 31, 1962
Auer, Jr. (Auer)	3,445,637	May 20, 1969
DeMetz, Sr. (DeMetz)	5,060,206	Oct. 22, 1991
Stanzcyk	5,250,946	Oct. 05, 1993

(filed Feb. 10,
1992)

Claims 1-4 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers DeMetz or Auer in view of Hendricks with respect to claims 1, 2 and 4, and adds Stanzcyk with respect to claim 3.

² The examiner's answer cites two additional references which have not been applied in any rejection and, therefore, are not listed here.

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Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-4. Accordingly, we reverse.

We consider first the rejection of claims 1, 2 and 4 under 35 U.S.C. § 103 as unpatentable over the teachings of DeMetz or Auer in view of Hendricks. Appellants have indicated that these claims stand or fall together as a single

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group [brief, page 2]. Therefore, we will consider claim 1 as the representative claim for this group.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by

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the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

DeMetz teaches a marine acoustic detector which can detect the presence of a specific type of aircraft within a measurable zone. The examiner observes that DeMetz does not teach a second electro-acoustic transducer or spatial discrimination circuitry as recited in claim 1 [answer, page 3]. Auer teaches an apparatus using sonic detector means for measuring traffic density. The examiner observes that Auer does not teach spatial discrimination circuitry [Id., page 4]. The examiner cites Hendricks as a teaching of using a plurality of traffic density detectors for detecting traffic density in each of a plurality of street lanes. It is the position of the examiner that the determination of traffic volume in Hendricks from the traffic density signals is equivalent to a spatial discrimination means for combining and converting the detected electrical signals into an electrical signal representative of the detected traffic [Id.]. The examiner concludes that it would have been obvious within the

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meaning of 35 U.S.C. § 103 to employ the multiple detectors of Hendricks with DeMetz or Auer to arrive at the claimed invention.

Appellants argue that neither DeMetz nor Auer teaches the two claimed electro-acoustic transducers and that Hendricks does not cure this deficiency [brief, page 2]. DeMetz does not teach the claimed two transducers as admitted by the examiner. Auer teaches two electro-acoustic transducers, but the examiner notes that one of these transducers is for transmitting signals and one is for receiving signals [answer, page 3]. Therefore, Auer also does not teach two different electro-acoustic transducers for receiving acoustic signals as recited in claim 1.

As noted above, however, the examiner relies on Hendricks to overcome this deficiency of DeMetz and Auer. Appellants argue that there is no motivation to combine Hendricks' plural transducers with DeMetz or Auer because DeMetz has no traffic density or volume problem and because Auer's speed-based Doppler shift system has no need for spatial discrimination circuitry. We agree with appellants that the artisan would find no motivation to combine the

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teachings of Hendricks with either DeMetz or Auer for the reasons indicated by appellants.

Appellants also point out that Hendricks uses plural sensing elements for monitoring plural zones such that there is one sensor for each monitored zone. Although the examiner finds that this operation teaches the claimed spatial discrimination circuitry, appellants strongly disagree. We again agree with appellants.

Claim 1 recites that the two different transducers receive signals from the same motor vehicle. The transducers in Hendricks are designed to receive signals from a specific one of the street lanes. Thus, no two transducers in Hendricks receive signals from the same motor vehicle so that spatial discrimination circuitry is unnecessary. The examiner's finding that Hendricks teaches two transducers and the spatial discrimination circuitry as recited in claim 1 is clearly erroneous.

Although the examiner may view the point of contention here to be minor or clearly obvious, the indisputable fact is that this record does not support the examiner's rejection. We are not in a position to say whether there is any prior art

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which is better than that applied by the examiner. We can say, however, that the prior art applied by the examiner does not support the rejection formulated by him. Therefore, we do not sustain the rejection of claims 1, 2 and 4.

Claim 3 depends from claim 1 and was rejected on the same prior art with Stanzcyk added. Since Stanzcyk does not overcome the deficiencies noted above in the combination of DeMetz or Auer in view of Hendricks, we also do not sustain the rejection of claim 3.

The decision of the examiner rejecting claims 1-4 is reversed.

REVERSED

JERRY SMITH)
Administrative Patent Judge)
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