

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(2) is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SEIJIRO OKADA

Appeal No. 95-2807
Application 07/944,653¹

ON BRIEF

Before McCANDLISH Senior Administrative Patent Judge and
KRASS and STAAB, Administrative Patent Judges.

McCANDLISH, Senior Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final
rejection of claims 1 and 3 through 8. No other claims are
pending in the application.

¹ Application for patent filed September 14, 1992.

Appellant's invention relates to a magnetic head for a tape recording/reproducing apparatus. Appealed claim 1 recites that the head comprises a "slidable surface" (which we interpret as being a tape sliding surface inasmuch as this surface of the head is not "slidable" in a literal sense) and first and second magnetic gaps (1A, 2A).² The first magnetic gap is recited to correspond to a first running direction of the magnetic tape, and the second magnetic gap is recited to correspond to a second running direction of the tape. According to claim 1, each of the magnetic gaps lies between a head peak (9, 10) of the slidable surface and a tape departure point (7, 8) downstream from the head peak so that it is effectively offset from the peak.

A copy of the appealed claims, as these claims appear in the appendix to appellant's brief, is appended to this decision.

The following references are relied upon by the examiner in support of his rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103:

Takanohashi et al. (Takanohashi)	4,387,410	Jun. 07, 1983
Favrou et al. (Favrou)	4,875,129	Oct. 17, 1989

² Although the magnetic gaps are not specifically defined or described in appellant's specification, U.S. Patent No. 4,849,841 issued to Edmund Sokolik states that a magnetic gap in a tape recording/reproducing head of an electromagnetic transducer core structure lies between confronting pole faces of the core. This patent was cited in the first office action in this application. See Paper No. 4.

Claim 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Favrou, claims 3 and 4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Favrou in view of Toshimitsu, claims 5 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Toshimitsu alone and claims 7 and 8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Toshimitsu in view of Favrou or Takanohashi.

With regard to the rejection of claims 3 and 4, the examiner concludes that the teachings of Toshimitsu would have made it obvious to provide Favrou's head device with a pad for pressing the tape against a predetermined portion of the tape sliding surface. With regard to claim 5, the examiner concludes that it would have been obvious to enlarge Toshimitsu's pad 5 to cover the offset magnetic gap 2a in Figures 3-5 of the drawings of the reference to cause the tape to run over the head surface "in a more accurate and precise manner" (answer, page 4). Reference is made to the examiner's answer for further details of the standing rejections.

Considering first the § 102 rejection of claim 1, it is well

³ A copy of a translation of this reference is attached.

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settled that for a reference to be properly anticipatory, each

and every element of the rejected claim must be found either expressly described or under the principles of inherency in the applied reference. See, inter alia, RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

In the present case, appellant does not take issue with the examiner's finding that each of Favrou's elements or configurations 148 and 149, which constitute the magnetic gaps according to the examiner, lie between a head peak of a tape sliding surface and a tape departure point downstream from the head peak as recited in appealed claim 1. Appellant also does not specifically challenge the examiner's finding on page 6 of the answer that a magnetic gap is an inherent part of each of Favrou's transducers 140 and 142. Indeed, it is noteworthy that appellant's illustration of the magnetic gaps 1A and 2A (Figure 1) and also magnetic gaps 1 and 2 (Figure 3) closely resembles the configurations designated by the reference numerals 148 and 149 in the Favrou patent. In any case, we are satisfied that

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the magnetic gaps are inherently disclosed in the Favrou patent inasmuch as one of ordinary skill in the art would have recognized from Favrou's specification and drawings, as well as the prior art as shown in Figure 3 of appellant's drawings, that

the Favrou's transducers are each of the type incorporating a magnetic gap. See Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). This view is reinforced by the fact that in illustrations of the prior art, such as Figure 3 of appellant's drawings, the magnetic gap in the core structure is simply illustrated as a relatively thick line between pole pieces similar to the illustration in the Favrou patent.

Furthermore, appellant's arguments in the second full paragraph on page 4 of the brief are unpersuasive. As stated by our reviewing court in In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989), "[d]uring patent examination the pending claims must be interpreted as broadly as their terms reasonably allow."

Applying the foregoing principle to the present case, the recitation of a magnetic head in appealed claim 1 is broad enough to read on what appears to be non-unitary head structures

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designated by the reference numerals 140 and 142 in the Favrou patent. Neither claim 1 nor any of the other appealed claims recites that the head incorporating the two magnetic gaps is a unitary structure. In fact, appellant's head as illustrated in Figure 3 of the patent application drawings appears to be two

side-by-side structures lying along what appears to be a central dividing line extending vertically between the chain link lines 7B and 8B.

For the foregoing reasons, we will sustain the examiner's § 102(b) rejection of appealed claim 1.

With regard to the § 103 rejection of dependent claims 3 and 4, the purpose of employing a pressure pad for a tape is known in the art as evidenced by the use of such a pad in the prior art head device shown in Figure 1 of appellant's own drawings. Moreover, Toshimitsu expressly teaches the art that the pad 5 provides close contact between the tape and the head space as shown, for example, in Figure 3 and noted on page 3 of the accompanying translation. Contrary to appellant's arguments, such a teaching would have been ample motivation for one of ordinary skill in the art to provide Favrou's head device with a corresponding pad. Admittedly, Toshimitsu's pad in Figures 3-5

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does not cover the magnetic gap. However, unlike appealed claim 5, claims 3 and 4 do not require the pad to press the tape against the head portion containing the magnetic gap. For these reasons we will also sustain the examiner's § 103 rejection of claims 3 and 4.

We cannot, however, sustain the § 103 rejection of appealed claims 5 and 6. In contrast to the invention defined in claim 5, Toshimitsu expressly teaches the art to locate the pad remotely from the head portion containing the offset magnetic gap 2a as shown, for example, in Figure 3 of Toshimitsu's drawings so that the pressure exerted by the pad is not applied directly over the offset gap to avoid the problems discussed on pages 2 and 3 of the accompanying translation of the Toshimitsu reference. As such, the teachings of Toshimitsu points away from, not toward, the invention defined in appealed claim 5. The examiner's speculative reason why one of ordinary skill in the art would ignore this express teaching in Toshimitsu lacks the requisite factual basis to support a conclusion of obviousness. See In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

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Finally, we also cannot sustain the § 103 rejection of dependent claims 7 and 8 inasmuch as neither Favrou nor Takanosashi rectifies the deficiency of Toshimitsu as discussed supra.

In summary, the examiner's decision rejecting the appealed claims is affirmed with respect to claims 1, 3 and 4, but is reversed with respect to claims 5 through 8.

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

AFFIRMED-IN-PART

HARRISON E. McCANDLISH)	
Senior Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	

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LAWRENCE J. STAAB)
Administrative Patent Judge)

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