

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PETER R. DENT

Appeal No. 1996-0452
Application 07/790,618¹

ON BRIEF

Before THOMAS, FLEMING and HECKER, Administrative Patent
Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

¹ Application for patent filed November 8, 1991.

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This is a decision on the appeal from the examiner's final rejection of claims 22 through 26 and 28, which constitute all the claims remaining in the application.

Representative claim 22 is reproduced below:

22. Decoding apparatus for decoding received encoded data comprising:

an input for receiving said encoded data;

a first comparator connected to said input for receiving said encoded data therefrom and comparing said received data with a predetermined value, said predetermined value being defined in relation to an aberrant or probably aberrant datum value;

an adaptive differential pulse code modulation decoder connected to said input for receiving said encoded data therefrom and providing a pulse code modulation signal as an output;

second and third comparators having inputs connected to the output of said adaptive differential pulse code modulation decoder;

said second comparator comparing the pulse code modulation signal provided from the output of said adaptive differential pulse code modulation decoder to the low value of a predetermined pulse code modulation value range;

said third comparator comparing the pulse code modulation signal provided from the output of said adaptive differential

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pulse code modulation decoder to the high value of said predetermined pulse code modulation value range;

a combiner connected to the outputs of said first, second, and third comparators for producing a single pulse train output having a pulse rate indicative of the frequency of aberrant data reception; and

filtering means connected to the output of said combiner for producing an integrated filtered pulse train output signal.

The following references are relied on by the examiner:

Fortuna et al. (Fortuna) 1974	3,810,020	May 7,
Jackson	4,968,902	Nov. 6, 1990

Claims 22 through 26 and 28 stand rejected under 35
U.S.C.

§ 103. As evidence of obviousness, the examiner relies upon Fortuna in view of Jackson.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and the answer for respective details thereof.

OPINION

We reverse since the examiner has not set forth a prima facie case of obviousness within 35 U.S.C. § 103.

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As set forth by appellant in the brief, the claimed adaptive differential pulse code modulation decoder is not taught or suggested in either of the two references relied upon by the examiner. This element is recited in some manner in each independent claim 22, 24 and 28 on appeal. The element is critical to each independent claim since each of these claims as a whole recites specific inputs to and outputs from this decoder. Among other elements recited, the examiner's view at page 5 of the answer is that this ADPCM decoder was a well known standard component in the art, and further presumptively begs the question by taking the additional view that the artisan "could use" this element in a variety of different configurations to accomplish the stated objective of correct transmission of information. The requirement within 35 U.S.C. § 103 for the examiner is to provide evidence that it would have been obvious to the artisan not that it could have been obvious to the artisan.

We also reverse the stated rejection because the examiner's extensive arguments in the answer are to no avail

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to persuade us of the proper combinability of Fortuna and Jackson within

35 U.S.C. § 103. Fortuna's focus is to disclose an encoder to encode PAM information into PCM information. It appears the examiner views this basic conversion as a decoding operation for purposes of the claimed invention. Even though Fortuna does teach a comparator for comparing an input signal to a low value range and a separate comparator for comparing the same signal to a high value range, there is no rational basis within 35 U.S.C.

§ 103 from the teachings of the references or even the reasoning of the examiner to persuade us that the artisan obviously would have provided any type of comparator-type operation from Jackson into Fortuna's system. The examiner's basic view is to add an additional or third comparator function from Jackson's teachings to compare an input with respective low and high threshold levels to determine periods of instability of the signal. The examiner does not persuade us, nor are we able to determine on our own, why the artisan, let alone how the artisan, would

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have combined the teachings of Jackson into Fortuna's system. The examiner's view as to Jackson appears to be based upon prohibited hindsight derived from the claimed invention.

Since we reverse the rejection of independent claims 22, 24 and 28, we also reverse the rejection of the respective dependent claims 23, 25 and 26. Therefore, the decision of the examiner rejecting claims 22 through 26 and 28 under 35 U.S.C. § 103 is reversed.

REVERSED

	James D. Thomas)	
	Administrative Patent Judge)	
)	
)	
)	
	Michael R. Fleming)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	Stuart N. Hecker)	
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William E. Hiller

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