

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte RAYFORD C. HUBBARD

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Appeal No. 96-2995  
Application 08/383,608<sup>1</sup>

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ON BRIEF

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Before THOMAS, HAIRSTON and LALL, Administrative Patent Judges.

LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the final rejection of claims 1 through 5, 8, 9 and 11;

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<sup>1</sup> Application for patent filed February 2, 1995. According to appellant, the application is a continuation of Application 08/136,805, filed October 14, 1993.

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claims 6, 7, 10 and 16<sup>2</sup>, having been canceled; and 12 through 15 and 17 having been allowed.

The claimed invention relates to a system for providing audio or visual messages from a recorded medium to the passengers riding in a passenger conveyance vehicle such as a bus. To control the operation of the recorded message player, a pressure- operated switch is mounted adjacent the arm of the conveyance driver, and is operated in response to pressure between the driver's arm and his torso. The pressure results from a voluntary act of the driver as he realizes that he is approaching a vehicle stop or a point of interest and wishes to provide a message to the passengers.

Representative claim 1 is reproduced as follows:

**1. In a passenger conveyance vehicle, a system for sensory announcement of a series of discrete messages, each identifying an approaching stop or point of interest, the combination comprising:**

**first means including a play-back device for transcribing signals recorded therein;**

**second means including at least one sensory indicator**

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<sup>2</sup> Claim 16 was actually never entered into the record as the amendment after the final rejection, filed on October 10, 1995 was denied entry as per advisory action mailed on November 29, 1995. However, the parties have presented their positions on appeal as if claim 16 was in fact in the record. We also assume that to be the situation in our decision.

within said vehicle, said second means being responsive to corresponding transcribed signals from said first means; and

third means for controlling said first means including a pressure operated switch mounted adjacent an arm of said vehicle driver, said mounting being such that said switch operates to activate said first means in response to pressure between said driver's arm and the torso of said driver, application of said pressure being a voluntary act of said driver.

The examiner relies on the following references:<sup>3</sup>

Rakos	2,106,658	Jan. 25, 1938
Bazille et al.(Bazille) [French]	2,406,266	May 11, 1979
Kawana [Japanese]	0,267,700 <sup>4</sup>	Mar. 7, 1990
Dumond, Jr. et al.(Dumond)	5,218,629	Jun. 8, 1993

Claims 1 through 5, 8, 9 and 11 stand rejected under 35 U.S.C. § 103. As evidence of obviousness the examiner offers Rakos, Bazille, Kawana and Dumond.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the brief and the answer for

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<sup>3</sup> Copies of the translations for Bazille and Kawana are attached

<sup>4</sup> In the Examiner's answer, page 3, this reference is identified as 0,067,700.

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their respective positions.

OPINION

We have considered the subject matter on appeal and the rejections advanced by the examiner. We have, likewise, reviewed the Appellant's arguments against the rejections as set forth in the brief.

It is our view, after consideration of the record before us, that the collective evidence relied upon and the level of skill in the particular art would have suggested, to one of ordinary skill in the art, the obviousness of the invention as set forth in claims 1 through 5, 8, 9 and 11. Accordingly, we affirm.

We consider first the Section 103 rejections as they apply to claims 1, 2, 3, 5, 8, 9 and 11, which are grouped together [brief, pages 11 and 12, and answer, page 2].

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to the applicant to overcome the prima facie case with argument

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and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

With respect to claim 1, the Examiner asserts that claim 1 is unpatentable under 35 U.S.C. § 103 over Kawana in view of Bazille and Rakos. The Examiner concludes that it would have been obvious, to one of ordinary skill in the art at the time of the invention, to utilize specific sensory indicator means as taught by Bazille, and switch means as suggested by Rakos, in conjunction with a system as disclosed by Kawana "in order that

passengers could have specific visual indications of an upcoming stop, ... so that a driver could have operated the signal device without using hands, thus providing greater

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vehicle control and safety." [answer, page 4].

The appellant argues that there is no teaching in the cited references of Kawana, Bazille or Rakos that would lead one to substitute the switch of Rakos into the system of Kawana [brief, page 12].

The Examiner responds that Kawana teaches activation of the playback device by the grip of the bus driver. The Examiner further takes an official notice of the fact that "it is also conventional in the aircraft art [vehicle art] to include a radio push-to-talk switch on the steering yoke so that a pilot does not have to remove hands from the steering device [yoke] to perform [activate] non-steering functions" [answer, page 5].

We note that Kawana does suggest the desirability of activating the message playback system without removing the hand from the steering wheel, simply by "the grip of a bus driver" [English abstract]. We also note that Appellant has not contested, by any reply brief, the Examiner's taking of official notice of the use of a no-hands-required switch to perform non-steering functions while steering an aircraft [vehicle].

When an artisan is directed to use a generic device in a prior art teaching and there is no indication that one species is better or worse than any other, the artisan would expect any of the conventionally known species to be equally selectable for use. The situation here is not one where the artisan must choose from an extremely large number of possibilities with no expectation of success. Rather, the artisan here would have been aware that there were only a relatively small number of no-hands- required switches which could be activated to perform a non-steering function, while the driver continues to keep his hands on the steering wheel. The switch shown by Rakos is activated in response to the pressure between the arms and the body of the operator [column 2, lines 3 to 4]. Rakos' switch, thus, performs substantially the same function as the disclosed and claimed switch.

Next, Appellant argues that Kawana does not recognize the problem of a busy driver needing his hands and legs for normal vehicle control actions, and that none of the cited references recognize[s] the problem of the busy driver [brief, page 12].

We disagree. Kawana expressly discloses the use of the handgrip of the bus driver to activate the message playback

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system while the driver is driving the bus [English abstract]. The obvious conclusion, one of ordinary skill in the art would here drawn from this disclosure, is that the driver is busy and his hands are needed to be free for normal vehicle control actions, while the message playback switch is being activated by the handgrip of the driver.

Still further, Appellant argues that the "combination disclosed by applicant should not be thought to be obvious under 35 U.S.C. § 103" [brief, page 12].

We note that this is merely a conclusionary statement. No specific facts or arguments in regard to the instant application are discussed. Therefore, we need not address it any further than already discussed above.

For the above rationale, we affirm the rejection of claim 1 under 35 U.S.C. § 103 as being unpatentable over Kawana in view of Bazille and Rakos.

With respect to claims 2, 3, 5, 8, 9 and 11, they all stand or fall together. Thus, we also affirm the rejections of these claims under 35 U.S.C. § 103 as being unpatentable over Kawana in view of Bazille and Rakos.

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In regard to claim 4, the Examiner has rejected it under 35 U.S.C. § 103 as being unpatentable over Kawana in view of Bazille, Rakos and Dumond. Here, the Examiner has used the additional reference, Dumond, to show the feature claimed in claim 4, namely: "... said visual display is of the dot-matrix type" [answer, page 6].

Appellant has not made any specific argument regarding this rejection. We, too, find nothing wrong with the Examiner's

position on claim 4. Therefore, we affirm the rejection of claim 4 under 35 U.S.C. § 103 as being unpatentable over Kawana in view of Bazille, Rakos and Dumond.

In conclusion, we affirm the Examiner's final rejections of claims 1 through 5, 8, 9 and 11.

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

AFFIRMED

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Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
KENNETH W. HAIRSTON	)	)
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