

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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 PAUL MAY,
GRAHAM J. WOODGATE, and
DAVID EZRA

Appeal No. 1997-0502
Application 08/110,064¹

ON BRIEF

Before THOMAS, KRASS, and GROSS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

This a decision on appeal from the examiner's final rejection of claims 1, 2, and 4 through 23.

¹ Application for patent filed August 20, 1993.

Each independent claim 1 and 17 on appeal requires in part "a spatial light modulator" or SLM.

The following references are relied on by the examiner:

Santilli et al. (Santilli)	3,989,971	Nov. 2, 1976
Dolizy	4,698,496	Oct. 6, 1987
Smits	5,059,854	Oct. 22, 1991

Claims 1, 2, and 4 through 23 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner presents Santilli in view of Smits as to claims 1, 2, 4 through 12, and 16 through 23, with the addition of Dolizy as to claims 13 through 15.

Rather than repeat the positions of the appellants and examiner, reference is made to the Briefs and the Answer for the respective details thereof.

OPINION

We reverse both stated rejections.

Neither the image intensifier tube of Santilli nor that of Smits comprises the claimed spatial light modulator. As indicated at column 1, lines 11 through 14 of Santilli, an "image intensifier [tube] converts an optical input image to an electron image, and back to an optical image while intensifying the original image." It is not apparent to us that there is

any structure in either Santilli or Smits which provides any light modulation in accordance with the requirements of a spatial light modulator.

Moreover, we agree with the arguments presented by appellants in the Brief and the Reply Brief that neither Santilli nor Smits separately or in combination teaches such a spatial light modulator. We understand SLMs to function in the manner argued by appellants in the Brief and Reply Brief. Additionally, the Reply Brief presents evidence that spatial light modulators have a known special meaning in the field of electro-optics. SLMs are a term of art. We note that appellants' disclosed invention as well the prior art mentioned in the early pages of appellants' specification as filed in part gives examples of spatial light modulators comprising liquid crystals as the basic light modulating element. This is consistent with the basic SLM structures presented at the bottom of page 478 of the Horner book attached to the Reply Brief.

Thus, the initial rejection of independent claims 1 and 17 and their respectively noted dependent claims must be reversed.

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Because Dolizy's image dissector tube does not cure the noted deficiencies with respect to both Santilli and Smits, the separate rejection of claims 13 through 15 under 35 U.S.C. § 103 relying upon the three references must also be reversed. As such, the decision of the examiner rejecting claims 1, 2, and 4 through 23 under 35 U.S.C. § 103 is reversed.

REVERSED

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JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	
)	BOARD OF PATENT
ERROL A. KRASS)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
)	
ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

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