

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** KURT M. CONOVER

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Appeal No. 1997-2151  
Application No. 08/221,959

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ON BRIEF

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Before HAIRSTON, KRASS, and DIXON, **Administrative Patent Judges**.  
DIXON, **Administrative Patent Judge**.

**DECISION ON APPEAL**

This is a decision on appeal from the examiner's final rejection of claims 14, 28-31 and 33-41<sup>1</sup>, which are all of the claims pending in this application.

We AFFIRM.

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<sup>1</sup> Claims 32 and 42 have been objected to by the examiner as allowable if written in independent form.

## BACKGROUND

The appellant's invention relates to a phase-locked sync stripper. An understanding of the invention can be derived from a reading of exemplary claim 14, which is reproduced below.

14. A circuit for stripping a synchronization component from a composite video signal, the circuit comprising:

a phase-locked loop comprising:

a 10 MHZ clock phase-locked with a leading edge of a video sync signal; and

a signal generating means which outputs a signal that encompasses the video sync signal, said signal which begins a first predetermined time period before a leading edge of the video sync and ends at a second predetermined time period; and

an analog switch comprising a switchable input operational amplifier controlled by said signal for switching a blank level voltage onto the composite video signal.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Dolby	3,005,869	Oct. 24, 1961
Tanabe	3,681,522	Aug. 01, 1972
Omori (Japanese Patent specification)	JP 63-219273	Sep. 12, 1988
Nonomura (Japanese Patent specification)	JP 4-192971	Jul. 13, 1992

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Claims 28, 29, 33, 35, 38, 39 and 40 stand rejected under 35 U.S.C. § 102 as being unpatentable over Tanabe. Claims 14, 28-31 and 33-41 stand rejected under 35 U.S.C. § 103 as being unpatentable over Nonomura in view of Omori, Dolby and Tanabe.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 17, mailed Aug. 20, 1996) for the examiner's reasoning in support of the rejections, and to the appellant's brief (Paper No. 16, filed Jul. 15, 1996) for the appellant's arguments thereagainst.

### **OPINION**

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made, but chose not to make in the brief have not been considered. (See 37 CFR § 1.192(a).)

**Claims 28, 29, 33, 35, 38, 39 and 40**

After the PTO establishes a *prima facie* case of anticipation based on inherency, the burden shifts to the appellant to prove that the subject matter shown to be in the prior art does not possess the characteristics of the claimed invention. **See In re Thorpe**, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985); **In re King**, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986). Hence, appellant's burden before the PTO is to prove that the applied prior art reference does not perform the functions defined in the claims. The appellant has not come forward with any evidence to satisfy that burden. **Compare In re Best**, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977); **In re Ludtke**, 441 F.2d 660, 664, 169 USPQ 563, 566-67 (CCPA 1971); **See In re Pearson**, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974) (attorney's arguments in a brief cannot take the place of evidence).

In our view, the examiner has set forth a *prima facie* case of anticipation. The examiner has set forth the structure in Tanabe which corresponds to the claimed invention. (See answer at pages 4-7.) Furthermore, the examiner has responded to appellant's arguments. (See answer at pages 7-10.) The examiner points out that the claim language is broader than appellant argues. (See answer at page 8.) We agree with the examiner. Appellant argues the timing and duration of the blanking signal as a distinguishing factor, but cites to no specific claim language in claims 28 or 35. (See brief at page 3.) We

disagree with appellant. Appellant argues that Tanabe does not use clock signals to properly time the signal generator, but cites to no specific claim language in claims 28 or 35. (See brief at page 3.) We disagree with appellant. Claim 28 merely requires that the blanking “start a predetermined amount of time before the leading edge of the video sync signal” and “ends a second predetermined time after a trailing edge of the video sync signal.” We agree with the examiner that appellant is arguing limitations not expressly found in the language of claim 28<sup>2</sup>.

Appellant argues that Tanabe does not take into account the “front and back porch” which includes color burst information. (See brief at page 3.) We agree with the examiner that this limitation is not found in the language of claims 28 or 35 and is therefore not persuasive. Appellant has not set forth any specific language in claims 28 or 35 which distinguishes the claimed invention from Tanabe. Therefore, we will sustain the rejection of claims 28 and 35 and their dependent claims.

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<sup>2</sup> We note that an after-final amendment, filed Feb. 26, 1996, proposing to modify the language of the independent claims was not entered in an advisory action mailed Mar. 6, 1996. We have not considered the language in these claims.

**Claims 14, 28-31 and 33-41**

“To reject claims in an application under section 103, an examiner must show an un rebutted *prima facie* case of obviousness. **See In re Deuel**, 51 F.3d 1552, 1557, 34 USPQ2d 1210, 1214 (Fed. Cir. 1995). In the absence of a proper *prima facie* case of obviousness, an applicant who complies with the other statutory requirements is entitled to a patent. **See In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.” **In re Rouffet**, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1455 (Fed. Cir. 1998). Here, we find that appellant has not overcome the *prima facie* case of obviousness by showing insufficient evidence by the examiner of obviousness or by rebutting the *prima facie* case with secondary evidence. Therefore, we will sustain the rejection of claims 14, 28 and 35.

Similarly, as discussed above, claim 14 contains similar limitations as claim 28 with the exception of the 10 MHZ limitation and use of the leading edge for timing purposes. Again, we agree with the examiner concerning the *prima facie* case of obviousness set forth in the answer. (See answer at pages 10-16.) Again, appellant has not shown insufficient evidence by the examiner of obviousness or by rebutting the *prima facie* case

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of obviousness with secondary evidence. (See brief at pages 3-4.) Moreover, appellant has merely addressed the individual references without addressing the combination of the teachings. Appellant merely argues that “none of them teach or suggest means to closely control the width of this blocking signal.” (See brief at page 4.) We agree with the examiner and similarly, do not find a limitation in independent claims 14, 28 or 35 expressly setting forth the “means to closely control the width of this blocking signal.” Therefore, we will sustain the rejection of claims 14, 28 and 35 and their dependent claims.

With respect to claims 32 and 42 which the examiner indicated as allowable if rewritten in independent form, we make no comment with regard to these claims since these claims are not on appeal.

### **CONCLUSION**

To summarize, the decision of the examiner to reject claims 28, 29, 33, 35, 38, 39 and 40 under 35 U.S.C. §102 is affirmed and the decision of the examiner to reject claims 14, 28-31 and 33-41 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
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	)	
	)	
	)	BOARD OF PATENT
ERROL A. KRASS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

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