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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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

Appeal No. 1998-0538
Application 08/424,634

ON BRIEF

Before THOMAS, BARRETT and BARRY, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellant has appealed to the Board from the examiner's final rejection of claims 1 and 3 through 5, which constitute all the claims remaining in the application.

Representative claim 1 is reproduced below:

1. A sliding type head carriage assembly for a magnetic disk drive for flexible magnetic disks, comprising:

a slider including a magnetic core for writing and reading data to and from a flexible magnetic disk;

a carriage supporting said slider; and

a projection protruding from said carriage at least in the vicinity of one side of said slider;

wherein said slider is directly adhered to said carriage by an adhesive, and wherein said projection is separate from and also directly adhered to said slider by said adhesive.

The following references are relied upon by the examiner:

Kakizaki et al. (Kakizaki)	5,091,810	Feb. 25, 1992
Nagase[1] (Japanese Patent Application)	04-149816	May 22, 1992

Claims 1 and 3 through 5 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon

[1] Our understanding of this reference is based upon a translation provided by the Scientific and Technical Information Center of the Patent and Trademark Office. A copy of the translation is enclosed with this decision.

Nagase in view of Kakizaki.

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

OPINION

We reverse, generally for the reasons set forth by the appellant in the brief and reply brief.

From the translation of Nagase that we have obtained, our reading of this reference is consistent with that argued by the appellant. It is thus apparent that from the examiner's persistent manner in which the examiner applies Nagase to the subject matter of independent claims 1 and 4 on appeal the examiner has clearly misapplied the teachings and showings of this reference to the subject matter of the claims.

In the Figures 3 and 7 showings in Nagase, the entire carriage 11 is composed of an upper arm 13 and the head carriage main body 12. Each of these has somehow affixed thereto respective prior art heads shown in Figure 5 as element 2 or the respective head construction of the patentee shown as head 20 in Figure 1. In accordance with the claimed

invention, Nagase does show a sliding-type head carriage assembly for a magnetic disk drive for flexible magnetic disks of the type claimed. In contrast to the examiner's view that element 21 in Figure 2 comprises a slider, this element in this figure is stated to be a magnetic head core. The examiner's view that a carriage 28 supporting the slider is shown in this figure is also misplaced since element 28 is the slider itself. Additionally, the examiner considers the claimed projection to be the part of the carriage [sic, slider] 28 near the contact surface 28a in forming part of the "rail" of the assembly. There is no claimed rail and the region of the slider 28 noted by the examiner is a part of the slider and not a projection protruding from the carriage as set forth in claim 1 on appeal.

As noted earlier, Nagase does teach a head type carriage assembly for a magnetic disk drive for flexible magnetic disk as forth in the preamble of claim 1 on appeal. Figure 2 does show a slider 28 which may be said to include a magnetic core 21 as claimed. The carriage 11 in Figure 3 clearly supports the

slider 28 by means of the intermediate support mechanism, the gimbal spring 30. However, we find no projection protruding from the carriage on one side of the slider as required by this claim and the drawing in Figures 1-4 as relied on by the examiner.

We make similar observations with respect to the examiner's application of Nagase's prior art Figures 4-8 against claim 4. The examiner's view that the slider means of the claim is

element 5 is misplaced since this element is a magnetic core in Figure 5. The examiner's view that the carriage means of the claim comprises elements 3/4 is also misplaced since these are both ceramic sliders. Again, the examiner takes the view that two projection means comprising parts of these misapplied elements 3 and 4 compose the part of the rail contacting the disk in the vicinity of the slider. Again, there is no rail claimed and the examiner is misapplying the corresponding portions of the ceramic sliders 3, 4 as the examiner did in the Figure 2 showing. If we correctly apply the reference against the claim consistently with its own teachings, we are

also left with a deficiency of the claim requiring two projection means which are not independently or separately taught or suggested in the showings in Figures 4-8 of Nagase.

Although page 2 of the reply brief brings out that the terms "slider" and "carriage" are used somewhat loosely in the art, we agree with the appellant's view that the examiner has gone way beyond a reasonable view from an artisan's perspective in applying the art. The appellant's admitted prior art, his own contribution in the art, and the terminology utilized in Nagase from the translation we have of this reference consistently use the questioned terms that have been misapplied by the examiner.

The examiner's reliance on Kakizaki to show that it was old in the art to use adhesives to join a magnetic head core to a carriage or slider is cumulative because the middle of page 6 of the translation indicates that the slider 28 in Figure 2 of Nagase is joined on one side of the magnetic head core section 21 by applying an adhesive thereto. Moreover, the appellant's prior art Figures 1-5 indicate that it was well-known in art to have used an adhesive for the claimed

purposes anyway.

Finally, the examiner is incorrect in asserting on pages 4 and 5 of the answer that "[i]t is assumed to be inherent to Nagase '816's disclosure" that certain features are present. "To establish inherency, the extrinsic evidence, must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by person of ordinary skill." Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991). "Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient." Id. at 1269, 20 USPQ2d at 1749 (quoting In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981)).

In view of the foregoing, we have reversed the examiner's rejection of independent claims 1 and 4. As such, we also

reverse the rejection of their respective dependent claims 3 and 5. Therefore, the decision of the examiner rejecting claims 1 and 3 through 5 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS Administrative Patent Judge	)
LEE E. BARRETT Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
LANCE LEONARD BARRY Administrative Patent Judge	)

Young and Thompson
745 South 23rd Street
Ste. 200
Arlington, VA 22202

JDT/dal