

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. BERUBE and JAMES T. REED

Appeal No. 1998-2868
Application No. 08/635,986

ON BRIEF

Before HAIRSTON, KRASS and BARRY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1, 2, 7 and 11.

The disclosed invention relates to a portable communicator for use with a personal security system that locates emergency transmissions from the portable communicator in a protected region.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

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1. A portable communicator for use with a personal security system; said communicator comprising:

a transmitter for transmitting wireless signals identifying said communicator to said system;

a manually operated actuator initiating said transmission of said identifying signals; and,

a control responsive to said manual initiation and automatically transmitting said identifying signals repeatedly over a predetermined time interval exceeding five minutes, said control automatically discontinuing said automatic transmissions at the end of said predetermined time interval.

The reference relied on by the examiner is¹:

Akerberg	4,347,501	Aug. 31,
1982		

Claims 1, 2, 7 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Akerberg.

Reference is made to the brief (paper number 11) and the answer (paper number 12) for the respective positions of the appellants and the examiner.

OPINION

¹ Although U.S. Patent No. 5,363,425 to Mufti et al. is listed in the prior art of record (Answer, page 3), the examiner did not include this reference in the rejection of record (Answer, pages 3 through 5).

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The obviousness rejection of claims 1 and 2 is sustained, and the obviousness rejection of claims 7 and 11 is reversed.

With the exception of the transmission intervals, Akerberg discloses all of the claimed communicator structure of claims 1 and 2. The examiner contends (Answer, page 4) that "it would have been obvious to one of ordinary skill in the art to implement any desired timing interval, since it would have been obvious . . . to implement the most optimal timing interval for the system operation." When we turn to appellants' disclosure (specification, page 7, lines 26 through 33) for guidance as to the significance of the selected transmission timing intervals, we do not find any significance attached to the selected transmission intervals. The same holds true for appellants' arguments (Brief, pages 4 through 8). Appellants' tracking arguments (Brief, pages 4 through 8) are not convincing of the nonobviousness of the claimed invention because tracking is not set forth in claims 1 and 2. In the absence of any significance to the transmission intervals, we agree with the examiner that the skilled artisan would have found it obvious to set the transmission interval to an optimal value for the particular

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system. Thus, the obviousness rejection of claims 1 and 2 is sustained.

Turning next to claims 7 and 11, the examiner has erroneously concluded (Answer, page 5) that "the claimed plurality of fixed receivers is met by the locally fixed transmitters (1A, 1B, figure 1, column 4, lines 29-41)." The locally fixed transmitters 1A and 1B in Akerberg (Figures 1 and 3) never function as receivers. For this reason, we agree with appellants' argument (Brief, page 8) that Akerberg is incapable of "tracking time spaced transmissions." In summary, the obviousness rejection of claims 7 and 11 is reversed.

DECISION

The decision of the examiner rejecting claims 1, 2, 7 and 11 under 35 U.S.C. § 103(a) is sustained as to claims 1 and 2, and is reversed as to claims 7 and 11. Accordingly, the decision of the examiner is affirmed-in-part.

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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-IN-PART

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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LANCE LEONARD BARRY)	
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