

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH F. CONKLIN, DAVID B. GIGUERE and JAMES C. CHEN

Appeal No. 1999-1110
Application No. 08/665,755

ON BRIEF

Before KRASS, JERRY SMITH and RUGGIERO, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-20, all of the claims pending in the application.

The invention is directed to an integrated point-to-point microwave radio frequency unit/antenna best illustrated by reference to representative independent claim 1, reproduced as follows:

1. An integrated point-to-point microwave radio frequency unit/antenna, comprising:

a housing having an exterior wall;

a microwave radio frequency transceiver electronics package within the housing, the microwave radio frequency transceiver electronics package comprising

a baseband signal processing unit having an input/output, and being operable to process information selected from the group consisting of voice, video, and data link information,

a microwave transceiver having a low-frequency side with a baseband signal connection to the baseband signal processing unit and a high frequency side including an antenna connection;

a flat antenna integral with the exterior wall of the housing; and

a microwave radio frequency feed communicating between the flat antenna and the antenna connection of the microwave transceiver electronics package.

The examiner relies on the following references:

Braun et al. [Braun]	5,160,936	Nov. 03, 1992
Caille et al. [Caille]	5,206,655	Apr. 27, 1993

Claims 1-12 stand rejected under 35 U.S.C. § 102(b) as anticipated by either one of Braun or Caille. In addition, claims 1-20 stand rejected under 35 U.S.C. § 103 as unpatentable over either one of Braun or Caille.

Appeal No. 1999-1110
Application No. 08/665,755

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

We REVERSE.

In order to anticipate under 35 U.S.C. § 102(b), a reference must disclose, either directly, or by way of inherency, each and every claimed element. One may not speculate as to what a reference may or may not teach in applying a rejection under this statutory section.

The examiner applies Braun and Caille, alternatively, against the subject matter of instant claims 1-12. In applying these references, at page 2 of the final rejection, the examiner cites Braun as disclosing an integrated transceiver antenna, with transverse stub antennas 10 mounted as a flat array upon a wall 14 including a housing, transceiver, electronics package 42, 44, 46 with high and low transceivers having a baseband signal connection, controller, power supply and RF coupler, etc. coaxial feeder 28 and support fixing means 62. It is the examiner's position that Braun's transceiver "is deemed to include the circuitry as now recited." [final rejection, page 2.]

While it is not entirely clear to us how the specific elements of Braun, identified by the examiner, correspond to the claimed elements, it is clear to us that "deeming" is

not a recognized substitute for providing evidence. The examiner may not “deem” that any transceiver electronics package of Braun includes the specific circuitry recited. The examiner should be aware that “deeming” does not discharge him from the burden of providing the requisite factual basis and establishing the requisite motivation to support a conclusion of obviousness. The examiner’s reference to unidentified phantom prior art falls far short of the mark. Ex parte Stern, 13 USPQ2d 1379, 1381. The examiner must show where such circuitry is taught by Braun or why such circuitry would be inherent in the Braun disclosure.

The statement of rejection does not address the claimed limitation of processing information “selected from the group consisting of voice, video, and data link information.” Because the instant invention is interested in communication by point-to-point microwave radio frequency, voice, video and/or data link information is processed. The airborne radar system of Braun clearly is not interested in voice or video information and it is arguable as to whether the radar information provided in Braun may be considered “data link information.” The examiner’s contention that a transceiver includes a detector and modulator that extracts voice or data frequencies or impresses upon a carrier such voice or data frequencies and that these are “essential and inherent components of a transceiver” [answer-page 4] is unsupported. We find no

Appeal No. 1999-1110
Application No. 08/665,755

such “voice or data frequencies” in the radar system of Braun and it would not appear to be inherent at all to employ voice signals in an airborne radar system such as that taught by Braun.

With regard to Caille, the examiner is even less straightforward in identifying corresponding elements between Caille and the subject matter of the claims, stating only, at page 2 of the final rejection, that Caille shows “similar transceiver structure, including the newly added circuitry, identifying Figures 3-9.” It is unclear how Caille is being applied by the examiner against the instant claims. Similar to the reasoning with regard to Braun, the examiner identifies the satellite 20 of Caille and declares that the “specific claimed electronics package is inherent and implied in the satellite housing 20” [answer-page 5]. We disagree. Even in response to a challenge by appellant, the examiner has been unable to identify any evidence tending to show that the satellite of Caille “inherently” includes the baseband signal processing unit and microwave transceiver set forth in the instant claims. Speculation on the part of the examiner simply does not cut it with respect to making a showing of anticipation under 35 U.S.C. § 102(b).

Part of the examiner’s problem may be in declaring, at page 6 of the answer, that the instant “claims are nothing more than a combination of antenna and communication

Appeal No. 1999-1110
Application No. 08/665,755

electronics in a single package.” Clearly, the instant claims recite more, specifically claiming elements within a microwave radio frequency transceiver electronics package. The examiner has not persuasively shown these elements within the teachings of the applied references.

Accordingly, the rejection of claims 1-12 under 35 U.S.C. § 102(b) as anticipated by either one of Braun or Caille is reversed.

Turning to the rejection of claims 1-20 under 35 U.S.C. § 103 as alternatively unpatentable over either Braun or Caille, we will also reverse this rejection since much of the examiner’s reasoning is similar to that applied in the 35 U.S.C. § 102(b) rejection.

With regard to Braun, the examiner again says that the transceiver is “deemed” to include the circuitry claimed because the circuitry “is well known and common knowledge in transceivers” [final rejection-page 3]. The examiner says the transceiver is “deemed” to have a baseband signal processor with input/output and a microwave transceiver with low and high side connections, that such circuitry “is taken for granted and found to be obvious” [final rejection-page 3]. Regarding claims 13-20, the examiner contends that the specific size of the array and band of operation “is an obvious design choice.”

Appeal No. 1999-1110
Application No. 08/665,755

Upon challenge by appellant to provide evidence of these things that the examiner claims are "well known and common knowledge," that are "deemed" to include certain circuitry and are "taken for granted" or "obvious design choices," the examiner has responded by citing no evidence of these allegations even though the burden was shifted to the examiner, once challenged by appellant, to establish that which is considered to be well known and common knowledge, etc. When an examiner judicially notices a feature as being old in the art and such is challenged, there is reversible error when the examiner fails to cite the well known thing on which he relies. Ex parte Nouel, 158 USPQ 237 (Bd. of App. 1967).

Deficiencies in the factual basis cannot be supplied by resorting to speculation or unsupported generalities. In re Freed, 425 F.2d 785, 787, 165 USPQ 570, 571 (CCPA 1970); In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967).

Accordingly, the examiner has failed to present a prima facie case of obviousness with regard to the subject matter of instant claims 1-20.

Appeal No. 1999-1110
Application No. 08/665,755

The examiner's decision rejecting claims 1-12 under 35 U.S.C. § 102(b) and claims 1-20 under 35 U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JERRY SMITH)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JOSEPH F. RUGGIERO)	
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Appeal No. 1999-1110
Application No. 08/665,755

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