

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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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**Ex parte** JOHN C. SARALLO and WILLIAM A. FELDERMAN

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Appeal No. 1999-1802  
Application No. 08/806,466

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ON BRIEF

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Before BARRETT, RUGGIERO, 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 1-4, 6-10 and 17. Claims 11-13 and 16 have been indicated by the examiner as allowable over the prior art of record, and claims 14 and 15 have been objected to by the examiner.

We REVERSE.

## BACKGROUND

The appellants' invention relates to a wireless communication system with trunked signal voting. The system contains a switch which allows any of the plural stations to connect to any of the plural voters. An understanding of the invention can be derived from a reading of exemplary claim 17, which is reproduced below.

17. A wireless communication system, comprising:

a plurality of signal reception sites;

a plurality of signal voters; and

a signal switch intercoupled between the plurality of signal reception sites and the plurality of signal voters, the signal switch being controllable to couple respective versions of received signals from any of the plurality of reception sites to any of the plurality of signal voters.

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

Perry	4,317,218	Feb. 23, 1982
Lenchik et al. (Lenchik)	5,251,327	Oct. 5, 1993

Admitted Prior Art (APA) - Figure 1

Claims 1-4, 6-10 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over APA in view of Perry and Lenchik.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's

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answer (Paper No. 22, mailed Dec. 21, 1998) for the examiner's reasoning in support of the rejections, and to appellants' brief<sup>1</sup> (Paper No. 21, filed Oct. 21, 1998) and reply brief (Paper No. 23, filed Jan. 26, 1999) for appellants' arguments thereagainst.

### OPINION

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

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 U.S.P.Q.2d 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 U.S.P.Q.2d 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. [Citation omitted.]

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<sup>1</sup> Here we note that text appears to be missing from the brief at the top of page 4 which begins in the middle of a sentence, and section header "1" is not present, but header "2" is present at the bottom of page 4. Furthermore, the Brief contains pages 1-7 and the certificate of mailing is on page 9 and the transmittal letter indicates that 9 pages were sent. Appellants representative, Mr. Andrew Fuller, was contacted by Legal Technician, Vasco Harper at Board of Patent Appeals and Interferences, on August 29, 2001. Mr. Fuller indicated that there was a clerical error and that a portion of the text of the Brief was not included. The missing text was the material from the immediate prior amendment, filed March 13, 1998. The missing text was intended to be the arguments spanning pages 3, line 5 to page 4, line 7 of the amendment. Since this material has been previously considered by the examiner in formulating the final rejection, we have treated the brief as also containing these arguments.

**In re Rouffet**, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1455 (Fed. Cir. 1998). Here, we agree with appellants that the examiner's rejection lacks support for the invention as recited in independent claim 17. Therefore, we find that appellants have overcome the rejection by having insufficient evidence of *prima facie* obviousness.

Appellants argue that the references when combined do not teach all of the claimed limitations. (See brief at page 6.) We agree with appellants. Appellants argue that the switch taught by Perry between the voter and the multiple transmission sources/sites operates to control the transmissions rather than to couple the multiple versions of a common source to any of the plural voters for voting purposes. (See page 4 of the amendment inserted into the brief before the first line of page 4.) We agree with appellants that Perry does not teach or suggest the switch controlling connection between the reception sites and the voters where the switch is used in re-transmission of the signal rather than in the reception.

Appellants argue that Lenchik does not teach the use of a signal switch to couple different versions of a common source signal from base stations to any one of several devices. (See brief at page 4.) We agree with appellants. Appellants further argue that the only cited portion of Lenchik would not teach one skilled in the art that the

resource allocator routes multiple versions of a common source to a particular device.

(See brief at page 4.) We agree with appellants. From our review of Lenchik, we find no express teaching of the subject matter asserted by the examiner to be present at col. 4, lines 36-59. (See brief at page 5.) While the resource allocator 110 may teach or suggest some switching, Lenchik is silent as to the operation of this element. To interpret Lenchik to teach detailed switching between plural units and sites would be speculation on our part, which we will not do. Furthermore, the examiner has not provided any other teaching or a line of reasoning why it would have been obvious to one of ordinary skill in the art at the time of the invention to have the allocator perform the claimed switching. Therefore, we agree with appellants that the combination if properly combined would not have taught or suggested the invention as recited in

claim 17, and we will not sustain the rejection of claim 17. Independent claims 1, 6, 7, and 10 contain similar limitations concerning the switching of the input signals to a selected voter from plural voters, therefore, we will not sustain the rejection of these independent claims and their dependent claims 2-4, 8, and 9.

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**CONCLUSION**

To summarize, the decision of the examiner to reject claims 1-4, 6-10 and 17 under 35 U.S.C. § 103 is reversed.

REVERSED

LEE E. BARRETT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOSEPH F. RUGGIERO	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

JLD:clm

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