

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHANNES J. MONS

Appeal No. 1999-2269
Application 08/558,517

ON BRIEF

Before HAIRSTON, SMITH, JERRY and LALL, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 3 through 7.

The disclosed invention relates to control information on a disc-like record carrier that is indicative of the diameter of the record carrier.

Claims 3, 6 and 7 are illustrative of the claimed invention, and they read as follows:

3. An information recording and/or reading apparatus comprising drive means for rotatably driving a disc-like record carrier having a predefined diameter, control information comprising diameter information including an encoding of the predefined diameter of the disc-like record carrier being accommodated on the record carrier, components whose behavior depends on the diameter of the record carrier, and means for reading the diameter information and for setting the components in dependence on the diameter information and for adapting the diameter-dependent behavior of said components.

6. A record carrier in the form of a disc on which control information is recorded, said record carrier having a diameter, said control information comprising diameter information including an encoding of the diameter of the record carrier.

7. A record carrier as in claim 6, wherein said carrier has information tracks on which said control information is recorded at a predetermined position.

The references relied on by the examiner are:

Ando et al. (Ando)	5,432,766	July 11, 1995
Akashi (Japanese Patent Application) ¹	04-245061	Sept. 1, 1992

Claims 3 through 7 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ando.

Claims 3 through 7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Akashi.

Reference is made to the brief (paper number 26) and the answer (paper number 27) for the respective positions of the appellant and the examiner.

OPINION

For all of the reasons expressed by the examiner (answer, pages 4 through 9), and for the additional reasons set forth infra, we will sustain the rejections of claims 3 through 7.

Ando clearly recognizes that compact discs (CDs) have several different diameters (column 1, lines 33 through 55), that the “type of disc is identified on the basis of a

¹ A copy of the translation of this reference is attached.

subcode recorded on a CD thereby to vary a servo loop gain" (column 1, lines 57 through 59), and that "the gain of the servo loop is switched on the basis of the type (size) of the loaded disc judged by the CPU 5 on the basis of subcode decoded by the subcode decoder 4" (column 6, lines 24 through 27). No matter what the form of the encoded data on the disc disclosed by Ando, it represents the diameter of the disc. Appellant's argument (brief, page 4) that the encoded data in Ando is surrogate data rather than the diameter itself is perplexing inasmuch as Ando's diameter data is disclosed in infinitely more detail than appellant's so-called diameter data. Stated differently, if a skilled artisan would know how to store encoded diameter data on a disc based upon appellant's sparsely disclosed and claimed invention, then surely the skilled artisan would know that Ando's disclosure is directed to encoded diameter data stored on a disc. In re Fox, 471 F.2d 1405, 1407, 176 USPQ 340, 341 (CCPA 1973). Ando describes an alternative embodiment (column 6, line 38 through column 7, line 3) wherein gain of the servo loop is not switched based on disc diameter. Appellant's arguments (brief, pages 6 and 7) to the contrary notwithstanding, the examiner did not rely on this alternative embodiment in Ando to reject the claims on appeal.

Akashi, like Ando, clearly discloses (translation, page 3) that "the servo gain . . . is automatically switched according to the diameter of CDS," and that this is accomplished by detecting "the size (diameter) of the CD that is placed on the spindle hub that is driven by the spindle motor." Akashi explains (translation, pages 6 and 7) that "[a]ccording to the optical disc playback apparatus of the present invention, the diameter of an optical disc is

determined by reading the table-of-content data (hereinafter referred to as TOC) recorded in the lead-in section of the optical disc, and the rotation servo gain is controlled accordingly; thus, it becomes possible to determine the type of the optical disc even when the optical disc is rotating.” “In addition, the TOC extracted in the TOC-extracting circuit (12) is input to the discrimination circuit (13), which discriminates between a CD single and standard CD, and the discrimination result is supplied to the control circuit (11)” (translation, page 8). Thus, Akashi “reads the aforesaid TOC recorded in CD 1 or CD 2 to determine the size of the CD and, based upon the result, controls the servo gain of the spindle motor (3)” (translation, page 11). Appellant argues (brief, page 7) that there is nothing whatsoever in Akashi “to suggest that the control information includes an actual encoding of the diameter.” If Akashi uses a decoder (translation, page 8), then the signal read from the disc is encoded. Appellant’s argument (brief, page 8) concerning an “actual physical” disc diameter is not commensurate in scope with the claimed invention. Appellant argues (brief, pages 13 and 14) that the references do not require that the diameter data be recorded at a “predetermined position” on the disc. As indicated supra, Akashi clearly states (translation, pages 6 and 7) that the diameter data is “recorded in the lead-in section of the optical disc.”

Based upon the foregoing, and the examiner’s thorough analysis of the facts and issues in this application, appellant’s arguments (brief, pages 10 and 13) that the disc data read in both Ando and Akashi is not “inherently” intended to represent disc diameter data is without merit.

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In summary, the anticipation rejections of claims 3 through 7 are sustained.

DECISION

The decision of the examiner rejecting claims 3 through 7 under 35 U.S.C. § 102(e) and 35 U.S.C. § 102(b) is affirmed.

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
JERRY SMITH)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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