

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte BERNARD BOSSARD and CHARLES BRAND

---

Appeal No. 1999-2694  
Application No. 08/684,651

---

ON BRIEF

---

Before KRASS, DIXON and BARRY, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-7 and 10-14. Claims 8 and 9 have been indicated in the answer as being directed to allowable subject matter and are no longer before us on appeal.<sup>1</sup>

---

<sup>1</sup>We find it curious as to why the examiner, in the answer, would indicate that claims 8 and 9 are now directed to allowable subject matter [pages 2-4]; that the only remaining issue on appeal is the rejection of claims 1-7 and 10-14 and, at the same time, in the answer, repeat the previous rejection of these claims [pages 9-10] and, moreover, label one of the responses, at page 14 of the answer,

(continued...)

The invention is directed to a dual transmitter arrangement with back-up switching such that, if one of the transmitters fails, the input signals for that transmitter are provided to the other transmitter, which then transmits both the first and second channels over their respective portions of the frequency band.

Representative independent claim 1 is reproduced as follows:

1. A transmitting arrangement for multi-channel operation, comprising:
  - two transmitters each having a respective input and a respective output,
  - means for connecting the respective outputs to at least one communication element,
  - means for providing first input signals, corresponding to at least a first channel in a first portion of a frequency band, to the input of a first of said transmitters,
  - means for providing second input signals, corresponding to at least a second channel in a second portion of said frequency band not including said first portion, to the input of the second of said transmitters,
  - means for sensing a loss of output signals from one of said transmitters, and
  - means, responsive to sensing of a loss of output signals from said one of said transmitters, for providing both input signals to the input of the

---

<sup>1</sup>(...continued)

“REJECTION OVER LUX IN VIEW OF LANGSETH AND FURTHER IN VIEW OF KLEIBER”, when Kleiber was only applied with regard to claims 8 and 9. In any event, in view of the examiner’s clear intent to now limit the appeal to claims 1-7 and 10-14, withdrawing the rejection of claims 8 and 9, we will presume that only the rejection of claims 1-7 and 10-14 under 35 U.S.C. § 103 over Lux in view of Langseth is before us on appeal.

Appeal No. 1999-2694  
Application No. 08/684,651

other of said transmitters, whereby said other of the transmitters then transmits said first and second channels.

The examiner relies on the following references:

Langseth et al. (Langseth)	4,287,598	Sep. 01, 1981
Lux	5,274,836	Dec. 28, 1993

Claims 1-7 and 10-14 stand rejected under 35 U.S.C. § 103 as unpatentable over Lux in view of Langseth.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

#### OPINION

At pages 5-6 of the answer, the examiner identifies the elements of Lux which allegedly correspond to the instant claimed elements, admitting that Lux fails to disclose the claimed means for sensing loss of output signals from the one of the transmitters, for providing both input signals to the input of the other of the transmitters, whereby the other of the transmitters then transmits the first and second channels. However, the examiner indicates that Langseth teaches, in Figures 4 and 9, a cooperating arrangement for a pair of space diversity stations wherein each station normally communicates independently with a remote point. At the occurrence of a fade condition at one of the two stations, the fading station alerts the other station of the pair of the condition and both stations are enabled to cause the normal two-way

communications between the faded station and the distant point to be routed over the communication link for two-way transmission between the non-faded station of the pair and the distant point along with the normal associated two-way transmissions between the non-faded station and the distant point.

The examiner concludes that it would have been obvious to combine Lux with Langseth in order to provide a continuous transmission.

For their part, appellants contend that the transmit “channels” referred to by Lux are not the same “channels” to which the instant claimed invention is directed. It is appellants’ position that Lux’s “channels” refer to paths and that this is inconsistent with a “channel” referring to a band of frequencies of sufficient width for a single radio or television communication which is the meaning appellants ascribe to the instant invention .

The examiner does not dispute appellants’ definitions and application of these different meanings to the reference and to the instant invention. The examiner merely argues that the broad recitation of “multi-channel operation” by claims 1 and 10 “fails to give any specific definition of the word ‘channel’.” The examiner concludes that as “broadly as the word ‘channel’ is used in claim 1, Lux clearly reads on it” [answer-page 10].

In our view, the examiner has failed to properly analyze the instant claim language. Each of the independent claims 1 and 10 specifically requires “a first channel in a first portion of a frequency band” and a “second channel in a second portion of said frequency band not including said first portion.” Thus, each of the recited first and second input signals corresponds to a non-overlapping band of frequencies. Each of two transmitters transmits one of the bands of frequencies. When a loss of output signals from one of the transmitters is detected, both input signals are provided to the input of the other transmitter so that the other transmitter then transmits the first and second channels.

We find nothing in Lux or Langseth which suggests two transmitters transmitting two such “channels” where one channel corresponds to one band of frequencies and the other channel corresponds to a non-overlapping band of frequencies. The examiner explains that in Lux,

[d]ata from 22 of Fig.1A in Lux inherently corresponds [to] a “first channel” in a “first portion of a frequency band” since the portion of data assigned to transmitter 26a is communicated at a first frequency which is inherently within the first portion of the entire frequency band used to transmit the carriers. The same is true for a “second input signal” at transmitter 26b and so on. Each transmitter is operable at a unique frequency (channel) and that frequency inherently is positioned within a relative portion of the “microwave frequency band” disclosed by Lux (see column 2, line 16). [answer-pages 11-12].

We do not find the “inherencies” to which the examiner refers. Lux teaches that the

Appeal No. 1999-2694  
Application No. 08/684,651

data processor 22 divides an incoming high rate data stream into parallel lower rate transmit data streams. There is no teaching or suggestion that these parallel lower rate transmit data streams constitute non-overlapping channels of different frequency bands. Moreover, to whatever extent the “channels’ in Lux may be considered to be channels of non-overlapping frequency bands, as claimed, there is absolutely no teaching or suggestion in Lux that failure of one channel will cause another channel to transmit its normal signals and signals corresponding to the failed channel wherein the signals correspond to first and second non-overlapping portions of a frequency band.

Langseth is employed by the examiner only for the teaching of sensing the failure of transmission of a transmission path and does not provide for the deficiencies of Lux noted supra with regard to channels of non-overlapping frequencies.

Moreover, the combination of Lux and Langseth, as proposed by the examiner, is suspect. If Langseth is needed to supply a teaching of sensing the failure of transmission of a path, or channel, as suggested by the examiner, then it must be because Lux does not provide for such sensing. If Lux does not provide for such sensing, it must be because Lux has no interest in knowing that a path, or channel, has

Appeal No. 1999-2694  
Application No. 08/684,651

failed. If Lux has no interest in determining whether a path, or channel, has failed, then Lux would appear to have little relevance to the instant claimed subject matter which is clearly concerned with the loss of output signals from one transmitter so that the signals input thereto can then be provided to a second transmitter which will then transmit both channels. If Lux has no interest in determining whether there is a loss of output signals from one transmitter, one must question why the skilled artisan would look to Langseth for any suggestion of sensing failure of transmission of a path, or channel, and how such a teaching would be applicable to the Lux device.

The examiner's entire rationale for making the combination is "in order to provide a continuous transmission" [answer-page 7]. We do not find this rather brief and cryptic rationale for concluding obviousness of the instant claimed subject matter to be sufficient under 35 U.S.C. § 103. The examiner does not explain how the combination would provide for any more "continuous transmission" than is already provided for by Lux, alone.

It is our view that the examiner has not established a prima facie case of obviousness.

Appeal No. 1999-2694  
Application No. 08/684,651

Accordingly, the examiner's decision rejecting claims 1-7 and 10-14 under 35  
U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
JOSEPH L. DIXON	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
LANCE LEONARD BARRY	)	
Administrative Patent Judge	)	

eak/vsh

Appeal No. 1999-2694  
Application No. 08/684,651

CORPORATE PATENT COUNSEL  
U.S. PHILIPS CORPORATION  
580 WHITE PLAINS ROAD  
TARRYTOWN, NY 10591