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EXAMINER
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WIMER, MICHAEL C

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2821

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper (4564843) in view of Harrington (4165493).

3. Regarding Claims 1-57, Cooper shows in Figures 1 and 2, an antenna communication system and method for controlling the antenna parameters, such as input impedance and tuning which is controlled by switches 15, D1-D20, etc., along the radiating structure or elements of the antenna L1-L6, etc., and the switchable locations are at the diode connections to the radiator, and the ground switching locations are those on the other side of the dipole leg in Fig .3, and where the limiter circuit 17 determines the detuning of the antenna. The system includes a power amplifier and filter connected between the amplifier and antenna, and the system determines the power output in order to provide the tuning state. Harrington is cited as resolving the level of ordinary skill in the antenna art and as evidence of obviousness, and shows the amplifier 16 connected to the antenna 62 via the attenuator 56, watt meter 26 which monitors VSWR, and low pass filter 22, along with a detector 38 which monitors average input power, all of which provide an information signal, as recited. IT would have been obvious to employ the monitoring system, along with amplifier and detector

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in the Cooper arrangement or to provide the Cooper antenna in lieu of the antenna in Harrington for the purpose of providing a fail-safe system for tuning, impedance control and amplifier protection. Harrington provides the testing step and controlling steps recited in Claim 57, which is employed in the Cooper system.

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-57 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 4,10-13,15-20 and 25 of copending Application No. 11/252,248. Although the conflicting claims are not identical, they are not patentably distinct from each other because the communication system with antenna tuning, including the system elements of power output amplifier with switching elements, meandering antenna, and further control while

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monitoring the system VSWR and power output in order to adjust the antenna parameters has been shown to be obvious in the prior art of record.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Wimer whose telephone number is (571) 272-1833. The examiner can normally be reached on M-F. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Wimer/  
Primary Examiner, Art Unit 2821

MW  
5/20/2009