

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOYOTA MOTOR CORPORATION,
Petitioner,

v.

CELLPORT SYSTEMS, INC.,
Patent Owner.

Case IPR2015-01423
Patent 5,479,479

Before JAMESON LEE, JAMES B. ARPIN, and SCOTT C. MOORE,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

A. *Background*

Toyota Motor Corporation filed a Petition (Paper 2, “Pet.”) to institute *inter partes* review of claims 1–29 of expired U.S. Patent No. 5,479,479 (Ex. 1001, “the ’479 patent”). Patent Owner, Cellport Systems, Inc., filed a Preliminary Response (Paper 6, “Prelim. Resp.”).

Upon consideration of the Petition and Preliminary Response, we reject the Petition under 35 U.S.C. § 325(d), because substantially the same prior art and substantially the same arguments previously were presented by Petitioner in IPR2015-00634. Accordingly, we do not institute an *inter partes* review of any claim of the ’479 patent. The Petition is *denied*.

B. *Related Matters*

The ’479 patent has been asserted in two lawsuits in the United States District Court for the District of Colorado. Pet. 4; Paper 5, 2. The ’479 patent also is the subject of a petition filed by Toyota Motor Corporation, the same petitioner as in this proceeding, in IPR2015-00634.

C. *Evidence Relied Upon by Petitioner*

Petitioner relies on the following references:¹

¹ Petitioner also relies on the Declaration of John Villasenor (Ex. 1004).

Reference		Date	Exhibit
Boatwright	US 5,465,207	Issued: Nov. 7, 1995 Filed: Sep. 21, 1992	Ex. 1002
Mansell	US 5,223,844	Issued: June 29, 1993 Filed: Apr. 17, 1992	Ex. 1014
Hoto	US 5,410,541	Issued: Apr. 25, 1995 Filed: May 4, 1992	Ex. 1015
Guy	US 5,187,591	Filed: Feb. 16, 1993 Filed: Jan. 24, 1991	Ex. 1016
Thompson	US 5,444,855	Issued: Aug. 22, 1995 Filed: Apr. 17, 1992	Ex. 1017
CAN	Szydlowski, C., <i>CAN Specification 2.0: Protocol and Implementations</i> , SAE Technical Paper 921603, Future Transportation Technology Conference and Exposition, Costa Mesa, California August 10–13, 1992	1992	Ex. 1026

D. The '479 Patent

The '479 patent relates to transmitting and receiving digital information through an air link. Ex. 1001, Title. The specific disclosure pertains to sending and receiving digital data between a plurality of peripheral devices, through a cellular telephone, to remote devices. *Id.* at Abstr. One aspect of the '479 patent concerns providing a universal interface to different kinds of cellular phones in the form of an adaptor cable that provides for selectable coding to identify the type of the attached phone, and the application environment for that aspect of the invention can be that of a car kit environment. *Id.* at 2:40–55. Another aspect of the '479 patent concerns using a controller attached to a common bus to which a plurality of peripheral devices also are attached to permit digital data to be communicated to and from the peripheral devices via a wireless telephone. *Id.* at 3:30–44. Figure 15 of the '479 patent is reproduced below:

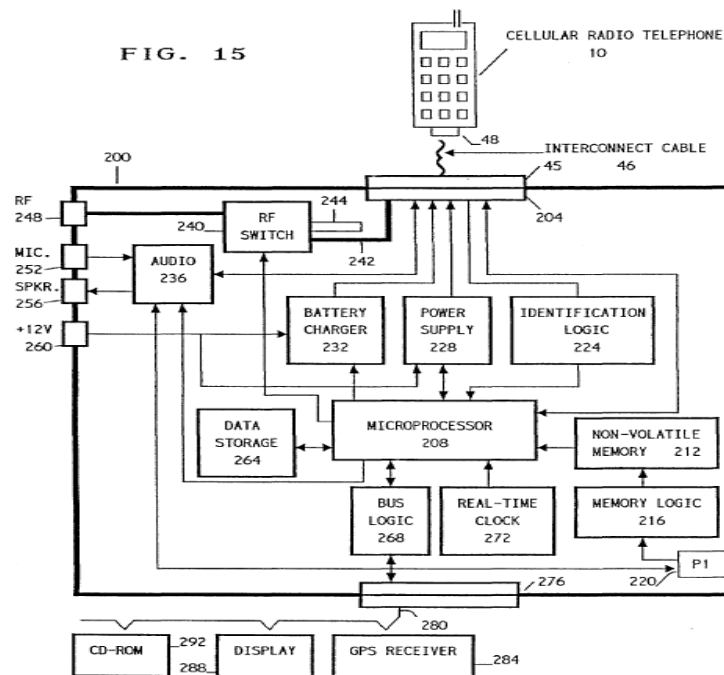


Figure 15 shows cellular phone 10 connected to car kit controller 200 through an interconnect cable having universal connector 45 that connects with car kit connector 204. *Id.* at 10:10–17. Car kit controller 200 includes bus logic 268 to control common bus 280 to which peripheral devices CD ROM 292, display 288, and GPS Receiver 284 are connected. *Id.* at 11:59–61.

With regard to operation of the system, the '479 patent states:

In operation, cellular phone 10 may receive RF signals containing data addressed to one of the peripheral devices. The data is passed via interconnect cable 46 to microprocessor 208. Microprocessor 208 formats the data according to the needs of the peripheral device to which the data is addressed. The data is then either buffered or passed directly through bus connector 276 to the appropriate peripheral device [on] bus 280.

Car kit controller 200 further comprises circuitry to allow this process to be reversed to allow any of the peripheral devices to send data through car kit controller 200 and cellular phone 10 and out of the car using RF signals. Accordingly, a duplex digital path is provided between bus 280 and cellular phone 10, for allowing digital information to be transmitted through car kit controller 200 in either direction.

Id. at 12:39–54.

II. ANALYSIS

Title 35, Section 325(d) of the U.S. Code provides, in pertinent part:

In determining whether to institute or order a proceeding under this chapter, chapter 30, or chapter 31, the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.

The following table shows the alleged grounds of unpatentability

asserted by Petitioner in this proceeding:

Reference(s)	Basis	Claim(s) Challenged
Boatwright, CAN, and Mansell	§ 103(a)	1, 2, 4, 6–19, 21–25, and 27–29
Boatwright, CAN, Mansell, and Hotto	§ 103(a)	3 and 5
Boatwright, CAN, Mansell, and Guy	§ 103(a)	20
Boatwright, CAN, Mansell, and Thompson	§ 103(a)	26
Mansell and CAN	§ 103(a)	1, 2, 4, 6–12, 15–19, 22–24, and 27–29

The following table shows the alleged grounds of unpatentability Petitioner previously alleged in IPR2015-00634:

Reference(s)	Basis	Claim(s) Challenged
Boatwright, RS-485 ² , and Mansell	§ 103(a)	1, 2, 4, 6–19, 21–25, and 27–29
Boatwright, RS-485, Mansell, and Hotto	§ 103(a)	3 and 5
Boatwright, RS-485, Mansell, and Guy	§ 103(a)	20
Boatwright, RS-485, Mansell, and Thompson	§ 103(a)	26
Mansell and RS-485	§ 103(a)	1, 2, 4, 6–12, 15–19, 22–24, and 27–29

² *Standard for Electrical Characteristics of Generators and Receivers for Use in Balanced Digital Multipoint Systems*, RS-485, Electronic Industries Association (April 1983).

But for substituting CAN for RS-485, the alleged grounds of unpatentability in this proceeding are the same as those grounds of unpatentability in IPR2015-00634. The Petition in IPR2015-00634 was filed on February 5, 2015, prior to filing of the Petition in this proceeding on June 19, 2015. Despite the substitution of CAN for RS-485, the prior art and arguments presented in this proceeding are substantially the same as those previously presented in IPR2015-00634.

Each of Boatwright, Mansell, Hotto, Guy, and Thompson is applied in the same manner in this case, i.e., based on the same teachings therein, against the same claims of the '479 patent, as it was previously applied in IPR2015-00634. Although in this case Petitioner has replaced RS-485 with CAN, both RS-485 and CAN disclose a standard for a bus useable to connect multiple devices. CAN was published in 1992, whereas RS-485 was published in 1983. The teaching that is required from each to cure the deficiency of the other prior art references is the same.

Petitioner makes no explanation as to why the disclosure of CAN is substantively and meaningfully different from the disclosure of RS-485, insofar as the claimed subject matter of the challenged claims is concerned. Citing page 3 of CAN, Petitioner refers to CAN as disclosing a bus protocol “designed” for use in vehicles. Pet. 3. We have reviewed the cited portion of CAN and do not see any disclosure that CAN was designed specifically for use in vehicular systems, as opposed to other environments. Rather, CAN simply is useable in vehicular systems. Even assuming that CAN was designed specifically for use in vehicular systems, that fact would be inconsequential because it is not reasonably disputable that the RS-485 bus

standard is useable on vehicles. Petitioner does not identify any functionality provided by the CAN standard, significant to the claimed subject matter of the challenged claims, that it believes the RS-485 standard does not provide. In that regard, we note that in the Petition in IPR2015-00634 (Paper 2, 45), Petitioner asserted that RS-485 discloses a bus in which any slave device on an RS-485 bus can communicate with any other of 32 slave devices without going through a master device. Petitioner also asserted in that previous Petition (*id.* at 21) that the RS-485 standard “was a well-known bus protocol providing a simple way to interconnect peripherals such that they could be communicable with each other.”

Additionally, Petitioner presents no argument or evidence that CAN was not known or available to Petitioner at the time of filing of the Petition in IPR2015-00634. Without explanation, Petition seeks another opportunity to challenge the same claims on essentially the same grounds, albeit not based on the identical set of prior art references. Such a second bite at the apple wastes the Board’s limited resources and imposes undue burden on the Patent Owner. Also, the Petition in this case was filed on June 19, 2015, subsequent to the filing of Patent Owner’s Preliminary Response in IPR2015-00634 on May 20, 2015. Especially given the similarity between the earlier application of RS-485 and the application here of the CAN standard, the opportunity to read Patent Owner’s Preliminary Response in IPR2015-00634, prior to filing the Petition here, is unjust. *See* 35 U.S.C. § 314(a) (“The Director *may* not authorize an inter partes review unless . . .”; emphasis added); 37 C.F.R. §§ 42.1(b), 108(b).

On this record, we exercise our discretion and “reject the petition” because substantially the same prior art and substantially the same arguments previously were “presented to the Office” in IPR2015-00634. 35 U.S.C. § 325(d); *see also Unilever, Inc., v. The Proctor & Gamble Co.*, Case IPR2014-00506, slip op. at 6 (PTAB July 7, 2014) (Paper 17) (informative).

III. ORDER

Accordingly, it is

ORDERED that the Petition is *denied*, and no *inter partes* review is instituted as to any claim of the '479 patent.

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