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71016	7590	11/30/2016	EXAMINER	
Bose Corporation Patent Group Mountain Road, MS 3B1 Framingham, MA 01701			PATEL, YOGESHKUMAR G	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* TRAVIS E. NICHOLSON,  
PAUL WARREN, STEPHEN J. MAGUIRE, and JOUNG-MO KANG

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Appeal 2016-002922  
Application 13/076,544  
Technology Center 2600

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Before JOHN A. EVANS, MATTHEW J. McNEILL, and  
ALEX S. YAP, *Administrative Patent Judges*.

YAP, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–20, which are all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> According to Appellants, the real party in interest is Bose Corp. (App. Br. 2.)

## STATEMENT OF THE CASE

### *Introduction*

Appellants' invention relates to "audio devices and in particular to a portable loudspeaker with a cover." (Mar. 31, 2011 Specification ("Spec."))

¶ 1.) Claim 1 is illustrative, and is reproduced below:

1. A portable loudspeaker, comprising:
  - an electro-acoustic driver which creates sound waves when operated;
  - a housing having a front side to which the driver is secured;
  - a battery supported by the housing for providing electrical power to the driver;
  - a cover secured to the housing which can be moved between (i) a closed position in which the cover overlies the driver and would restrict sound pressure waves created by the driver from exiting the loudspeaker, and (ii) an open position in which the cover does not overlie the driver; and
  - a controller for controlling operation of the loudspeaker, wherein when the cover is moved to the closed position a feature on the cover causes an indication to the controller that the cover is in the closed position, and wherein in response to said indication, the controller mutes the driver if the driver was outputting acoustic waves when the cover was moved to the closed position.

### *Prior Art and Rejections on Appeal*

The following table lists the prior art relied upon by the Examiner in rejecting the claims on appeal:

Beppu	US 5,621,804	Apr. 15, 1997
Uda	US 2003/0008689 A1	Jan. 9, 2003
Ishida	US 2004/0102211 A1	May 27, 2004

Schul et al. ("Schul")	US 2007/0076911 A1	Apr. 5, 2007
Jacob et al. ("Jacob")	US 8,126,180 B2	Feb. 28, 2012
Kennedy et al. ("Kennedy")	US 2012/0072752 A1	Mar. 22, 2012

Claims 1–5, 11–15, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Uda in view of Schul, and further in view of Kennedy. (*See* Final Office Action (mailed Mar. 2, 2015) ("Final Act.") 2–5.)

Claims 6, 7, 9, 16, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Uda in view of Schul and Kennedy, and further in view of Jacob. (*See* Final Act. 5–6.)

Claims 8, 17, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Uda in view of Schul, Kennedy, and Jacob, and further in view of Beppu. (*See* Final Act. 6–8.)

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Uda in view of Schul and Kennedy, and further in view of Ishida. (*See* Final Act. 9.)

#### ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We are not persuaded that the Examiner erred in rejecting claims 1–20.

With respect to claims 1 and 11, the Examiner finds that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of Schul into the teachings of Uda[] in order to restrict sound pressure from the device when the lid is closed.” (Final Act. 3.) Figure 1 of Uda is reproduced below.

Fig.1

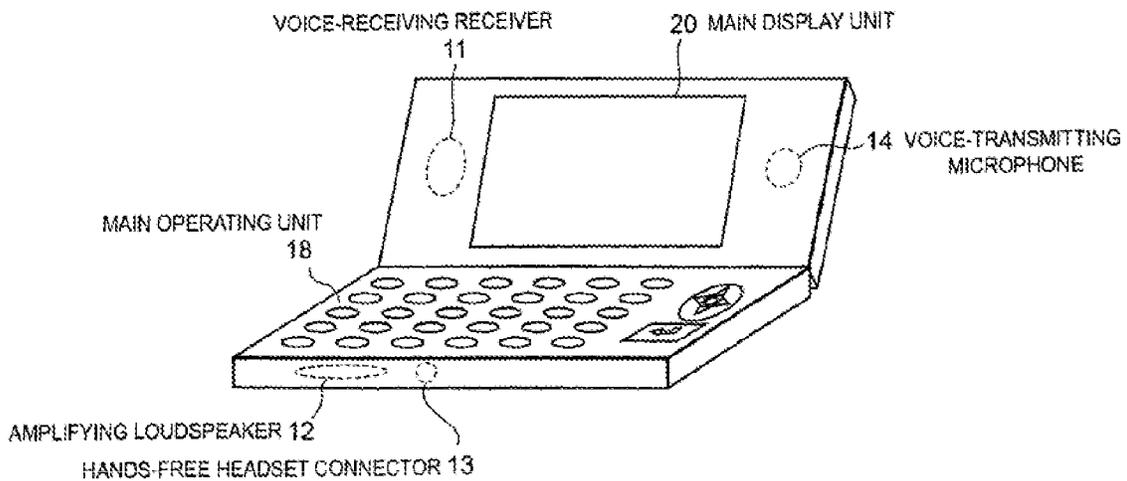


Figure 1 depicts “a wireless portable terminal device.” (Uda ¶ 22.) According to the Examiner, even though “Uda does not explicitly teach a cover secured to the housing . . . , Schul teaches a cover secured to the housing . . . .” (Final Act. 3; Schul ¶ 53, FIGs. 1–7, 14.) Appellants contend that one of ordinary skilled in the art would not “move the loudspeaker 12 of Uda from its position shown in F[igure] 1 to another position in which the loudspeaker 12 is covered up when the wireless portable terminal device (WPTD) is in a folded status” because paragraph 33 of Uda states that the “loudspeaker 12 is normally used for outputting an amplified sound such as a ring tone.” (App. Br. 5–6; Uda ¶ 33.) According to Appellants, “a user

would not [] be able to hear the ring tone, particularly if the folded WPTD was, for example, across the room from the user.” (App. Br. 5–6.)

Therefore, “the proposed modification would render Uda unsatisfactory for its intended purpose.” (Reply 2.)

Appellants have not persuaded us that the Examiner erred. We agree with the Examiner’s finding that a ring tone “can [still] be heard from the hands-free headset 13” when loudspeaker 12 is folded. (Final Act. 9–10; Ans. 10.) Moreover, “in a case of this type where a rejection is predicated on two references each containing pertinent disclosure which has been pointed out to the applicant, we deem it to be of no significance, but merely a matter of exposition, that the rejection is stated to be on A in view of B instead of on B in view of A, or to term one reference primary and the other secondary. *In re Bush*, 296 F.2d 491, 496 (CCPA 1961). We observe that Schul also teaches or suggests many of the limitations of claim 1 that Uda teaches. For example, Schul teaches an audio reproduction system, which includes an electro-acoustic driver and housing, and a cover that can “automatically power off [the device] when closed.” (Schul ¶ 53.) Figures 6 and 14 of Schul are reproduced below.

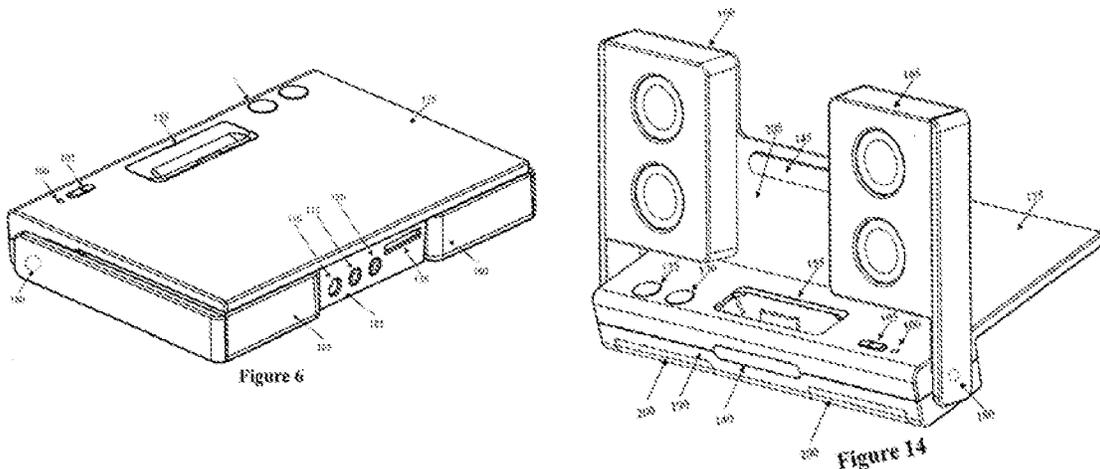


Figure 6 depicts “a rear isometric view of a preferred embodiment of the invention when closed.” (Schul ¶ 22.) Figure 14 depicts “a front isometric view of a preferred embodiment of the invention when open.” (Schul ¶ 30.) In fact, the device shown in Schul is very similar to that of the claimed invention. Figures 1 and 2 of the Specification is reproduced below.

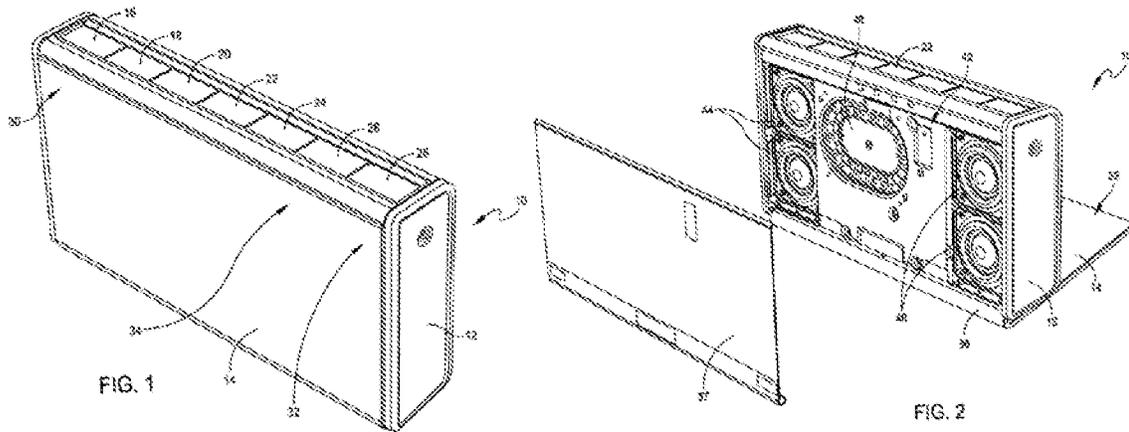


Figure 1 “is perspective view of a portable loudspeaker as seen from the front, top and right sides.” (Spec. ¶ 8.) Figure 2 “is the same perspective view as in Fig[ure] 1 with a cover rotated to an open position and a speaker grill exploded out from the loudspeaker.” (Spec. ¶ 9.)

For the foregoing reasons, we are not persuaded of Examiner error in the rejection of claims 1 and 11. Thus, we sustain the 35 U.S.C. § 103 rejection of claims 1 and 11. We also sustain the 35 U.S.C. § 103 rejections of claims 2–10 and 12–20, which are also not argued separately. (App. Br. 6.)

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DECISION

The decision of the Examiner to reject claims 1–20 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED