

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte KEVIN D. WINNER

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Appeal No. 2000-0328  
Application No. 08/863,345

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ON BRIEF

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Before FLEMING, DIXON, and LEVY, Administrative Patent Judges.  
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-47<sup>1</sup>, which are all of the claims pending in this application.

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<sup>1</sup> An amendment (Paper No. 10, filed July 13, 2002) was filed subsequent to the final rejection. The copy of the claims accompanying the brief include the proposed changes. However, there is no indication in the record that the amendment has been entered by the examiner. Accordingly, the claims before us on appeal are claims as they stood at the time of the final rejection. Because the proposed changes to the claims were merely to correct informalities, this issue should be addressed with the examiner subsequent to the decision on appeal.

BACKGROUND

Appellant's invention relates to a vehicle anti-theft system with tampering indicator. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced as follows:

1. A vehicle anti-theft device comprising, electrical circuit means including alarm means having activated and deactivated modes, sensing means for sensing tampering with said vehicle, means for shifting said alarm means to said activated mode in response to said sensing means sensing tampering with said vehicle, means including timing means for shifting said alarm means from said activated mode to said deactivated mode after a predetermined period of time, tamper indicating means separate from said alarm means for indicating tampering with said vehicle, and means for activating said tamper indicating means in response to said sensing means sensing tampering with said vehicle.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Fuller	5,055,823	Oct. 8, 1991
Drori	5,157,375	Oct. 20, 1992
Chang	5,598,725	Feb. 4, 1997

Claims 1-47 stand rejected under 35 U.S.C. § 103 as being unpatentable over Chang in view of Fuller and Drori<sup>2,3</sup>.

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<sup>2</sup> The reference to Drori was added by the examiner in the advisory action (Paper No. 8, mailed July 14, 1998) as support for the examiner's taking notice of well known prior art. The examiner's reliance on Drori was necessitated by the statement of appellant (Paper No. 6, filed March 27, 1998) that "applicant requests the citation of prior art showing the use of separate tamper indicating means in a vehicle security system and which is operable after timed deactivation of the anti-theft alarm in accordance with the applicant's claimed invention." Although the examiner should have positively recited Drori in the statement of the rejection, because appellant has filed

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we make reference to the examiner's answer (Paper No. 14, mailed March 2, 1999) and the advisory action (Paper No. 8, mailed July 14, 1998) for the examiner's complete reasoning in support of the rejection, and to appellant's brief (Paper No. 12, filed September 4, 1998) and reply brief (Paper No. 15, filed March 19, 1999) for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a). Under the heading of "Grouping of Claims" (brief, pages 7 and 8) it is asserted that "appellant considers independent claims 1 and 20 to be separately patentable from the prior art and from one another and further considers claims 2 and 21 to be separately patentable respectively from claims 1 and 20 from which they depend." However, in the substantive portion of

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an amended brief to address the examiner's reliance on Drori, and the examiner's position is explained in the advisory action and the "Remarks" section of the examiner's answer, we decline to remand the case to the examiner for formal inclusion of Drori in the statement of the rejection.

<sup>3</sup> In the answer (page 3) that examiner additionally lists references to Chen, Carlo et al, Johnson, Wu, Winner, and Elmer as being relied upon in the rejection of claims under appeal. However, we find no reliance on any of these references in either the examiner's answer or the final rejection.

the brief, appellant additionally presents arguments with respect to independent claim 34. The remaining claims, all of which depend from either claim 1 or claim 20, have not been separately argued, and will rise or fall with the claims from which they depend.

OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejection advanced by the examiner, and the evidence of obviousness relied upon by the examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

Upon consideration of the record before us, we affirm-in-part.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the

examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d

1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

We consider first the rejection of claim 1 based on the teachings of Chang, Fuller, and Drori. We make reference to the examiner's answer for the examiner's position. Appellant asserts (brief, page 9) that alarms 15 and 16 of Chang operate simultaneously with LED 143 to provide audible and visual alarms. We find that Chang discloses (figure 2) a steering wheel lock having an alarm, for use as a vehicle anti-theft device. Chang discloses a "first alarm means 15" (col. 2, line 43). The alarm display is a bright LED which can flash to demonstrate various working conditions. When alarm means 15 is shaken, detections are obtained by a pick-up means, amplified and delivered to a CPU for judgment as to activate an alarm circuitry. If the judgment is positive, speakers are used to sound the alarm (col. 2, line 63 to col. 3, line 11). LED 143 is electrically connected to the first alarm means (col. 4, lines 44 and 45). The alarm means 15 and LED flash simultaneously (col. 3, lines 45-50). As shown in figure 5, the system of Chang is powered by a 3V power supply. As stated by the examiner (answer, page 4) Chang does not specifically disclose use of timing means for deactivating the alarm after a predetermined period of time.

Appellant argues (brief, page 9) that Fuller discloses simultaneous deactivation of both the audible and visible alarms after simultaneous activation thereof for a predetermined period of time. We find that Fuller teaches the use of an anti-theft alarm and locking device for vehicles. Fuller also discloses a alarm as well as a bright halogen lamp which are activated when the alarm is triggered (col. 5, lines 29-32). Fuller further discloses that when the unit is tampered with, the alarm sounds and lamp 26 flashes for a period of two minutes. From our review of Chang and Fuller, we agree with appellant for the reasons set forth by appellant in the brief, that if Chang were modified by Fuller, the result would be simultaneous deactivation of both the audible and visual alarms of Chang after a predetermined period of time.

Appellant asserts (brief, page 9 and reply brief, page 3) that in Drori the tamper indicator is activated by the vehicle owner when the vehicle owner disarms the system, whereas appellant provides means separate from the alarm or alarm means which is activated in response to sensing of tampering. From our review of Drori, we find that Drori is directed to an electronic vehicle security system. In Drori, disarming subroutine 558 occurs in response to the receipt of a properly transmitted code.

At step 561 the trigger and sensor flags are checked to determine if any tampering has occurred during the armed mode. If tampering is indicated, at step 563 the chirp counter is set to 3, and at step 564, the point of intrusion is indicated by the active flag (or flags) is loaded into the LED register for display by the LED control function. The proper LED pulse count corresponding to the intrusion point is set and at step 693, the LEDs are turned on (col. 12, line 50 to col. 13, line 9 and col. 17, lines 46-68). From the teachings of Drori, we agree with appellant's statement (brief, page 10) that "[t]he only modification suggested by Drori would be to provide for Chang to respond to the owner's disarming of the system to indicate that tampering took place." However, for the reasons which follow, we find that the prior art suggests the invention set forth in claim 1.

As stated by the court in In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) "[t]he name of the game is the claim." Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. cir. 1985).

Claim 1 recites "tamper indicating means separate from said alarm means for indicating tampering with said vehicle, and means for activating said tamper indicating means in response to said sensing means sensing tampering with said vehicle." We find that LED 143 of Chang meets the claimed tamper indicating means separate from said alarm means because Chang discloses alarm 15 to be "first alarm means" and separately discloses LED 143 as an alarm display. Although the alarm means and the alarm display are both simultaneously activated, claim 1 does not distinguish between tamper and alarm means that operate contemporaneously, and tamper means that are activated after the period of time that the is activated. In appellant's invention, the alarm is speaker 56 and the tamper indicator is pulsed lamp 62 (specification, page 8). In addition, of note is the statement in appellant's specification (id.) that "[w]hile the activation of the strobe light is preferably contemporaneous with deactivation of the audible alarm signal, it will be appreciated that the strobe light can be activated at any time after tampering is detected and, accordingly, could be activated contemporaneously with activation of the alarm signal." In Chang, we find that the alarm is first alarm means 15 and the tamper indicator is LED 143 which flashes. Similarly, both the alarm and tamper indicating

means of Chang are activated during the same period of time. Although we find that in Drori the flags associated with the triggers and sensors are set when tampering occurs, and agree with appellant that the tamper indicating LED panel of Drori is activated in response to entry of a DISARM or IDENTIFY subroutine, we find that the claimed tamper indicating means is disclosed by Chang. Thus, we find that Chang and Fuller suggest the language of claim 1, and consider Drori to be surplusage. We are not persuaded by appellant's assertion (brief, page 9) that the prior art does not teach forewarning the vehicle owner that the vehicle has been tampered with prior to the vehicle owner reentering or approaching the vehicle, because the claim does not require this limitation. Nothing in the language of claim 1 requires the tamper indicating means to be activated after the alarm means is deactivated. From all of the above, we will sustain the rejection of claim 1. Accordingly, the rejection of claim 1, and dependent claims 3-19 which fall with claim 1, under 35 U.S.C. § 103(a) is affirmed.

Turning next to independent claim 20, appellant (brief, page 12) presents the same arguments with respect to claim 1 and adds that claim 20 "patentably distinguishes from claim 1 by providing dual mechanical and electrical anti-theft devices which further

promotes protection of a vehicle against theft." We find that both Chang (figure 6) and Fuller (figure 1) disclose an anti-theft device, including alarm means, that is mountable on a vehicle and limits rotation of the vehicle steering wheel. Thus, we find that both Chang and Fuller disclose both mechanical and electrical anti-theft devices. We therefore sustain the rejection of claim 20. Accordingly, the rejection of claim 20 and dependent claims 22-33, which fall with independent claim 20, under 35 U.S.C. § 103(a) is affirmed.

We turn next to claims 2 and 21. We reverse the rejection of these claims because we find no teaching or suggestion in the prior art of activating LED 143 of Chang after expiration of the time period that the alarm is in an activated mode. In view of Chang's teaching (col. 3, lines 35-37) that "LED 143 flashes at a particular frequency constantly, getting on a break-in burglars nerves," we find no suggestion to turn on the LED after the alarm is deactivated. In addition, even if we provided Chang with a tamper indicating means as taught by Drori, claims 2 and 21 would not be met. In Drori, the tamper indicating means, are not activated in response to sensing means sensing tampering with the vehicle because the setting of sensor and target flags is insufficient to constitute activation of the tamper indicating

means which indicate tampering with the vehicle. We agree with appellant that the tamper indicating means is activated by the sending of a proper code to disarm the alarm. We are not persuaded by the examiner's assertion (answer, page 13) that it would have been obvious to make the tamper indication of Drori automatic because "automatic indication would have facilitated the awareness of this indication to the owner upon his return to the vehicle by alleviating the necessity of the owner to activate the system." We agree with appellant (reply brief, page 3) that the examiner's assertion is an unsupported assumption and does not constitute the disclosure of prior art. Thus, we do not sustain the rejection of claims 2 and 21. Accordingly, the rejection of claims 2 and 21 under 35 U.S.C. § 103(a) is reversed.

We turn next to the rejection of independent claim 34. Claim 34 is different in scope from claims 2 and 21 as claim 34, inter alia, does not require means for activating the tamper indicating means in response to the sensing means sensing tampering with the vehicle. Appellant asserts (brief, page 8) that "[c]laim 34 adds that the tamper indicating means is a visible signal which is produced at the time the alarm is deactivated." We find appellant's assertion to be inconsistent

with the precise language of claim 34, which recites "means separate from said alarm means for providing a visible signal after said predetermined period of time for indicating said sensing of vibration of said anti-theft device." Contrary to appellant's assertion, we find that claim 34 does not require providing the visible signal at the time the alarm is deactivated, or "immediately" in response to a tampering event (reply brief, page 3), but rather only requires that the visible signal is provided after the alarm is deactivated. Claim 34 does not recite when the visible signal is provided, and as broadly drafted, the claim language reads upon activating the LED panel of Drori when the vehicle owner returns to the vehicle and provides a proper code to disarm the system. While we agree with appellant (brief, page 10) that "[t]he only modification suggested by Drori would be to provide for Chang to respond to the owner's disarming of the system to indicate that tampering took place" we find that the teachings of Drori are sufficient to meet the claim language of providing the visible signal after said predetermined period of time for indicating said sensing of vibration of said anti-theft device. Thus, we find that one of ordinary skill in the art would have been motivated to provide Chang with a visible indicator that would enable the vehicle

owner to know that the steering wheel lock has been tampered with if the owner returns to the vehicle after the alarm has deactivated after a predetermined period of time. From all of the above, we sustain the rejection of claim 34. We distinguish claim 34 from claims 2 and 21 because claim 34 does not recite both activating the tamper indicating means in response to the sensing means sensing tampering of the vehicle, and that the timing means includes means for activating the tamper indicating means after the expiration of the period of time that the alarm means is activated. Accordingly, the rejection of claim 34, and dependent claims 35-47 which fall with claim 34, under 35 U.S.C. 103(a) is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 3-20, and 22-47 under 35 U.S.C. § 103(a) is affirmed. The examiner's decision to reject claims 2, and 21 under 35 U.S.C. § 103(a) is reversed.

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

AFFIRMED-IN-PART

MICHAEL R. FLEMING	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JOSEPH L. DIXON	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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STUART S. LEVY	)	
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