

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. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERMANN WINNER and STEFAN WITTE

Appeal No. 2000-0858
Application No. 08/890,933

ON BRIEF¹

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the refusal of the examiner to allow claims 3, 5 to 8, 10 and 11, as amended subsequent to the final rejection. These claims constitute all of the claims pending in this application.

We REVERSE.

¹ On February 15, 2001, the appellants waived the oral hearing (see Paper No. 21) scheduled for March 8, 2001.

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BACKGROUND

The appellants' invention relates to a method of controlling the road speed of a motor vehicle (claims 3, 5 to 8 and 10) and an arrangement for controlling the road speed of a motor vehicle (claim 11). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

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

Suzuki et al. (Suzuki)	4,394,739	July 19, 1983
Yamaguchi	4,437,442	Mar. 20,
1984		

Claims 5 to 8, 10 and 11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suzuki.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over Suzuki in view of Yamaguchi.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted

rejections, we make reference to the answer (Paper No. 17, mailed January 7, 2000) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 16, filed December 20, 1999) and reply brief (Paper No. 18, filed March 7, 2000) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 5 to 8, 10 and 11 under 35 U.S.C. § 102(b).

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of

inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

The appellants argue (brief, pp. 8-10; reply brief, pp. 1-3) that the following limitations from independent claim 10 are not found in Suzuki

delaying a resumption of said control by said road speed controller for a pregiven time duration when said resumption is actuated by said driver and said actual speed (Vact) is greater than said stored desired speed (Vdes); and,

after said pregiven time duration has elapsed, decelerating said motor vehicle in such a manner that said actual speed (Vact) approaches said stored desired speed (Vdes)

and the following limitations from independent claim 11 are not found in Suzuki

means for delaying the resumption of the control of said road speed for a pregiven time duration when said resumption is actuated by said driver and said actual speed (Vact) is greater than said stored desired speed (Vdes); and,

means for decelerating said motor vehicle in such a manner that said actual speed (Vact) approaches said stored desired speed (Vdes) after said pregiven time duration has elapsed.

After reviewing the teachings of Suzuki, we found ourselves in agreement with the appellants that the above-noted limitations of claims 10 and 11 (the only independent claims on appeal) are not found in Suzuki. In fact, we are unable to find in Suzuki any mention of the actual speed of the vehicle being greater than the stored or preset speed. Moreover, even if Suzuki's system would inherently provide a delay before resumption of the control if the actual speed of the vehicle was greater than the stored or preset speed, such a delay would not be for a pregiven time duration.

Since the above-noted limitations of claims 10 and 11 are not found in Suzuki for the reasons set forth above, the decision of the examiner to reject claims 10 and 11, and claims 5 to 8 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection

We will not sustain the rejection of dependent claim 3 under 35 U.S.C. § 103. We have reviewed the reference to Yamaguchi applied with Suzuki in the rejection of claim 3 but

find nothing therein which makes up for the deficiencies of Suzuki discussed above with regard to parent claim 10. Accordingly, the decision of the examiner to reject claim 3 under 35 U.S.C. § 103 is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 5 to 8, 10 and 11 under 35 U.S.C. § 102(b) is reversed

and the decision of the examiner to reject claim 3 under 35
U.S.C. § 103 is reversed.

REVERSED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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