

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUYA MUROTA

Appeal No. 97-2412
Application No. 08/330,136¹

HEARD: March 12, 1999

Before CALVERT, COHEN, and NASE, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 4. These claims constitute all of the claims in the application.

¹ Application for patent filed October 25, 1994. According to appellant this application is a continuation-in-part of Application No. 08/074,746, filed June 10, 1993, now abandoned.

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Appellant's invention pertains to a transmission. An understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the brief (Paper No. 14).

As evidence of anticipation, the examiner has applied the following:

"Admitted Prior Art, i.e., Figs. 1 and 2 in this application shown in NISSAN AUTOMATIC TRANSAXLE RL4F03A - MAINTENANCE PROCEDURE MANUAL, May 1989" (Nissan Manual).

The following rejection is before us for review.

Claims 1 through 4 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the NISSAN MANUAL (Figs. 1 and 2 of present application).

The full text of the examiner's rejection and response to the argument presented by appellant appears in the answer (Paper No. 15), while the complete statement of appellant's argument can be found in the brief (Paper No. 14).

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OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the evidence of anticipation, and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection of appellant's claims under 35 U.S.C. § 102(b).

At the outset, we note that the present application is considered by appellant to be a continuation-in-part of application Serial No. 08/074,746, now abandoned (hereafter, the '746 application).

The '746 application includes a "BACKGROUND OF THE INVENTION" section (page 1) which describes a "conventional" transmission, with "such transmission" being disclosed in a

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publication entitled "TOYOTA AUTOMATIC TRANSMISSION REPAIR INSTRUCTION A341E, November, 1989 (Vol. 63231)." As indicated, the transmission includes a sleeve made of wear resisting material, press-fitted onto a stationary shaft. The '746 application includes Fig. 1, disclosed as being a cross-sectional view of an upper portion of an automatic transmission according to the present invention (page 2), and Fig. 2, described as being an enlarged view of Fig. 1 (page 3). In the '746 application, under the section "DESCRIPTION OF THE PREFERRED EMBODIMENT," appellant indicates, referring to Fig. 1, that "there is shown an automatic transmission disclosed in a publication entitled NISSAN AUTOMATIC TRANSAXLE RL4FO3A - MAINTENANCE PROCEDURE MANUAL, May, 1989, to which a transmission according to the present invention is applied." It is noted that the priority document, found in the '746 application, includes Figs. 1 through 3. Unlike Figs. 1 and 2 of the present application, wherein a like sleeve is shown, Fig. 1 of the priority document appears to show a sleeve different from the sleeve configuration in Fig. 2 thereof.

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In the present continuation-in-part application, drawing Fig. 3 has been added (this figure does not correspond to Fig. 3 of the priority document). In the section "Detailed Description of the Preferred Embodiments" (page 3) appellant, referring to Fig. 1, sets forth that "there is shown an automatic transmission according to the present invention. The transmission of the present invention may be applied to an automatic transmission disclosed in a publication entitled NISSAN AUTOMATIC TRANSAXLE RL4FO3A - MAINTENANCE PROCEDURE MANUAL, May, 19 [sic] 1989."

Based upon appellant's disclosure regarding the Nissan Manual and Figs. 1 and 2, as specified above, the examiner considers claims 1 through 4 to be anticipated by the Nissan Manual or appellant's Figs. 1 and 2.

Independent claim 1, on appeal, is drawn to a transmission with, inter alia, a shaft, a sleeve including a first sleeve portion being formed with a bearing support and second sleeve portion being formed with seal ring grooves, a drum rotatably supported by the bearing support of the first

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sleeve portion, and said first sleeve portion being formed with first wall means for defining a first bore and said second sleeve portion being formed with second wall means for defining a second bore section, the first wall means being firmly engaged with the shaft and the second wall means being in spaced relationship with said shaft with clearance fit. Independent claim 4 sets forth a transmission with, inter alia, a shaft, a sleeve including a first sleeve portion being formed with a bearing support for rotatably supporting a drum and a second sleeve portion carrying seal rings to provide a cylindrical clearance between a second wall means of the second sleeve portion and the shaft for preventing stress from being exerted on the seal rings via the second wall means.

On appeal, appellant disputes the examiner's understanding of the disclosure, and indicates (brief, page 10) that Exhibit A2 (a blow-up view of a portion of the transmission shown on page A-2 of the Nissan Manual RL4F03A), appended to the brief, clearly demonstrates that the Nissan Manual's sleeve and shaft arrangement is different from that of the present invention shown in Figures 1 through 3.

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Particularly in light of Exhibit A2, it is quite apparent to this panel of the board that the respective transmissions disclosed in the Nissan Manual and Figs. 1 and 2 of the present application are clearly different as to sleeve structure. Thus, the aforementioned Figs. 1 and 2 do not depict the prior art transmission of the Nissan Manual, but instead portray appellant's own invention. Obviously, the reference to the Nissan Manual in appellant's specification (page 3) was not intended to indicate that the Manual disclosed the presently claimed invention. It follows, of course, that the now claimed transmission with a sleeve having first and second sleeve portions is clearly not anticipated under 35 U.S.C. § 102(b) by the different transmission of the Nissan Manual.

In summary, this panel of the board has reversed the examiner's rejection of appellant's claims 1 through 4 under 35 U.S.C. § 102(b).

REVERSED

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IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN)	
Administrative Patent Judge)	APPEALS AND
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JEFFREY V. NASE)	
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