

**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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOSE LUIS BELIL CREIXELL

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Appeal No. 97-2902  
Application No. 08/170,332<sup>1</sup>

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HEARD: May 7, 1998

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Before STONER, *Chief Administrative Patent Judge*, COHEN and ABRAMS, *Administrative Patent Judges*.

ABRAMS, *Administrative Patent Judge*.

**DECISION ON APPEAL**

This is an appeal from the decision of the examiner finally rejecting claims 17 and 19-36. Claims 1-16 and 18 have been canceled. No claims have been allowed.

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<sup>1</sup> Application for patent filed May 24, 1994. According to appellant, this application is a National stage application under 35 U.S.C. § 371 of PCT/ES93/00037, filed April 30, 1993.

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The appellant's invention is directed to a suspension system for motorcycles and the like. The subject matter before us on appeal is illustrated by reference to claim 17, which has been reproduced in an appendix to the Appeal Brief.

#### **THE REJECTION**

Claims 17 and 19-36 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

The rejection is explained in the Examiner's Answer.

The opposing viewpoints of the appellant are set forth in the Appeal Brief and the Reply Brief.

#### **OPINION**

Each of the appellant's independent claims contains the limitation that there be a swinging arm coupling a wheel to the frame of the vehicle, and that this swinging arm be arranged such that a virtual line joining the two pivot points on the swinging arm be substantially parallel to a line extending from the point of tangency of the wheel with the

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ground to a point that is defined by the intersection of a line which runs perpendicular to the ground from the point of tangency of a wheel opposite the wheel coupled by the swinging arm

and a line extending substantially parallel to the ground at the height of the center of gravity of the vehicle and rider assembly in a position of positive and negative acceleration in a horizontal direction.

The relationship between the swinging arm and the various lines is shown in Figure 2 of the drawings and accompanying explanation in the specification. As discussed below, this has been amplified by the Briefs and the exhibits that accompanied them.

It is the examiner's position that certain language in the three independent claims fails to conform to the second paragraph of 35 U.S.C. § 112, in that the claims therefore are indefinite. The examiner explains on page 4 of the Answer that

[t]he sole issue presented on this appeal is whether Appellant may rely upon the center of gravity of a "vehicle and rider assembly" to define the present invention. More particularly, the issue is whether Appellant may rely upon the center of gravity of a rider of the vehicle to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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According to the examiner, this is because the center of gravity of the rider will vary depending upon the weight and the position of the individual. The appellant argues in rebuttal that the rejection on indefiniteness is ill-founded. Our understanding of the appellant's position is that while the center of gravity of a rider inherently varies with height and weight, the "center of gravity of the vehicle and rider assembly in a position of positive and negative acceleration in a horizontal direction" is a factor that would have been understood by one of ordinary skill in the art, and that determining it would have been within the skill of the artisan.

The second paragraph of 35 U.S.C. § 112 requires that claims set out and circumscribe a particular area with a reasonable degree of precision and particularity. *In re Johnson*, 558 F.2d 1008, 1015, 194 USPQ 187, 193 (CCPA 1977). In determining whether this standard is met, the definiteness of the language employed in the claims must be analyzed, not in a vacuum, but always in the light of the teachings of the prior art and of the disclosure of the application as it would

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be interpreted by one possessing the ordinary level of skill in the pertinent art. *Id.* The appellant has explained in the specification the dynamics of the forces which act upon the class of vehicles to which his invention is directed, as well as the problem and the solution that his invention provides. We agree with the examiner that this does not explicitly include an explanation of the effect of the height and weight of the rider upon the center of gravity of the "vehicle and rider assembly." However, the guidance we have received from our reviewing court, stated above, does not limit us to looking to the specification for an understanding of the words of the claims. It directs that the language of the claims be interpreted from the perspective of one of ordinary skill in the art. In our view, the appellant has established that one of ordinary skill in the art would have known that the position of positive and negative acceleration in a horizontal direction is that which is shown in Exhibit 4, and would have possessed sufficient knowledge and skill to determine the height of the center of gravity of the vehicle and rider assembly when in such a position. Of particular interest are the explanations regarding the negligible effect

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of the height of the rider when in the recited position, as well as the relationship between the weight of the rider, the wheelbase of the motorcycle, and the parallel lines through the swinging arm and the "virtual line" recited in the claims.

We therefore are persuaded by the explanations and arguments offered by the appellant on pages 5 and 9-13 of the Brief, as supported by the exhibits accompanying it, that the terminology in issue is not indefinite, and that the rejection should not be sustained.

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The decision of the examiner is reversed.

**REVERSED**

	BRUCE H. STONER, JR., Chief )	
	Administrative Patent Judge )	
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	)	
	)	
	IRWIN CHARLES COHEN )	BOARD OF
PATENT	Administrative Patent Judge )	APPEALS AND
	)	INTERFERENCES
	)	
	)	
	NEAL E. ABRAMS )	
	Administrative Patent Judge )	

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