

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. WINNER
and JOHN RUTKOWSKI

Appeal No. 1998-2375
Application 08/512,065

ON BRIEF

Before THOMAS, HAIRSTON and KRASS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 through 13, 15 and 17 through 58, which constitute all the claims remaining in the application.

Representative claim 1 is reproduced below:

1. An anti-theft device for disabling a moving vehicle comprising, a vehicle control unit mounted on said vehicle, said vehicle control unit having a first condition allowing operation of said vehicle and a second condition inhibiting operation of said vehicle, determining means for determining the rate of movement of said vehicle, transmitter means to be carried by an authorized operator of said vehicle, means for sensing the presence of said transmitter means in the vicinity of said vehicle, and means including said determining means responsive to said sensing means sensing that said transmitter means is removed from the vicinity of said vehicle for shifting said vehicle control unit into said second condition upon one of accelerating and decelerating movement of said vehicle through a predetermined rate of movement.

The following references are relied on by the examiner:

Weber	4,452,197	June 5, 1984
McShane	5,444,430	Aug. 22, 1995 (filing date Jan. 4, 1993)
Giroto	WO 92/02911	Feb. 20, 1992

Claims 1 through 13, 15 and 17 through 58 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon McShane in view of Weber, further in view of Giroto.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the final rejection and answer for the examiner's positions.

OPINION

Generally for the reasons set forth by the examiner in the final rejection and answer, we sustain the rejection of claims 1 through 3, 5 through 13, 15, 17 through 24, 26 through 42, 45 through 54 and 56 through 58. We, therefore, agree with appellants' arguments as to the patentability of claims 4, 25, 43, 44 and 55.

From our study of appellants' arguments in the brief and reply brief, appellants do not argue the non-combinability of the three references relied upon by the examiner within 35 U.S.C. § 103 or that the specifically identified references to Weber and Giroto do not teach or suggest what the examiner alleges. As stated at page 8 of the principal brief on appeal, "[a]ppellants do not argue with the fact that at least SNSR" shown in Figure 6 of McShane and including an accelerometer is means for sensing or determining the rate of movement of a vehicle, or sensing a speed condition of a vehicle. However, it is respectfully submitted that the examiner is in error in asserting that this sensor functions in any way to inhibit operation of the motor vehicle based on the rate of movement of the vehicle." It is with respect to these latter assertions that we disagree with appellants' views as to the teachings in and teaching value of McShane.

The focus of the dispute between the examiner and McShane revolves around the Figure 6 showing of the alternative embodiment for the sensor shown in the overall system of Figure 4. The discussion in the SUMMARY OF THE INVENTION at column 2 regarding

the sensor detecting motion of the motor vehicle indicates that the motion sensor senses the number of revolutions of the wheels to determine a distance value. How this is accomplished is discussed in detail regarding Figure 4 beginning at column 6, line 35. An alternative embodiment shown in Figure 5 is discussed in the initial lines of column 7 enabling the device shown in Figure 5 to determine distance and time of the vehicle movement.

As noted at column 8, at lines 41 through 45, in the embodiment shown in Figure 6 “the pulse train is developed not by directly measuring the motion of the drive train but by sensing acceleration with an accelerometer.” The discussion of Figure 6 itself begins at column 7, line 32. The discussion ending at line 43 indicates that (and this is shown at Figure 6 itself) the output of the accelerometer ACL is integrated once to produce a voltage proportional to velocity. This voltage is then applied to the VCO to produce a frequency proportional to velocity. This voltage output from the VCO as stated at lines 40 and 41 “can be used to produce pulses that are equivalent to rotation of the vehicle wheel.” There is no further discussion in the reference apparently dealing with this velocity determination. However, Figure 6 shows that the output of the VCO on line 20 would therefore be fed into the counter CTR of Figure 4. Thus, it is apparent to us that the output pulses of the VCO embodiment in Figure 6 would be a velocity determination, which pulses are counted by the counter in Figure 4. We, therefore, disagree with appellants’

assertion that the teachings of Figure 6 would therefore indicate only that a distance determination is made.

What is significant is that the discussion on Figure 6 continues at lines 43 through 48 indicating in an "alternative" manner that this accelerometer ACL of Figure 6 may be doubly integrated to produce an output having a magnitude proportional to the distance travelled. The artisan would well understand that a single integration of an acceleration value would yield velocity as explained earlier at lines 32 through 42 of column 6. Mathematically speaking, the artisan would also understand that the second integration of that value would yield a distance value. The output of this circuit according to the second integration teaching would be a distance travelled which is utilized in accordance with the threshold detector discussed at lines 45 through 48 which would produce a determination of distance travelled exceeding a predetermined amount.

For appellants' assertion to be true regarding Figure 6, the output of the velocity determination utilizing a single integration of the accelerometer ACL in Figure 6 would require some form of time determination to be taught or shown in Figure 4. Because the rate or velocity must be multiplied by time in accordance with the formula $d=rt$ to equal a distance value, it is again clear to us that McShane's initial discussion with respect to Figure 6 would indicate that a velocity value would be utilized as the means to determine

whether an inhibition of the vehicle as a whole would occur according to the remaining discussion of modified Figure 4 in its operation.

Therefore, we disagree with appellants' assertions in the brief and reply brief regarding the actual teachings and suggestions in McShane itself. Moreover, as alluded to by the examiner in his brief discussion at the top of page 5 of the answer, the teaching value of McShane to the artisan includes teachings of determining distance, time, velocity and acceleration as values which may be utilized to disable a vehicle after a given value is determined by the respective sensed element. It is implied from the discussion of column 6, line 45, regarding a distance value determination of the initial embodiment for the SNSR that a value other than one mile may be arbitrarily set by the user of the vehicle or the designer of the system. The operator selectability capability of the overall system is taught at the last lines of column 8 of McShane.

Finally, we agree with appellants' views expressed at pages 9 through 11 regarding dependent claims 4, 25, 43, 44 and 55. Because it is clear from the examiner's statement of the rejection in the final rejection that he does not regard any teaching value of Weber and Giroto as indicating a determination of rate of movement or speed of a vehicle, our study of McShane leads us to conclude that there is no teaching in this reference regarding the features recited in these noted claims as

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asserted by appellants in the principal brief. The responsive arguments portion of the answer beginning at page 4 does not address these arguments of patentability of these respective dependent claims. Therefore, we reverse the rejection of them.

In summary, we have sustained the rejection under 35 U.S.C. § 103 of claims 1 through 3, 5 through 13, 15, 17 through 24, 26 through 42, 45 through 54 and 56 through 58 because the particulars of these claims have not been argued by appellants. On the other hand, we do agree with appellants' view that claims 4, 25, 43, 44 and 55 would not have been obvious to the artisan within the meaning of 35 U.S.C. § 103. Therefore, the decision of the examiner is affirmed-in-part.

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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

James D. Thomas)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Kenneth W. Hairston)	
Administrative Patent Judge)	APPEALS AND
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