

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.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 DAVID FRANKOWSKI, NEIL J. ADAMS,
STEVEN L. PLEE and DONALD J. REMBOSKI JR.

Appeal No. 1999-1621
Application No. 08/035,348

ON BRIEF

Before HAIRSTON, KRASS and BARRETT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 14 and 27. Claims 2-13, 15-26 and 28 have been indicated by the examiner as being directed to allowable

Appeal No. 1999-1621
Application No. 08/035,348

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

All claims will stand or fall together in accordance with appellants' grouping at page 4 of the brief.

It is the examiner's position that Remboski discloses the instant claimed subject matter but for the "trended time weighted version of the knock variable" but contends that it would have been obvious to modify Remboski to detect the engine knocking based on a trended time weighted version of a knock variable "because such modification will avoid any accuracy [sic, inaccuracy?] due engine aging [sic] or due characteristic random [sic] behavior of the knock spectral signal (column 3), thereby improving accuracy and engine performance. The motivation...is that this avoids any inaccuracy due to the multi-cylinder averaging, or due to the characteristically random behavior of the knock spectra signal" [answer-page 4].

The meaning of "trended time weighted version of said

Appeal No. 1999-1621
Application No. 08/035,348

knock variable" is understood from the reference to the bottom of page 23 of the instant specification to refer to averaging a newly provided knock variable with previously provided knock variables, in effect, producing a running average of all knock variable values. Perhaps there is some connection between such "trended time weighted version of said knock variable" and the "average" energy within a predetermined knock spectra, as disclosed by Remboski, but, if so, the examiner has not indicated any such connection in the rationale for the instant rejection.

The examiner has failed to establish a prima facie case of obviousness with regard to the claimed subject matter. The alleged "motivation" provided by the examiner is not motivation at all, as required by 35 U.S.C. 103, but merely a reason fabricated by impermissible hindsight gleaned from a knowledge of appellants' disclosed invention.

Since Remboski fails to disclose providing a knock indication when the knock variable exceeds a magnitude of a "trended time weighted version of said knock variable" by a predetermined magnitude, a failure correctly recognized by the

Appeal No. 1999-1621
Application No. 08/035,348

examiner, the examiner cannot merely state that it would have been obvious to compare the knock variable in Remboski to the magnitude of a "trended time weighted version of said knock variable" with no evidence as to why it would have been obvious to do so. A general rationale that it would improve "accuracy and engine performance" to make such a comparison, without some suggestion in the prior art that such is the case, is tantamount to saying that the modification would have been made because appellants made it and it improved accuracy and engine performance. This is clearly a rationale based on impermissible hindsight and is not permitted within the confines of 35 U.S.C. 103.

The examiner's decision rejecting claims 1, 14 and 27 under 35 U.S.C. 103 is reversed.

REVERSED

KENNETH W. HAIRSTON)
Administrative Patent Judge)

Appeal No. 1999-1621
Application No. 08/035,348

)	
)	
)	
)	
ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
)	
LEE E. BARRETT)	
Administrative Patent Judge)	

EK/RWK

DONALD B. SOUTHARD
MOTOROLA, INC.
1303 EAST ALGONQUIN RD.
SCHAUMBURG, IL 60196