

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DIETER PAPENHAGEN  
and MANFRED LOCHLE

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Appeal No. 99-1752  
Application 08/632,955<sup>1</sup>

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ON BRIEF

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Before COHEN, FRANKFORT and CRAWFORD, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 9, all of the claims in the application. In the answer (page 2), the examiner indicates that finally rejected

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<sup>1</sup> Application for patent filed April 16, 1996.

Appeal No. 99-1752  
Application 08/632,955

dependent claims 8 and 9 are now objected to but would otherwise be

allowable if rewritten in independent form. It follows that only claims 1 through 7 are before us for appellate review.

Appellants' invention relates to a motion transmitting device for controlling an internal combustion engine by means of an accelerator pedal. A further 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. 6).

As evidence of anticipation, the examiner has applied the document specified below:

Tamaki	5,509,396	Apr. 23, 1996 (filed Apr. 12, 1994)
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The following rejection is before us for review.

Claims 1 through 7 stand rejected under 35 U.S.C. §

Appeal No. 99-1752  
Application 08/632,955

102(e) as being anticipated by Tamaki. According to the examiner (Paper No. 4, page 5), since the forces are applied "similarly" in Fig. 2 of Tamaki, Tamaki's forces are as parallel as the ones in the instant application.

The full text of the examiner's rejection and response to the argument presented by appellants appears in the final rejection and answer (Paper Nos. 4 and 9), while the complete statement of appellants' argument can be found in the brief and reply brief response (Paper Nos. 6 and 10).<sup>2</sup>

#### OPINION

In reaching our conclusion on the anticipation issue raised in this appeal, this panel of the board has carefully considered appellants' specification and claims, the applied patent and the respective viewpoints of appellants and the

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<sup>2</sup> In response to an order for compliance (Paper No. 12), appellants submitted a supplement to the appeal brief (Paper No. 13). In that supplement, it is specified that the real party in interest is the party named in the caption of the brief. Thus, we understand appellants to mean that the real party is "Dieter Papenhagen et al". However, contrary to this indication is the statement in the original specification (page 1, lines 6,7) that there is an "assignee of the present invention". This disparity should be remedied.

Appeal No. 99-1752  
Application 08/632,955

examiner. As a consequence of our review, we make the determination which follows.

We reverse the examiner's rejection under 35 U.S.C. § 102(e). While this panel of the board fully appreciates the examiner's viewpoint, as revealed by the commentary in the answer (pages 4 and 5) and the showing in Attachments "A" and "B", for the reasons set forth below we differ in our conclusion that the Tamaki patent is not an anticipation.

Anticipation is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, it must be kept in mind that an anticipation cannot be based upon teachings in a reference that are vague or ambiguous. See In re Turley, 304

Appeal No. 99-1752  
Application 08/632,955

F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962).

Appellants' underlying disclosure (page 1) specifies that the principal object of the invention is to improve the drive arrangement for a motion transmission device in such a way that the drive shaft is subject to little mechanical stress and wear. More specifically, appellants indicate (specification, page 2) that a special arrangement and design of the return spring provides a drive means which keeps the "transverse forces on the drive shaft extremely small". Appellants make it clear (specification, page 4) that a parallel force relationship results in an equilibrium of forces such that the stress on the friction bearings 5, 6 of the drive shaft 4 is relatively small.

Claim 1 on appeal, the same, sole independent claim as originally filed in the application, sets forth a motion transmitting device comprising, inter alia, a pull member linking a control lever to an accelerator pedal, and a return coil spring having one end engaged with the control lever and the other end engaged with a support bracket "at locations

Appeal No. 99-1752  
Application 08/632,955

such that the force acting on said bracket by said return spring extends along a line which is parallel to the direction of the force applied to said control lever by said pull member but in opposite direction."

As elaborated upon below, we are in basic agreement with the view of appellants (brief, page 3) that in the Tamaki document "[n]o consideration is given to providing the least possible bearing forces and no structure is shown or described which would provide such a result."

Our review of the throttle valve actuating apparatus of Tamaki reveals silence on any concern for the transverse forces acting on the shaft 3 and, more particularly, a lack of an express or inherent teaching of the required parallel force relationship of claim 1, as recited, supra. While the Tamaki disclosure explicitly addresses bearings 5 (column 4, lines 3 through 8), hooking portions of two springs for hooking to projecting portions 13 and 4a (column 10, lines 60 through 63), and certain forces acting on end portions of the return spring member (column 11, lines 19 through 26), we find that

Appeal No. 99-1752  
Application 08/632,955

the descriptive portion of the Tamaki specification and the showing in Figs. 1 and 2 simply do not fairly teach a return coil spring having one end engaged with the control lever and the other end engaged with a support bracket at locations such that the force acting on said bracket by said return spring extends along a line which is parallel to the direction of the force applied to said control lever by said pull member but in opposite direction, an express requirement of claim 1. It would be inappropriate conjecture to conclude that the draftsman's depiction of the invention in the drawing of Tamaki teaches the force relationship now claimed. Lacking a sound evidentiary basis, the rejection of the claims on appeal under 35 U.S.C. § 102(e) cannot be sustained.

The decision of the examiner is reversed.

REVERSED

Appeal No. 99-1752  
Application 08/632,955

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IRWIN CHARLES COHEN	)	)
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	
Administrative Patent Judge	)	APPEALS AND
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	)	INTERFERENCES
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MURRIEL E. CRAWFORD	)	
Administrative Patent Judge	)	

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Appeal No. 99-1752  
Application 08/632,955