

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GUNTHER BAIL

Appeal No. 2000-0007
Application No. 08/586,919¹

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 13 to 17 and 19 to 25. Claim 18 has been objected to as depending from a non-allowed claim. Claim 26 has been allowed. Claims 1 to 12 have been canceled.

¹ According to the appellant, the application is the national stage application of PCT/DE94/00872, filed July 27, 1994.

We REVERSE.

BACKGROUND

The appellant's invention relates to a system consisting of an automotive vehicle, preferably a golf caddy, and a transmitter (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Pirre 1973	3,742,507	June 26,
Ohba 24, 1974	3,856,104	Dec.
Suyama 1977	4,023,178	May 10,
Farque 1978	4,109,186	Aug. 22,
Matsuzaki et al. 1997 (Matsuzaki)	5,611,406	Mar. 18,

(filed July 11, 1995)

Claims 13 to 17, 20 and 25 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Suyama.

Claims 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Suyama in view of Matsuzaki.

Claims 13 to 15, 17, 20 and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Pirre in view of Suyama.

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over Pirre in view of Suyama as applied to claim 13 above, and further in view of Ohba.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Pirre in view of Suyama as applied to claim 13 above, and further in view of Farque.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (Paper No. 9, mailed November 24, 1998) and the answer (Paper No. 12, mailed July 7, 1999) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 11,

filed March 18, 1999) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The anticipation rejection

We will not sustain the rejection of claims 13 to 17, 20 and 25 under 35 U.S.C. § 102(b).

To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 13, the sole independent claim on appeal, reads as follows:

An automotive vehicle and control comprising a transmitter means for sending high frequency and ultrasonic signals to the vehicle, a drive means for said vehicle, a control means for said vehicle, a high frequency position finder means on said vehicle for determining the direction of the transmitter means at a distance exceeding a predetermined distance from said transmitter means through said high frequency signals, and an ultrasonic position finder means for determining the direction and distance of the transmitter means through said ultrasonic signals from said transmitter [means²] when the vehicle is within said predetermined distance.

The appellant argues (brief, pp. 7-8) that Suyama does not anticipate claim 13 since Suyama does not teach (1) "a transmitter means for sending both high frequency and ultrasonic signals to the vehicle," and (2) "a position finder means for determining the direction and distance of a remote transmitter carried by an individual through ultrasonic signals (rather than originating from the vehicle) when the vehicle is within a predetermined distance."

² The omission of the word "means" is deserving of correction by the appellant.

The examiner's response to the appellant's argument
(answer, pp. 6-7) is that

[i]t is inherent to one having ordinary skill in the art that the ultra-sonic anti-collision Suyama teaches determines direction and distance. Suyama's transmitter is equivalent to the claimed transmitter means in claim 13. Suyama's direction sensor and ultrasonic circuit are equivalent to Appellant's ultrasonic finder means. . . . In claim 13, all the "means for" language are function limitations, not structural elements. The broad language of the Appellant's claim are functionally equivalent to the structure shown by Suyama.

Suyama discloses a radio-controlled vehicle (e.g., a golf cart) having a steering motor, a drive motor, a drive mechanism, and a direction sensor for receiving an RF signal from a remote station (e.g., a golfer) to actuate the drive motor and to control the steering motor to direct the vehicle to the station. Also, an ultra-sonic anti-collision circuit for preventing the vehicle from colliding with any obstacle lying in the way of its travel is provided on the vehicle. As shown in Figure 1, the vehicle includes, inter alia, a non-directional antenna 10 to receive a radio frequency signal transmitted by a transmitter carried by an operator of the vehicle which is in a remote position from the vehicle, and a

directional antenna 10' also to receive the RF signal; a direction sensor 12 in which a phase difference between signals from the respective antennae is detected; a vehicle drive mechanism 16; and an ultrasonic anti-collision circuit 14. The ultrasonic anti-collision circuit 14 includes an ultrasonic wave sending vibrator 64 and a vibrator 65 for receiving ultrasonic echo.

After reviewing claim 13 and the teaching of Suyama, it is our determination that contrary to the position of the examiner claim 13 is not readable on³ Suyama for the following reasons. First, the claimed "transmitter means for sending high frequency and ultrasonic signals to the vehicle" is not readable on the transmitter means disclosed by Suyama. In that regard, the ultrasonic transmitter of Suyama (i.e.,

³ The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

ultrasonic wave sending vibrator 64) transmits ultrasonic signal from the vehicle rather than to the vehicle. Second, the claimed "ultrasonic position finder means for determining the direction and distance of the transmitter means through said ultrasonic signals from said transmitter [means] when the vehicle is within said predetermined distance" is not readable on the ultrasonic anti-collision circuit 14 disclosed by Suyama. In that regard, the ultrasonic anti-collision circuit 14 of Suyama does not determine the direction and distance of the transmitter means since his ultrasonic transmitter (i.e., ultrasonic wave sending vibrator 64) is on the vehicle rather than being remote from the vehicle.

Since all the limitations of claim 13 are not found in Suyama for the reasons set forth above, the decision of the examiner to reject claim 13, and claims 14 to 17, 20 and 25 dependent thereon, under 35 U.S.C. § 102(b) as being anticipated by Suyama is reversed.

The obviousness rejections

We will not sustain the rejection of claims 13 to 15, 17 and 19 to 24 under 35 U.S.C. § 103.

Claims 21 and 22

We agree with the appellant's argument (brief, p. 10) that even if it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified Suyama to include a pair a ultrasonic receiving means as taught by Matsuzaki, the combination still would not have arrived at the claimed combination. In that regard, the examiner's proposed modification of Suyama would not have made up for the deficiencies of Suyama with respect to the anticipation rejection of claim 13 discussed above. Moreover, we agree with the appellant's argument (brief, p. 9) that Matsuzaki is not prior art to the present application. The examiner's response to this argument (answer, p. 7) is that Matsuzaki "is prior art to the application under 35 U.S.C. 103(a)." However, the examiner did not furnish any reasoning or rationale why Matsuzaki is prior art. The international filing date (i.e., July 27, 1994) is the

critical date for determining whether or not a particular reference is available as prior art against the application.⁴ Since the filing date of Matsuzaki (i.e., July 11, 1995) is subsequent to the international filing date (i.e., July 27, 1994) of this national stage application, we are unable to establish Matsuzaki as prior art under any section of 35 U.S.C. § 102.

For the reasons set forth above, the decision of the examiner to reject claims 21 and 22 under 35 U.S.C. § 103 is reversed.

Claims 13 to 15, 17, 20 and 24

The examiner determined (answer, pp. 4-5) that "Pirre fails to show an ultra-sonic device" and that based upon the teachings of Suyama of an ultra-sonic anti-collision device, it would have been obvious at the time the invention was made to a person having ordinary skill in the art "to modify the cart of Pirre to include the ultra-sonic device."

⁴ See Manual of Patent Examining Procedure (MPEP) § 1895.01.

We agree with the appellant's argument (brief, pp. 10-13) that even if it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified Pirre to include ultra-sonic anti-collision device as taught by Suyama, the combination still would not have arrived at the claimed combination. In that regard, the examiner's proposed modification of Pirre would not have provided either (1) the claimed "transmitter means for sending high frequency and ultrasonic signals to the vehicle" or (2) the claimed "ultrasonic position finder means for determining the direction and distance of the transmitter means through said ultrasonic signals from said transmitter [means] when the vehicle is within said predetermined distance" for the reasons discussed above with respect to the anticipation rejection of claim 13.

For the reasons set forth above, the decision of the examiner to reject claims 13 to 15, 17, 20 and 24 under 35 U.S.C. § 103 is reversed.

Claims 19 and 23

We have also reviewed the Farque and Ohba references additionally applied in the rejection of claims 19 and 23 but find nothing therein which makes up for the deficiencies of Pirre and Suyama discussed above. Accordingly, the decision of the examiner to reject claims 19 and 23 under 35 U.S.C. § 103 is also reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 13 to 17 and 19 to 25 is reversed.

REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
LAWRENCE J. STAAB)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
JEFFREY V. NASE)	
Administrative Patent Judge)	

Appeal No. 2000-0007
Application No. 08/586,919

Page 14

RUSSELL W. PYLE
JUETTNER PYLE LLOYD & PIONTEK
221 N LASALLE STREET SUITE 850
CHICAGO, IL 60601

Appeal No. 2000-0007
Application No. 08/586,919

Page 15

JVN/dl