

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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOCHEN WAGNER and HELMUT WISS

Appeal No. 2000-1475
Application No. 08/844,016

ON BRIEF

Before ABRAMS, McQUADE, 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 1 to 13, which are all of the claims pending in this application.¹

We REVERSE.

¹ While the examiner has approved entry of the AMENDMENT UNDER RULE 116 amending claim 1 (Paper No. 10, filed June 21, 1999), we note that this amendment has not been clerically entered.

BACKGROUND

As set forth in the SUMMARY OF THE INVENTION section of the brief (Paper No. 16, filed November 22, 1999), the appellants' invention

relates to a method [and] apparatus for controlling the brake system of a vehicle by regulatory brake pressure based on the inlet pressure set by the driver and correction value which provides a driver's wish value, which in turn determines the control on the regulatory means. Prior art apparatuses attempt to the applied force which is determined by measuring the inlet pressure (i.e., pressure in the main brake cylinder), however this does not coincide in every operating situation with the force actually applied by the foot. Thus, Applicants' claimed method and apparatus, being substantially free of these disadvantages, and provides a significant advance over other apparatuses for which do not regulate the brake pressure based on the inlet pressure set by the driver.

Claim 1 on appeal is set forth in the AMENDMENT UNDER RULE 116 (Paper No. 10). Claims 11 to 13 on appeal are set forth in the AMENDMENT UNDER RULE 111 (Paper No. 7, filed December 28, 1998). Claims 2 to 10 on appeal have not been amended.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Rivard et al. (Rivard)
1996

5,487,598

Jan. 30,

Claims 1 to 4 and 11 to 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Rivard. As stated on page 3 of the answer² (Paper No. 17, mailed February 25, 2000), this rejection is set forth in the first Office action (Paper No. 6, mailed September 25, 1998). With regard to this rejection, the first Office action (p. 2) provided "[n]ote pressure sensors 29, 31, flow rate determination means (see column 7, lines 1-18) and driver's wish valve determining mean 125 (see claim 4)."

² The answer was mailed to ROBERT S. M. GORMAN, FULBRIGHT & JAWORSKI, L.L.P., 666 FIFTH AVENUE, NEW YORK, NY 10103. This correspondence address replaced the original correspondence address of FELFE & LYNCH, 805 THIRD AVENUE, NEW YORK, NY 10022 due to a change of address (Paper No. 9, filed June 21, 1999) signed by Robert S. M. Gorman, Reg. No. 41, 790. A change of correspondence address may not be signed by an attorney or agent not of record. 37 CFR § 1.33(a); MPEP §§ 405 & 601.03. Our review of the record fails to reveal that Robert S. M. Gorman is an attorney or agent of record. Accordingly, the examiner should determine the correct correspondence address. In view of the possible error in changing the correspondence address, we will mail this decision to both addresses.

Claims 5 to 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rivard. As stated on page 3 of the answer, this rejection is set forth in the first Office action. With regard to this rejection, the first Office action (p. 3) provided "[t]he various steps recited in claims 5-10 relate only to matters of routine programming and matters of choice. It would have been obvious to one of ordinary skill in the art to have utilized any of these steps dependent on the particular type of vehicle utilizing the system."

In the brief (pp. 4-5), the appellants argue that it is improper to assert Rivard et al. over the present invention because the present invention concerns the operating status of the means for regulating brake pressure at the wheels and/or at least one flow rate in the brake system are determined in order to correct the driver's wish value.

By contrast, Rivard et al. simply does not teach correction of the driver's wish value. Figure 4 therein shows that the pressure influenced by the driver (pressure command) is detected by sensors 29 and 31 (125), and conventional braking therein takes place (81) as long as no slip is detected. If however, slip is detected, the accelerometer is monitored (63) based on the master cylinder pressure (pressure command) and the acceleration (col. 7, lines 39 to 42). If the accelerometer fails, then the conventional antilock braking takes place (71), but if the accelerometer works, then the enhanced antilock braking takes place (7 1). The

pressure is limited to the master cylinder pressure (65). Thus, there is no correction of the pressure command signals. In accordance with the teaching of Rivera [sic, Rivard] et al, these signals are merely taken as it, without any correction whatsoever.

Further, the present invention details a correction of the driver's wish signal according to the operating state of the regulating means and/or the value of at least one flow rate in the brake system takes place. There simply is no teaching or suggestion in Rivard et al. regarding how to take into account the operating status of the regulating means and/or a flow rate value of the brake system when forming a driver's wish signal. As such, the applicants' invention clearly differs from disclosure of Rivard et al.

The examiner's response (answer, p. 3) to the appellants' argument was that

[c]ontrary to Appellants contention, Rivard et al. does show determination of at least one of the status of means for regulating brake pressure in that anti-lock control is such a regulating means. In addition, Rivard et al. clearly states in claim 4 that the driver wish value (operator commanded vehicle deceleration) is corrected based on the measured pressure via sensor 31 and the anti-lock control during measured vehicle deceleration. Rivard et al. additionally teaches measurement of the flow rate in controlling brake pressure according to an operator command as discussed in column 7, lines 1-18.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish either a prima facie case of anticipation with respect to claims 1 to 4 and 11 to 13 or a prima facie case of obviousness with respect to claims 5 to 10. Accordingly, we will not sustain the examiner's rejection of claims 1 to 4 and 11 to 13 under 35 U.S.C. § 102(b) or the examiner's rejection of claims 5 to 10 under 35 U.S.C. § 103. Our reasoning for this determination follows.

The anticipation rejection

In rejecting claims under 35 U.S.C. § 102(b), the examiner bears the initial burden of presenting a prima facie case of anticipation. See In re Wilder, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). Only if that burden is met, does the burden of going forward shift to the appellants. Id. A prima facie case of anticipation is established if each and

every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). 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." Thus, in effect, a prima facie case of anticipation is made out whenever a reference is shown to contain a disclosure which is specific as to every element of the rejected claims.

The Manual of Patent Examining Procedure (MPEP) § 1208 (Seventh Edition, Rev. 1, Feb. 2000) provides (p. 1200-15) that for a rejection under 35 U.S.C. § 102, the examiner's answer, or single prior action, shall explain why the rejected

claims are anticipated, "pointing out where all of the specific limitations recited in the rejected claims are found in the prior art relied upon in the rejection." MPEP § 1208 also provides (p. 1200-16) that for a rejection under 35 U.S.C. 102 where there are questions as to how limitations in the claims correspond to features in the prior art, "the examiner shall compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison shall align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate."

In this case, the examiner has not shown how any claim on appeal is "readable on" Rivard. That is, the examiner has not provided any explanation as to how Rivard contains a disclosure which is specific as to every element of the claims rejected under 35 U.S.C. § 102(b).

We have reviewed the disclosure of Rivard and the examiner's comments thereabout³ but are unable to see how claims 1 to 4 and 11 to 13 are anticipated by Rivard. Specifically, we fail to find disclosure in Rivard of the following limitations:

(1) "determining a correction value based on at least one parameter of the status and the system, determining a driver's wish value based on the measured inlet pressure P_{vor} and the correction value, and controlling said regulating means in accordance with said driver's wish value" as recited in independent claim 1;

(2) "determines a correction value based of a least one of this status and system parameters, corrects the measured pressure value according to the correction value" as recited in independent claim 11;

(3) "determining a correction value (P) based on said status, determining a driver's wish value (P_{driver}) based on the measured inlet pressure P_{vor} and the correction value, and

³ See pages 3-5 of this decision.

controlling said regulating means in accordance with said driver's wish value" as recited in independent claim 12; and (4) "determining a correction value based on said system parameters, determining a driver's wish value based on the measured inlet pressure P_{vor} and the correction value, and controlling said regulating means in accordance with said driver's wish value" as recited in independent claim 13.

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 2 to 4 dependent thereon, and claims 11 to 13 under 35 U.S.C. § 102(b) is reversed.

The obviousness rejection

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed

invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

We reverse the decision of the examiner to reject claims 5 to 10 under 35 U.S.C. § 103 since the examiner has not presented evidence that would have led one of ordinary skill in the art to arrive at the claimed invention for the reasons set forth above in regard to the anticipation rejection.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 4 and 11 to 13 under 35 U.S.C. § 102(b) is

reversed and the decision of the examiner to reject claims 5
to 10 under 35 U.S.C. § 103 is reversed.

REVERSED

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| NEAL E. ABRAMS |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| JOHN P. McQUADE |) | APPEALS |
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