

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(2) is not binding precedent of the Board.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. 11

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte WALTER WEISHAUP

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Appeal No. 95-2730  
Application 08/169,959

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HEARD: Jun. 9, 1998

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Before KRASS, FLEMING, and LEE, Administrative Patent Judges.  
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of  
claims 5 through 7, the only claims pending in the  
application.

The invention is directed to an object sensing device for  
motor vehicles. More particularly, the invention employs a

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dual mode sensor whereby, in a first, clear visibility, mode, the system emits a warning signal only when either an object is standing in the vehicle's driving path or the object is moving in the same direction as the vehicle but at a slower speed and, in a second, poor visibility, mode, a warning signal is emitted not only in the same situations described with regard to the clear visibility mode, but also when an object is determined to be coming toward the vehicle. The dual mode is said to allow a driver more flexibility in determining when it is actually necessary for a warning signal to be emitted depending on the visibility mode selected.

Representative independent claim 5 is reproduced as follows:

5. An object sensing device for a motor vehicle, comprising at least one transmitter/receiver pair operatively located in the motor vehicle to obtain a reflex signal from an object situated in a driving direction of the motor vehicle and having a first operating mode for clear visibility and a second operating mode for poor visibility, wherein the at least one transmitter/receiver pair is operatively configured such that a signal emission occurs for the first operating mode when an object is standing or is driving more slowly in the driver's direction of the motor vehicle, but not when an object comes toward the motor vehicle and, for the second operating mode, when an object is standing or is driving more slowly in the driver's direction of the motor vehicle and when an object comes toward the motor vehicle.

No references are relied upon.

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Claims 5 through 7 stand rejected under 35 U.S.C. § 112, first paragraph, as relying on a non-enabling disclosure.

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

#### OPINION

Compliance with the enablement clause of 35 U.S.C. § 112 requires that the written description must be sufficiently full, clear, concise and exact to enable the artisan to practice the claimed invention without resort to undue experimentation. In re Strahilevitz, 668 F.2d 1229, 1232, 212 USPQ 561, 563-64 (CCPA 1982). The scope of enablement provided by the disclosure must be commensurate with the scope of protection sought by the claims. Phillips Petroleum Co. v. U.S. Steel Corp., 673 F. Supp. 1278, 6 USPQ2d 1065, 1074 (D. Del 1987), *aff'd*, 865 F.2d 1247, 1251, 9 USPQ2d 1461, 1464 (Fed. Cir. 1989).

To comply with the enablement clause of the first paragraph of 35 U.S.C. § 112, the disclosure must adequately describe the claimed invention so that the artisan could

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practice it without undue experimentation. In re Scarbrough, 500 F.2d 560, 566, 182 USPQ 298, 303 (CCPA 1974); In re Brandstadter, 484 F.2d 1395, 1407, 179 USPQ 286, 295 (CCPA 1973); In re Gay, 309 F.2d 769, 774, 135 USPQ 311, 316 (CCPA 1962). If the examiner had a reasonable basis for questioning the sufficiency of the disclosure, the burden shifted to the appellant to come forward with evidence to rebut this challenge. In re Doyle, 482 F.2d 1385, 1392, 179 USPQ 227, 232 (CCPA 1973); In re Brown, 477 F.2d 946, 950, 177 USPQ 691, 694 (CCPA 1973); In re Ghiron, 442 F.2d 985, 992, 169 USPQ 723, 728 (CCPA 1971). However, the burden was initially upon the examiner to establish a reasonable basis for questioning the adequacy of the disclosure. In re Strahilevitz, supra; In re Angstadt, 537 F.2d 498, 504, 190 USPQ 214, 219 (CCPA 1976); In re Armbruster, 512 F.2d 676, 677-78, 185 USPQ 152, 153 (CCPA 1975).

The examiner contends that the instant claimed invention is nonenabling because there is no block diagram and/or circuitry disclosing how the transmitter/receiver pair is configured in a manner to result in the emission of a signal

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for the first and second modes. The examiner also contends that there is inadequate disclosure for emitting a signal on a first operating mode characteristic of clear visibility, switching to a second operating mode and emitting a signal in the second operating mode. The examiner further contends that there is an inadequate disclosure of a signal emission occurring when two receivers observe an object at approximately the same distance whose relative speed is one of lower than, equal to, and higher than, the vehicle speed. The examiner also questions how the object sensing device operates with respect to the operating mode selector (4) and the rotary type switch (5). Finally, the examiner asks, "How does the object sensing device (1) know when an object is standing or is driving more slowly in the driver's direction of the motor vehicle, and when an object comes toward the motor vehicle?" [final rejection, page 4].

We have carefully considered the record before us, including, inter alia, the arguments of the examiner and appellant, the original disclosure and the declaration of Walter Weishaupt and we conclude therefrom that while the artisan would have needed to resort to some minimal

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experimentation in practicing the claimed invention, that experimentation was clearly not undue as to make the disclosure nonenabling within the meaning of 35 U.S.C. § 112, first paragraph. Accordingly, we will not sustain the rejection of claims 5 through 7.

The first operating mode concerns the situation where an object is standing still or is driving more slowly in the driver's direction. Clearly, it was well known in the art that distance measuring devices can determine whether an object is standing still (the relative speed of the object is equal to that of the vehicle speed) or moving slower in the same direction as the vehicle (the relative speed of the object is less than the vehicle speed).

The second operating mode concerns the situation where an object may be standing still or driving more slowly in the driver's direction, as in the first mode, but also includes the situation where an object is coming towards the vehicle. Clearly, it was also known in the art how to determine when an object is coming towards the vehicle (the relative speed of the object is greater than the vehicle speed).

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Thus, the two modes of operations merely involve the measuring of the relative speed of an object vis á vis a vehicle and the determination of the position/direction of that object, i.e., standing still, moving in the same direction but slower than the vehicle or coming at the vehicle. The skilled artisan was aware of how to make such determinations from the prior art at the time of filing the instant application.

The claimed subject matter merely involves a combination of these two modes wherein the mode is selectable. It would appear unreasonable to assume that the skilled artisan would have needed to resort to anything more than routine experimentation in order to practice the instant claimed invention whereby one may switch between the two modes of operation. The skilled artisan certainly could have employed a switch or some logic circuitry, including, for example, AND/or NOR gates, in a routine manner to implement the selection between the first and second operating modes.

Accordingly, in view of the rather simple functions to be performed and the availability of prior art devices for

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distance measuring between vehicles and objects, it is our view that the examiner did not have a reasonable basis for challenging the sufficiency of the instant disclosure under the first paragraph of 35 U.S.C. § 112. Alternatively, to the extent the examiner had such a reasonable basis, appellant clearly has explained, through attorney argument and the declaration of appellant, how the artisan would have easily adapted the prior art devices, through a switching arrangement, in view of appellant's disclosure, to implement the claimed subject matter.

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The examiner's decision rejecting claims 5 through 7 under 35 U.S.C. § 112, first paragraph, as relying on a nonenabling disclosure is reversed.

REVERSED

	Errol A. Krass	)	
	Administrative Patent Judge	)	
		)	
		)	
		)	
	Michael R. Fleming	)	BOARD OF
PATENT	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
		)	
	Jameson Lee	)	
	Administrative Patent Judge	)	

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