

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 44

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte NIKOLAY PARADA

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Appeal No. 97-1025  
Application No. 08/183,571<sup>1</sup>

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ON BRIEF

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Before COHEN, LYDDANE, 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 8, 10 to 15, 20 to 33, 35, 37, 38 and 40 to 44, which are all of the claims pending in this application.<sup>2</sup>

We AFFIRM-IN-PART and enter new rejections pursuant to

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<sup>1</sup> Application for patent filed January 19, 1994. According to the appellant, the application is a continuation of Application No. 07/912,815, filed July 13, 1992, now abandoned.

<sup>2</sup> Claims 3, 8 and 21 have been amended subsequent to the final rejection.

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37 CFR § 1.196(b).

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BACKGROUND

The appellant's invention relates to a steering wheel. Claims 4 and 6 are representative of the subject matter on appeal and a copy of those claims, as they appear in the appendix to the appellant's brief, is attached to this decision.

The prior art references of record relied upon by the examiner as evidence of anticipation under 35 U.S.C. § 102(b) or obviousness under 35 U.S.C. § 103 are:

Scheibert	1,103,438	July 14, 1914
Ahrens	2,863,015	Dec. 2, 1958
Kato et al. (Kato)	4,374,310	Feb. 15, 1983
Rose	218,330 (UK)	Aug. 20, 1925
Niemeyer <sup>3</sup>	2,936,350 (Germany)	Mar. 26, 1981

Claims 1, 2, 5, 12 to 15, 21 to 29 and 37 stand rejected under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed.

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<sup>3</sup> In determining the teachings of Niemeyer, we will rely on the translation provided by Schreiber Translations, Inc. A copy of the translation is attached for the appellant's convenience.

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Claims 1 to 8, 10 to 15, 20 to 33, 35, 37, 38 and 40 to 44 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the appellant regards as the invention.

Claims 1 to 3, 6, 8, 10 to 15, 20, 38 and 40 to 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Kato.

Claims 1 to 8, 10 to 12, 20, 21, 23, 25 to 33, 35, 37, 38, 43 and 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Niemeyer.

Claims 1, 2, 5 to 7, 20 to 33, 37 and 38 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Rose.

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Claims 1, 2, 6, 7, 20 to 33, 35, 37 and 38 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Scheibert.

Claims 1 to 4, 6, 8, 10 to 15, 20 to 32, 35, 38 and 40 to 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Ahrens.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the rejections set forth above, we make reference to the final rejection (Paper No. 17, mailed November 25, 1994) and the examiner's answer (Paper No. 33, mailed July 10, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 30, filed August 8, 1995) and reply brief (Paper No. 36, filed September 9, 1996) for the appellant's arguments thereagainst.

OPINION

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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.

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The description issue

The rejection of claims 22 and 24 under 35 U.S.C. § 112, first paragraph, is sustained, but not the rejection of claims 1, 2, 5, 12 to 15, 21, 23, 25 to 29 and 37.

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. Further, the content of the drawings may also be considered in determining compliance with the written description requirement. See Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991) and In re Kaslow, 707 F.2d 1366, 217 USPQ 1089, 1096 (Fed. Cir. 1983).

The following items were determined by the examiner as not being supported by the originally filed disclosure: (1)"said recesses have various predetermined shapes identifying corresponding control means" as recited in claim 22; (2) "each said at least one open at one side recess contains more than one

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of said control pads" as recited in claim 1; and (3) "said control pads do not project beyond said gripping surface" as recited in claims 1 and 23.

The appellant's argument (brief, pp. 23-25) regarding item (1) is not convincing. The appellant is correct that the original specification (p. 4) states that the cavities 30 may be of any conventional shape: rectangular, round, oval, etc. and that those various shapes are shown in the drawings. However, our review of the originally filed disclosure fails to find any support for the predetermined shapes identifying corresponding control means. That is, the originally filed disclosure would not have reasonably conveyed to an artisan that the shape of the recess identified the device being controlled by the control pad. Accordingly, we sustain the rejection of claim 22, and its dependent claim 24, under 35 U.S.C. § 112, first paragraph.

For the reasons set forth in the appellant's brief (pp. 10-23), it is our opinion that items (2) and (3) above are supported by the originally filed disclosure. Accordingly, we do not sustain the rejection of claims 1, 2, 5, 12 to 15, 21, 23, 25 to 29 and 37 under 35 U.S.C. § 112, first paragraph.

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The indefiniteness issue

We do not sustain the rejection of claims 1 to 8, 10 to 15, 20 to 33, 35, 37, 38 and 40 to 44 under 35 U.S.C. § 112, second paragraph.

Claims are considered to be definite, as required by the second paragraph of 35 U.S.C. § 112, when they define the metes and bounds of a claimed invention with a reasonable degree of precision and particularity. See In re Venezia, 530 F.2d 956, 189 USPQ 149, 151 (CCPA 1976).

Initially, we note that claims 3, 8 and 21 have been amended subsequent to the final rejection to delete the language which the examiner found to be objectionable.

As to the language still at issue (final rejection, pp.6-7), it is our opinion that the language at issue can be understood when read in light of the disclosure for the reasons set forth by the appellant (brief, pp. 37-52). With regard to claim 35, it is our opinion that the phrase "at least one positioned internally relative said gripping member connecting member connecting said gripping member with a steering column" would be interpreted by

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an artisan to be "at least one connecting member positioned internally relative said gripping member connecting said gripping member with a steering column." Accordingly, we do not sustain the rejection of claims 1 to 8, 10 to 15, 20 to 33, 35, 37, 38 and 40 to 44 under 35 U.S.C. § 112, second paragraph.

The anticipation issue

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).

**Kato**

We do not sustain the rejection of claims 1 to 3, 6, 8, 10 to 15, 20, 38 and 40 to 44 under 35 U.S.C. § 102(b) as being anticipated by Kato.

Kato does not disclose a plurality of control pads positioned in a separate "open at one side recess" as set forth in independent claims 1, 3 and 6 and dependent claim 43.

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Additionally, Kato does not disclose the control pads positioned on the gripping member of circular shape as set forth in independent claims 1 and 6.

For the above reasons, the rejection of claims 1, 3, 6 and 43, as well as their dependent claims 2, 8, 10 to 15, 20, 38, 40 to 42 and 44, as being anticipated by Kato is not sustained.

#### **Niemeyer**

We do not sustain the rejection of claims 1 to 8, 10 to 12, 20, 21, 23, 25 to 33, 35, 37, 38, 43 and 44 under 35 U.S.C. § 102(b) as being anticipated by Niemeyer.

Niemeyer does not disclose a plurality of control pads positioned in a separate "open at one side recess" as set forth in independent claims 1, 3, 6, 23 and 35. Additionally, Niemeyer does not disclose (1) the control pads positioned on the gripping member of circular shape as set forth in independent claims 1, 6 and 23, (2) the control pads positioned on the hub member of generally circular shape as set forth in independent claim 3, and (3) the devices being controlled being selected from a group consisting of a radio, air conditioning, heater, defroster,

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window controls and windshield wipers as set forth in independent claims 4, 6, 23 and 35.

For the above reasons, the rejection of independent claims 1, 3, 4, 6, 23 and 35, as well as their dependent claims 2, 5, 7, 8, 10 to 12, 20, 21, 25 to 33, 37, 38, 43 and 44, as being anticipated by Niemeyer is not sustained.

**Rose**

We do not sustain the rejection of claims 1, 2, 5 to 7, 20 to 33, 37 and 38 under 35 U.S.C. § 102(b) as being anticipated by Rose.

Rose does not disclose a plurality of control pads positioned in a separate "open at one side recess" as set forth in independent claims 1, 6 and 23. Additionally, Rose does not disclose that the devices being controlled being selected from a group consisting of a radio, air conditioning, heater, defroster, window controls and windshield wipers as set forth in independent claims 6 and 23.

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For the above reasons, the rejection of independent claims 1, 6 and 23, as well as their dependent claims 2, 5, 7, 20 to 22, 24 to 33, 37 and 38 as being anticipated by Rose is not sustained.

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**Scheibert**

We do not sustain the rejection of claims 1, 2, 6, 7, 20 to 33, 35, 37 and 38 under 35 U.S.C. § 102(b) as being anticipated by Scheibert.

Scheibert does not disclose a plurality of control pads positioned in a separate "open at one side recess" as set forth in independent claims 1, 6, 23 and 35. Additionally, Scheibert does not disclose (1) the control means positioned on the connecting member as set forth in independent claim 35, (2) the control pads which do not project beyond the gripping surface as set forth in independent claims 1 and 23, and (3) the devices being controlled being selected from a group consisting of a radio, air conditioning, heater, defroster, window controls and windshield wipers as set forth in independent claims 6, 23 and 35.

For the above reasons, the rejection of claims 1, 6, 23 and 35, as well as their dependent claims 2, 7, 20 to 22, 24 to 33, 37 and 38, as being anticipated by Scheibert is not sustained.

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**Ahrens**

We do not sustain the rejection of claims 1 to 4, 6, 8, 10 to 15, 20 to 32, 35, 38 and 40 to 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Ahrens.

Ahrens does not disclose a plurality of control pads positioned in a separate "open at one side recess" as set forth in independent claims 1, 3, 6, 23 and 35. Additionally, Ahrens does not disclose (1) the gripping member being of circular shape as set forth in independent claims 1, 3, 4, 6, 23 and 35, (2) the control pads positioned on the gripping member as set forth in independent claims 1, 6 and 23, (3) the control means positioned on the hub member of generally circular shape as set forth in independent claim 35, and (4) the control pads which do not project beyond the gripping surface as set forth in independent claims 1 and 23.

For the above reasons, the rejection of claims 1, 3, 4, 6, 23 and 35, as well as their dependent claims 2, 8, 10 to 15, 20 to 22, 24 to 32, 38 and 40 to 44 as being anticipated by Ahrens is not sustained.

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The obviousness issue

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). 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 the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art to make the modifications necessary 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, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972). Rejections based on § 103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. See In re

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Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968).

We will not sustain any of the examiner's rejections under 35 U.S.C. § 103 since the examiner has not established a factual basis as to why the differences between the claimed subject matter, as set forth previously with respect to the anticipation issue, and the individually applied prior art (i.e., Kato, Niemeyer, Rose, Scheibert or Ahrens) would have been obvious to one of ordinary skill in the art at the time of the appellant's invention.

The only difference in the independent claims that the examiner found to have been obvious was providing a plurality of control pads positioned in a separate "open at one side recess." The evidence the examiner first used in the final rejection to suggest the modification of the applied prior art was that

it is common knowledge in the art to form a recess with more than one control pad for the convenience of the driver to control different devices simultaneously.

However, the appellant seasonably challenged this statement in the brief. Thus, the burden to supply evidence to support this

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statement shifted to the examiner<sup>4</sup> and the examiner has not supplied any such evidence. Consequently, there is no factual basis to establish that it would have been obvious to have provided a plurality of control pads positioned in a separate "open at one side recess" as recited in claims 1, 3, 6, 23, 35 and 43.

New grounds of rejection

In accordance with 37 CFR § 1.196(b), we introduce the following new grounds of rejection.

**Written description**

Claims 3, 8, 10, 11, 20, 35, 38, and 40 to 44 are rejected under 35 U.S.C. § 112, first paragraph, as the specification, as originally filed, does not provide support for the invention as is now claimed, for the reasons set forth below.

As set forth previously, "said recesses have various predetermined shapes identifying corresponding control means" recited in claim 22 is not supported by the originally filed disclosure. This same limitation is recited in claim 20.

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<sup>4</sup> See Manual of Patent Examining Procedure § 2144.03.

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Therefore, claim 20 and claim 38 dependent thereon are not supported by the originally filed disclosure.

Additionally, we have determined from our review of the appealed claims and the originally filed disclosure that the following items are not supported by the originally filed disclosure: (1) "said control means includes a plurality of control pads positioned . . . in at least one open at one side recess" wherein the control means is positioned on the hub member as recited in claim 3; (2) "said control means include a plurality of control pads positioned . . . in at least one open at one side recess" wherein the control means is positioned on the connecting member as recited in claim 35; and (3) "said control pads are positioned in at least one open at one side recess" wherein the control pads are positioned on the spoke member as recited in claim 43. Therefore, claims 3, 35 and 43 and claims 8, 10, 11, 20, 38, 40 to 42 and 44 dependent thereon are not supported by the originally filed disclosure.

### **Indefiniteness**

Claim 35 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point

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out and distinctly claim the subject matter which the appellant regards as the invention, for the reasons set forth below.

Claim 35 recites a transportation device comprising, inter alia, a steering wheel, a gripping member and a connecting member. As disclosed, the gripping member and the connecting member recited in claim 35 form the steering wheel already recited in claim 35. Thus, it appears that the appellant has claimed the same element or elements twice. Consequently, claim 35 is rendered indefinite by the double inclusion of the same element or elements.<sup>5</sup> See Ex parte Kristensen, 10 USPQ2d 1701, 1703 (Bd. Pat. App. & Int. 1989).

### **Obviousness**

Claim 4 is rejected under 35 U.S.C. § 103 as being unpatentable over Ahrens in view of Niemeyer, for the reasons set forth below.

Ahrens discloses a steering wheel including, inter alia, a hub 1, a rim 2 and a spoke 3. As shown in the Figure, the rim 2

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<sup>5</sup> The appellant's attention is directed to claim 23 wherein this double inclusion was avoided.

is in the general form of a truncated ring or annulus. In the central part 3', spoke 3 is widened to form a casing, on the surface of which switch elements are provided in the form of keys. Key 7 is provided for operating a heater. Keys 4, 5 and 6 are provided for operating the horn, the headlights (from city to bright) and foglights. Additionally, a switch element in the form of a toggle handle 9 is provided for operating the windshield wiper.<sup>6</sup> Ahrens states that his invention permits the driver to operate the switch elements with his fingers.<sup>7</sup>

Niemeyer discloses a steering wheel 6 including, inter alia, a wheel hub 7, a wheel rim 5 and spokes 1, 2, 3 and 4. As shown in Figure 1, the rim 5 is of a circular shape. Located in the spokes 1 and 2 are push button switches 9 and 10 for operating the vehicle's directional indicators.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

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<sup>6</sup> See column 1, lines 52-70, of Ahrens.

<sup>7</sup> See column 2, lines 15-21, of Ahrens.

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Based on our analysis and review of Ahrens and claim 4, it is our determination that the only difference is the limitation that the gripping member is of a circular shape. It is our view that the switch elements of Ahrens are (1) readable on the term "control pads" as used in claim 4, and (2) equivalent to the structure recited in the appellant's specification which corresponds to the "control means" recited in claim 4.

With regard to this difference, it is our opinion that it would have been obvious to one of ordinary skill in the art at the time of the appellant's invention to modify the shape of Ahrens' rim to be circular in view of the art recognized alternative circular shape as suggested and taught by Niemeyer's circular rim since the shape of the rim is an obvious matter of designer's choice.

#### CONCLUSION

To summarize, the decision of the examiner to reject claims 22 and 24 under 35 U.S.C. § 112, first paragraph is affirmed; the decision of the examiner to reject claims 1 to 8, 10 to 15, 20, 21, 23, 25 to 33, 35, 37, 38 and 40 to 44 under 35 U.S.C. § 112,

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first paragraph is reversed; the decision of the examiner to reject claims 1, 2, 5, 12 to 15, 21, 23, 25 to 29 and 37 under 35 U.S.C. § 112, second paragraph is reversed; the decision of the examiner to reject claims 1 to 3, 6, 8, 10 to 15, 20, 38 and 40 to 44 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Kato is reversed; the decision of the examiner to reject claims 1 to 8, 10 to 12, 20, 21, 23, 25 to 33, 35, 37, 38, 43 and 44 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Niemeyer is reversed; the decision of the examiner to reject claims 1, 2, 5 to 7, 20 to 33, 37 and 38 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Rose is reversed; the decision of the examiner to reject claims 1, 2, 6, 7, 20 to 33, 35, 37 and 38 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Scheibert is reversed; the decision of the examiner to reject claims 1 to 4, 6, 8, 10 to 15, 20 to 32, 35, 38 and 40 to 44 under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103 as being unpatentable over Ahrens is reversed; a new rejection of claims 3, 8, 10, 11, 20,

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35, 38, and 40 to 44 under 35 U.S.C. § 112, first paragraph, has been added pursuant to provisions of 37 CFR § 1.196(b); a new rejection of claim 35 under 35 U.S.C. § 112, second paragraph, has been added pursuant to provisions of 37 CFR § 1.196(b); and a new rejection of claim 4 under 35 U.S.C. § 103 has been added pursuant to provisions of 37 CFR § 1.196(b).

Any request for reconsideration or modification of this decision by the Board of Patent Appeals and Interferences based upon the same record must be filed within one month from the date hereof. 37 CFR § 1.197.

With respect to the new rejections under 37 CFR § 1.196(b), should the appellant elect the alternate option under that rule to prosecute further before the Primary Examiner by way of amendment or showing of facts, or both, not previously of record, a shortened statutory period for making such response is hereby set to expire two months from the date of this decision. In the event the appellant elects this alternate option, in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed rejection, the effective date of the affirmance is deferred until conclusion of the prosecution before

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the examiner unless, as a mere incident to the limited prosecution, the affirmed rejection is overcome.

If the appellant elects prosecution before the examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to us for final action on the affirmed rejection, including any timely request for reconsideration thereof.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART; 37 CFR § 1.196(b)

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
WILLIAM E. LYDDANE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
JEFFREY V. NASE	)	
Administrative Patent Judge	)	

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NIKOLAY PARADA  
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APPENDIX

4. A steering wheel for a transportation device, comprising:  
a gripping member of a circular shape having a gripping surface;

at least one spoke member positioned internally relative said gripping member connecting said gripping member with a hub member, and

a control means positioned on said at least one spoke member for controlling various devices of said transportation device, wherein said devices are selected from a group consisting of a radio, air conditioner, heater, defroster, window controls, and windshield wipers,

wherein said control means include a plurality of control pads positioned for operation by fingertips of a driver on said spoke member.

6. A steering wheel, comprising:

a gripping member of a circular shape having a gripping surface;

at least one connecting member connecting said gripping member with a steering column, and

a control means positioned on said steering wheel for controlling various electric and electronic devices of said transportation device, wherein said control means include a plurality of control pads each of which is positioned for operation by fingertips of a driver on said gripping member in a separate open at one side recess, said pads being reachable by the fingertips of the driver, wherein said devices are selected from a group consisting of a radio, air conditioner, heater, defroster, window controls, and windshield wipers.

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APJ NASE

APJ LYDDANE

APJ COHEN

DECISION: **AFFIRMED-IN-PART ;**  
**1.196(b)**

Prepared By: Delores A. Lowe

**DRAFT TYPED:** 28 Oct 97  
1st Rev. 13 Nov 97

**FINAL TYPED:**

**3 MAN CONF**