

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(2) is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte LESLIE G. SEYMOUR,  
MICHAEL BARENA, and  
ALLAN KIRSON

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Appeal No. 97-2524  
Application 08/255,128<sup>1</sup>

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ON BRIEF

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Before KRASS, JERRY SMITH, and TORCZON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

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<sup>1</sup> Application for patent filed June 7, 1994. According to appellants, the application is a continuation of Application 07/786,450, filed November 1, 1991.

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DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1, 2, 9 and 11-20, which constitute all the claims remaining in the application.

The disclosed invention pertains to a vehicle route guidance system and method. More particularly, the route guidance system of the invention provides instructions to a driver which take into account the timing preferences of the driver.

Representative claim 1 is reproduced as follows:

1. A vehicle route guidance system comprising:

means for sensing vehicle location;

means for determining a location of an anticipated vehicle manoeuvre;

means for comparing said sensed vehicle location and said determined location and generating a distance difference corresponding to a difference between the vehicle location and the location of the anticipated vehicle manoeuvre;

means for providing driver instruction timing preferences in accordance with the generated distance difference;

means, responsive to said generated distance difference, for determining a degree of conformance to the driver

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instruction timing preferences, and for generating a guidance instruction whose timing is determined by the degree of conformance to the driver instruction timing preferences; and

means for communicating said guidance instruction to a driver of the vehicle.

The examiner relies on the following references:

Nimura et al. (Nimura '696)	4,882,696	Nov. 21, 1989
Nimura et al. (Nimura '751)	4,937,751	June 26, 1990
Davis et al. (Davis)	5,177,685	Jan. 05, 1993 (filed Aug. 09, 1990)

Claims 1, 9, 17 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosures of Nimura '696 or Nimura '751. Claims 1, 2, 9, 11-15 and 17-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Davis. Finally, claim 16 stands rejected under 35 U.S.C.

§ 103 as being unpatentable over the teachings of Davis.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

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We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that Nimura '696 and Nimura '751 do not fully meet the invention as set forth in claims 1, 9, 17 and 19. We are also of the view that Davis does fully meet the invention as recited in claims 1, 2, 9, 11, 12, 17 and 18, but Davis does not anticipate the invention of claims 13-15, 19 and 20. Finally, we are of the view that the evidence relied upon would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claim 16. Accordingly, we affirm-in-part.

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We consider first the rejection of independent claims 1, 9, 17 and 19 under 35 U.S.C. § 102(b) as being anticipated by the disclosures of Nimura '696 or Nimura '751. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner supports this rejection by attempting to read exemplary claim 1 on each Nimura reference [answer, page 3].

Appellants argue that neither Nimura reference discloses the claimed means for providing driver instruction timing preferences and the means for determining a degree of conformance [brief, pages 4-8]. The examiner points to the

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methodology of the Nimura references and asserts that Nimura '696 and Nimura '751 inherently suggest and/or disclose the claimed features [answer, pages 5-6].

We agree with appellants that neither Nimura reference discloses the invention of independent claims 1, 9, 17 and 19. The data processing controller of either Nimura reference does not provide instructions based on the driver's timing preferences. The timing instructions in each Nimura reference are location dependent only. That is, instructions in both Nimura references are timed to occur at specific locations and are not based on individual driver timing preferences. Thus, driver instruction timing preferences are not provided in Nimura '696 or Nimura '751. Therefore, there is also no degree of conformance determined as recited in independent claims 1 and 9 nor a timing preference score determined as recited in independent claim 19. Since the invention of claims 1, 9, 17 and 19 is not fully disclosed by either Nimura reference, we do not sustain the rejections based on Nimura '696 or Nimura '751. We now consider the rejection of claims 1, 2, 9, 11-15 and 17-20 under 35 U.S.C. §

102(e) as anticipated by the disclosure of Davis. The examiner supports this rejection by attempting to read exemplary claim 1 on Davis [answer, pages 3-4]. With respect to claim 1, appellants argue that Davis does not disclose generating "distance differences," driver preferences for instruction timing or generating an instruction whose timing is determined by a degree of conformance [brief, pages 12-14].

We do not agree with any of these contentions of appellants. Davis clearly calculates distance differences because Davis must calculate the place to speak by calculating distances from where a maneuver is to take place [column 18, lines 19-31]. The actual location must be compared to the calculated location in order to implement the instruction at the proper time. These calculations result in distance differences.

Davis discloses providing driver instruction timing preferences. Davis indicates that "[t]he Back Seat Driver preferably stores knowledge of its users, and uses this knowledge to customize its instructions to the preferences of the users" [column 2, lines 59-62]. Davis also notes that the new user should play the role of "back seat

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driver" and give instructions while in a car for some route [column 21, lines 2-4]. These instructions of the driver would include the driver's own timing preferences. Davis discloses that the Back Seat Driver learns the style of instruction giving appropriate for each user. Finally, Davis observes that the Back Seat Driver will collect user information and offer instructions without being asked. These disclosures of Davis would clearly suggest to the artisan that the user-models in Davis contain driver instruction timing preferences as broadly recited in claim 1.

The broad recitation of determining a degree of conformance is also disclosed in Davis because Davis generates an instruction when a specific location based on driver preference has been reached. That is, the degree of conformance in Davis is that a specific location as desired by the driver must be reached and the instruction generated at that time. This operation broadly meets the recitations of claim 1. Therefore, we sustain the rejection of claim 1 as anticipated by the disclosure of Davis. Since independent

claim 9 is essentially analogous to claim 1, we also sustain the rejection of claim 9.

With respect to claim 2, appellants argue that Davis does not teach that the guidance instruction timing is dependent on the measured speed of the vehicle. We do not agree. Davis discloses that the navigator of the Back Seat Driver maintains an estimate of the current position and velocity of the car [column 25, lines 10-11]. Davis also discloses that the Back Seat Driver determines at what point to offer instructions to safely implement maneuvers based on the speed of the vehicle. We are of the view that this disclosure of Davis meets the broad recitation of claim 2 that the timing of instructions is dependent on the speed of the vehicle. Thus, we sustain the rejection of claim 2.

With respect to claim 11, appellants merely assert that Davis does not disclose variable driver instruction timing preferences [brief, page 15]. In our view, the user-models created in Davis would clearly provide variable timing preferences consistent with the preferences initially established by the user acting as a "back seat driver."

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Accordingly, we sustain the rejection of claim 11. With respect to claim 12, appellants make the vehicle speed argument that we considered earlier. Since Davis clearly generates instructions based on the speed of the vehicle, we sustain the rejection of claim 12.

With respect to claim 13, appellants argue that Davis does not disclose any plurality of continuous functions related to driver instruction timing preferences [brief, page 15]. Although we have determined that Davis does disclose the broad concept of driver instruction timing preferences, we agree with appellants that there is no disclosure in Davis of what form these timing preferences should take. There certainly is no disclosure in Davis that driver instruction timing preferences should be comprised of a plurality of continuous functions. Since the rejection is under 35 U.S.C. § 102 and we can find no disclosure of continuous functions as recited in claim 13, we do not sustain the rejection of claim 13 as anticipated by Davis. Since claims 14-16 depend from claim 13, we also do not sustain the rejection of these claims.

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With respect to claims 17 and 18, these claims recite features which we discussed earlier in the rejection of claims 1 and 2. Therefore, we sustain the rejection of claims 17 and 18 for reasons discussed above.

With respect to independent claim 19, appellants argue that Davis has no disclosure of providing a maneuver announcement timing preference score based on speed and distance, and generating the guidance instructions at a timing dependent on the timing preference score [brief, page 22]. We agree with appellants that there is no disclosure in Davis of computing a score in the manner recited in claim 19. Therefore, we do not sustain the rejection of claim 19 as anticipated by the disclosure of Davis. Since claim 20 depends from claim 19, we also do not sustain the rejection of claim 20 as anticipated by the disclosure of Davis.

We now consider the rejection of claim 16 under 35 U.S.C. § 103 as unpatentable over the teachings of Davis. Claim 16 depends from claim 13 through claim 14. As noted above in our discussion of the rejection of claim 13, Davis does not

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disclose the plurality of continuous functions recited therein. This rejection of claim 16 under Section 103 also does not indicate why it would have been obvious to the artisan to modify the structure of Davis to have the driver instruction timing preferences be comprised of a plurality of continuous functions. Therefore, the examiner has not established a prima facie case of the obviousness of claim 16. Accordingly, we do not sustain the rejection of claim 16 as unpatentable over Davis.

In summary, the rejection of claims 1, 9, 17 and 19 as anticipated by Nimura '696 or Nimura '751 has not been sustained. The rejection of claims 1, 2, 9, 11-15 and 17-20 as anticipated by Davis is sustained with respect to claims 1, 2, 9, 11, 12, 17 and 18, but is not sustained with respect to claims 13-15, 19 and 20. The rejection of claim 16 as unpatentable over Davis is not sustained. Accordingly, the decision of the examiner rejecting claims 1, 2, 9 and 11-20 is affirmed-in-part.

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

AFFIRMED-IN-PART

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ERROL A. KRASS	)	)
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
JERRY SMITH	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
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RICHARD TORCZON	)	
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