

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(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES E. BOBROW
and
FARYAR JABBARI

Appeal No. 98-0336
Application 08/761,014¹

ON BRIEF

Before CALVERT, MEISTER and FRANKFORT, **Administrative Patent Judges.**

MEISTER, **Administrative Patent Judge.**

DECISION ON APPEAL

¹ Application for patent filed December 5, 1996. According to appellants, this application is a continuation of application 08/394,416, filed February 24, 1995 (abandoned).

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James E. Bobrow and Faryar Jabbari (the appellants) appeal from the final rejection of claims 1-20, the only claims present in the application.

We REVERSE.

The appellants' invention pertains to (1) a method of controlling a resettable truss element for maximizing the absorption of energy in a structure and (2) an apparatus for absorbing energy in a structure. Independent claims 1 and 15 are further illustrative of the appealed subject matter and copies thereof may be found in the appendix to the brief.

The reference relied on by the examiner is:

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|------------------------|-----------|-----------------------|
| Kobori et al. (Kobori) | 5,311,709 | May 17, 1994 |
| | | (filed Dec. 17, 1992) |

The claims on appeal stand rejected in the following manner:²

Claims 1-6, 8, 11-13 and 15-20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Kobori.

² For an explanation of the rejections the answer makes reference to the final rejection (Paper No. 16) and to "Attachment A" to the advisory action (Paper No. 12) in parent application Serial No. 08/394,416. Such a procedure by the examiner is totally improper and inappropriate. **Manual of Patent Examining Procedure** (MPEP) § 1208 (7th ed., Jul. 1998) expressly provides that incorporation by reference may be made only to a **single** other action.

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Claims 7, 9, 10 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kobori.

Initially we note that in the appendix to the brief, the appellants note that the examiner has refused to enter certain amendments and "requests the Board to take judicial notice of the refused amendments in considering any further action in the application." We must point out, however, that under 35 U.S.C. § 134 and 37 CFR § 1.191, appeals to the Board of Patent Appeals and Interferences are taken from the decision of the primary examiner to reject claims. We exercise no general supervisory power over the examining corps and decisions of primary examiners to deny entry of amendments are not subject to our review. **See Manual of Patent Examining Procedure** (MPEP) §§ 1002.02(c) and 1201 (7th ed., Jul. 1998); **In re Mindick**, 371 F.2d 892, 894, 152 USPQ 566, 568 (CCPA 1967) and **In re Deters**, 515 F.2d 1152, 1156, 185 USPQ 644, 648 (CCPA 1975). Inasmuch as taking "judicial notice of the refused amendments" would, in effect, overrule the examiner's decision to refuse entry of the amendments, we decline to take such action.

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Both of the above-noted rejections are bottomed on the examiner's view that Kobori teaches all the subject matter set forth in independent claims 1 and 15. As set forth in "Attachment A" to the advisory action (Paper No. 12) in parent application Serial No. 08/394,416, it is the examiner's position that Kobori determines when a predetermined amount of energy is stored in the truss element

since the sensing of the "wrong direction" via the sensing and comparing of the "plus and minus values" would mean that the truss element should not either be resisting extension or compression thereby sensing "a predetermined amount of energy" that is in the "wrong direction" and then "relaxing" and/or dissipating this energy by opening the valve to correct the problem, i.e., it absorbs that predetermined amount of energy that was built up.

We will not support the examiner's position. Kobori teaches a variable hydraulic **dampening** device including a cylinder 2, a piston 3 which divides the cylinder into left-hand and right-hand chambers 6L, 6R, sensors 23L, 24R for sensing the **pressure** in the chambers which generate pressure signals or values S6, S7 and a flow regulating or throttling valve 12 for controlling the amount of fluid (hydraulic oil; see column 1, lines 66, 67) which flows between the two chambers. The

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movement of the flow regulating valve towards opened or closed "throttle" positions is controlled by signals S1 (inputted by a computer which "judges" the damping force to be generated; see column 2, lines 16-28 and 45-50) and S8 (which is the difference between pressure valves S6 and S7). It is true that when the "signs" of S1 and S8 are different that the flow regulating valve is moved to the fully opened position (see, e.g., column 2, lines 53-57) and, in this valve setting, that the truss element would not appear to substantially resist either extension or compression. We are at a loss, however, to understand how such an arrangement can possibly be construed as "sensing 'a predetermined amount of energy'" as the examiner asserts. Hydraulic oil is an incompressible fluid and the sensors 23L and 23R merely measure or determine the **pressure** of that fluid (as distinguished from "energy").

The answer also states that:

It is maintained due to the breadth of the instant claims that the device of Kobori et al does "store a predetermined amount of energy" since the spring located in the hydraulic regulating valve 12 does "absorb a pre-determined amount of energy" created by the force of the fluid pressure present in line 15 pushing upon the piston 12c. Once this pressure of the fluid has reached a certain level, i.e.[,] the level of force

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corresponding to the maximum amount of energy that the spring is able to absorb prior to the compression of the spring, the spring will deflect thereby opening and/or relaxing the valve 12 to release the energy of the fluid pushing on the piston to thereby provide a dampening force to the system which was created by the movement of the piston 3 that is attached to the moving structure to be damped. [Page 4.]

This position is also unpersuasive. While Kobori's dampening device remains "hydraulically locked" until a sufficient force P1 is exerted on the valve spool 27 to overcome the bias of spring 28 (see column 6, lines 33 **et seq.**), there is no means for "**determining when** a predetermined amount of **energy is stored** . . . by movement of said structure" (claim 1; emphasis added) or "**a sensor** coupled to said resettable truss element **for determining energy stored** in said truss element" (claim 15; emphasis added).

The rejections of claims 1-6, 8, 11-13 and 15-20 under 35 U.S.C. § 103(e) and claims 7, 9, 10 and 14 under 35 U.S.C. § 103(a) are reversed.

REVERSED

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| IAN A. CALVERT |) | |
| Administrative Patent Judge |) | |
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| JAMES M. MEISTER |) | BOARD OF PATENT |
| Administrative Patent Judge |) | APPEALS AND |
| |) | INTERFERENCES |
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| |) | |
| CHARLES E. FRANKFORT |) | |
| Administrative Patent Judge |) | |

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Daniel L. Dawes
5252 Kenilworth Drive
Huntington Beach, CA 92649