

Appeal No. 98-2121
Application 08/509,669

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HISAYOSHI MORI, NORIKATA GOTO
and NOBUSHIGE TERAJI

Appeal No. 98-2121
Application 08/509,669¹

ON BRIEF

Before McCANDLISH, *Senior Administrative Patent Judge*, MEISTER and FRANKFORT,
Administrative Patent Judges.

MEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claim 1, the only claim present in the application.

¹ Application for patent filed July 31, 1995.

We REVERSE.

The appellants' invention pertains to a traction control device the nature of which may be readily ascertained by perusal of claim 1. A copy of claim 1 may be found in APPENDIX 1 of the brief.²

The references relied on by the examiner are:

Lindenman	4,969,697	Nov. 13, 1990
Willmann	5,188,435	Feb. 23, 1993

Claim 1 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindenman in view of Willmann. According to the examiner:

Lindenman shows a slip control system including: cut off valve 31, outlet valve/inlet valve 56, auxiliary pressure source 64, auxiliary reservoir 72, and proportioning valve 80. Also note auxiliary pressure line (29,52). The proportioning valve 80 is mounted in the main brake lines and it is upstream of the cut-off valves (30,31) and likewise it is downstream from the pump from the branching point near 52. [Answer, pages 3 and 4.]

Thereafter, the examiner (1) states that the claimed invention differs from Lindenman only in that the cut-off valve is a traction control valve and (2) concludes that it would have been obvious to have utilized a solenoid cut-off valve "as the valve" in Lindenman in view of the teachings of Willmann "since it has long been a common standard in the art to adapt ABS brake systems to provide traction control" (answer, page 4).

We will not support the examiner's position. In our view, there is nothing in the combined

² In line 7 of claim 1 (as it appears in the appendix) we interpret "a master cylinder" to be -- the master cylinder --.

teachings of Lindenman and Willmann which would fairly suggest the modification which the examiner has proposed. The entire thrust of Lindenman's invention is to improve over the prior art arrangement depicted in Fig. 1 by eliminating "the two check valves **8** and **9** and the bypass line **7**" (column 2; lines 23 and 24). To this end, Lindenman replaces these elements and the particular type of valve 6 utilized by the prior art arrangement with a proportioning valve 80 and a pressure differential release valve 31 (see Fig. 3) that during normal braking permits (1) the flow of fluid from the master cylinder through the valve 31 to the main brake line 52, 57 and then to the rear brakes 60, 70 and (2) the automatic return flow of the fluid back through the valve 31 to the master cylinder when braking ceases. While Willmann broadly teaches a "cut-off" valve 70 that is used in a braking system during traction control, if such a valve were utilized in Lindenman in lieu of the pressure differential release valve 31, Lindenman's device would no longer operate in the intended manner. Thus, we do not believe that it would have been obvious to provide the anti-lock braking system of Lindenman with a "cut-off" valve as taught by Willmann since to do so would destroy the invention upon which Lindenman was based, namely, providing a valve which permits the automatic return flow of the fluid back through the valve to the master cylinder when braking ceases. *See Ex parte Hartmann*, 186 USPQ 366, 367 (Bd. App. 1974). The examiner may not pick and chose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art (*Bausch & Lomb, Inc., v. Barnes-Hind/Hydrocurve*

Inc., 796 F.2d 443, 448, 230 USPQ 416, 419 (Fed. Cir. 1986), *cert. denied*, 484 U.S. 823 (1987) and *In re Kamm*, 452 F.2d 1052, 1057, 172 USPQ 298, 301-02 (CCPA 1972)), and obviousness cannot be established by locating references which describe various aspects of appellants' invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the appellants have done (*Ex parte Levengood*, 28 USPQ2d 1300, 1302 (Bd. Pat. App. & Int. 1993)). Here, the mere fact that, generally speaking, traction control in ABS braking systems might be the "common standard," does not provide persuasive evidence of such a motivating force.

Moreover, even if the references were combined in the manner proposed by the examiner, the claimed invention would not result. That is, the claim expressly requires three discrete lines (i.e., three *separate* lines), namely, a main brake line, a reflux line and an auxiliary hydraulic pressure line. The examiner has identified the line 52 of Linderman as being the auxiliary hydraulic pressure line, however, this line must, at least in part, be a portion of the *main line* for "connecting wheel cylinders of rear wheels to a master cylinder," and in which the proportioning valve and traction valve are mounted. Moreover, line 52 does not connect the "master cylinder and the auxiliary hydraulic pressure device" (i.e., pump 64) as claimed (note that valve 31 of Lindenman serves to *isolate* the master cylinder from the pump when it is operating - see, generally, columns 2 and 4). Still further, while the proportioning valve 80 of Lindenman is mounted in the main line upstream of the valve 31, it is not "downstream from a point of branching of the auxiliary line" as claimed. Finally, it does not appear Lindenman has a reflux

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line that is connected to the main line "at a point *between* the traction valve and the **inlet valve**"
(emphasis added) as claimed.

The decision of the examiner to reject claim 1 under 35 U.S.C. § 103(a) is reversed.

REVERSED

HARRISON E. McCANDLISH)
Senior Administrative Patent Judge)
)
)
) BOARD OF PATENT
JAMES M. MEISTER)
Administrative Patent Judge) APPEALS AND
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