

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte
HAP NGUYEN

Appeal No. 2000-0426
Application No. 08/427,447

ON BRIEF

Before KRASS, LALL, and LEVY, Administrative Patent Judges.
LALL, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 2, 5, 6 and 7, which constitutes all of the pending claims in the application.

The disclosed invention relates to an anti-carjacking device. The apparatus involves a first part comprising a controller in connection with the engine of said vehicle and in radio frequency communication with an enabling device (concealed on a person) that sends RF response signals in response to an interrogating signal

Appeal No. 2000-0426
Application No. 08/427,447

from the controller. The RF interrogating signal from the controller is sent on a periodic basis and within a limited distance from said controller. When the response signal is found to be an unauthorized signal by the controller, the latter is operable to disable the engine.

The following claim is further illustrative of the invention:

2. A two part system for disabling the engine of a motor vehicle in the event of non-authorized use of said vehicle, said system comprising: a first part comprising: a controller in electrical connection with the engine of said vehicle and having means to disable said engine, said controller having a means for propagating a radio frequency interrogating signal on a periodic basis and within a limited area; said area being defined in terms of the distance from said controller; a second part comprising: a radio frequency transmitting and receiving device for sending out a radio frequency response signal in response to said interrogating signal and of size suitable for concealment on a human; said controller having a means for receiving said response signal and for determining whether said response is an authorized signal, said controller having a means for disabling said engine in the event that said signal is not an authorized signal.

The examiner relies on the following references:

Lewis, Sr. et al. (Lewis)	5,493,268	Feb. 20, 1996 (filed Apr. 29, 1994)
Joselowitz et al. (Joselowitz) (UK Patent Application)	2,233,487A	Jan. 09, 1991

Claims 2, 6 and 7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Joselowitz, while the examiner adds Lewis to Joselowitz for the rejection of claim 5.

Appeal No. 2000-0426
Application No. 08/427,447

Rather than repeat the arguments of appellant and the examiner, we make reference to the brief (paper no. 16) and the examiners' answer (paper no. 17) for the respective details thereof.

OPINION

We have considered the rejections advanced by the examiner and the supporting arguments. We have, likewise, reviewed the appellant's arguments set forth in the brief.

We affirm-in-part

We note that independent claim 2 is an apparatus claim and the other independent claim 6 is the corresponding method claim. For our analysis, we take claim 2 as an example. After discussing the Joselowitz reference, the examiner makes the finding (answer at page 4) that Joselowitz (figure 3) does not specifically disclose that transmitter 16 interrogates transponder 20 periodically. However, the examiner asserts (id.) that "[i]t is a common practice in the art for the interrogator periodically interrogating the transponder in its optimum time interval which is based upon the specific application requirement. The purpose of periodical transmission is to save energy of the power source such as battery." Appellant argues (brief at page 5) that "there is no provision in the prior art to suggest the desirability of modifying

Appeal No. 2000-0426
Application No. 08/427,447

the applicant's device in order for the controller unit to send out signals on a periodic basis. The examiner's statements on page 3 of the final fail to specify any prior art teaching that would suggest why the proposed modification of periodic interrogation is desirable or preferable as opposed to being merely possible."

Appellant further argues (id. at page 6) that "the examiner supplies reasoning [to combine] with the aid of hindsight."

The examiner responds (answer at page 6) that

[i]n the amendment filed on 05/27/97 [paper no. 11], the appellant did challenge the examiner's well known position on "periodic interrogation" issue and the examiner provided Kersten reference (US. 5,583,486) as evidence to support the known "periodic interrogation". In Col 8, lines 25-35, Kersten specifically states that the transmitter 33 "periodically transmits short interrogation pulses of radio frequency energy that are received and retransmitted by a transponder 21 in a signal enabling tag 20." Thus, the examiner made that amendment [sic., Office action] final accordingly (Paper No. 13).

Appellant has filed no reply brief to challenge this evidence by the examiner that Kersten satisfies the requirement to support the official notice on which the examiner bases his assertion that periodic interrogation was commonly known.

Before making our decision we visit the requirement of a rejection under 35 U.S.C. § 103.

Appeal No. 2000-0426
Application No. 08/427,447

The Federal Circuit in In re Lee, 277 F.3d 1338, 1344-1345, 61 USPQ 2d 1430, 1434-35 (Fed. Cir. 2002) emphasized the need for an informed decision by the agency based upon evidence in the record.

Lee states:

Thus the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion.

Deferential judicial review under Procedure Act does not relieve the agency of its obligation to develop an evidentiary basis for its findings. To the contrary, the Administrative Procedure Act reinforces this obligation. See, e.g. Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29,43 (1983) ("the agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.") (quoting Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962)); Securities & Exchange Comm'n v. Chenery Corp., 318 U.S. 80, 94 (1943) ("The orderly function of the process of review requires that the grounds upon which the administrative agency acted are clearly disclosed and adequately sustained.").

The foundation of the principle of judicial deference to the rulings of agency tribunals is that the tribunal has specialized knowledge and expertise, such that when reasoned findings are made, a review court may confidently defer to the agency's application of its knowledge in its area of expertise. Reasoned findings are critical to the performance of agency functions and judicial reliance on agency competence. See Baltimore and Ohio R.R. Co. v Aberdeen & Rockfish R.R. Co., 393 U.S. 87, 91-92 (1968) (absent reasoned findings based on substantial evidence effective review would become lost "in the haze of so-called expertise")... The Board's findings must extend to all material facts and must be

Appeal No. 2000-0426
Application No. 08/427,447

documented on the record, lest the "haze of so-called expertise" acquire insulation from accountability.

Clearly, Lee reiterates that a reasoned conclusion by the examiner must be supported by some evidence in the administrative record.

Here, we find that the examiner has satisfied the requirement for the official notice by offering evidence of the Kersten reference which was available to appellant during the prosecution. Appellant did not, and does not challenge the efficacy of this evidence to support the use of the official notice. Therefore, we find that Joselowitz make obvious claim 2 and the corresponding method claim 6.

With respect to claim 7, we are of the view, after considering the explanation of the rejection of claim 7 (answer page 4 and the examiner's response at page 6), we agree with appellant that the examiner has not met the limitation recited in claim 7, "powering said transceiving device by rectifying and storing energy in the form of radio frequency transmissions received from said controller." In our view, the examiner has not grappled with the limitation that the recited transmitting device can run on energy which is converted from the radio frequency transmissions received from the controller instead of running on a battery. Therefore, we

Appeal No. 2000-0426
Application No. 08/427,447

do not sustain the obviousness rejection of claim 7 over Joselowitz.

With respect to claim 5, the examiner asserts (answer at page 5) that

it would have been obvious ... to readily recognize the desirability to incorporate the additional carjacking deterrent mechanism such as tear gas, dye, irritant fluid, or alarms as taught by **Lewis** into the system of **Joselowitz** in order to provide additional carjacking deterrent to the existing system where the combination would disable the vehicle and identifying [sic] the carjacker as well.

Appellant argues (brief at pages 10 and 11) that

Lewis deals with the carjacking by thwarting it, A [sic] secondary reference like Lewis might be useful with a primary reference but there must be some teaching as to why it would be useful when the primary reference is different in purpose. Moreover it is the combination of the applicant's use of a dye identification system together with a timed disabling means that produces a result that is new and non obvious.

The examiner responds (answer at page 7) that

Joselowitz specifically states in (sic) page 4 that the "enabling circuit" controls a fuel valve or a switch in the ignition circuit. It may also control a variety of other disabling devices and/or door lock on the vehicle. On the other hand, Lewis teaches the injection of tear gas, irritant fluid, dye or other deterrent upon detecting of an unauthorized use. Thus, ..., it would have been obvious ... to supplement the system of Joselowitz with the tear gas or dye injection as taught by Lewis [,] especially [noting that] the enabling circuit of Joselowitz may control variety of other devices.

Appeal No. 2000-0426
Application No. 08/427,447

Again, appellant has not challenged the examiner's findings regarding the response to the appellant's argument regarding the combination of Joselowitz and Lewis. We are persuaded by the examiner's explanation that an artisan in the art of designing anti-carjacking devices would have been motivated by the Lewis teachings to use any kind of deterrent fluid as being injected by the valves of Joselowitz on the driver (user) once the controller had determined that the user was not an authorized user. Therefore, we sustain the obviousness rejection of claim 5 over Joselowitz in view of Lewis.

In conclusion, we have sustained the obviousness rejection of claim 2, 5 and 6 while we have not sustained the obviousness rejection of claim 7.

Accordingly, the decision of the examiner rejecting claims 2, 5, 6 and 7 under 35 U.S.C. § 103(a) is affirmed-in-part.

Appeal No. 2000-0426
Application No. 08/427,447

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

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	
)	BOARD OF PATENT
PARSHOTAM S. LALL)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
STUART S. LEVY)	
Administrative Patent Judge)	

PSL/lp

Appeal No. 2000-0426
Application No. 08/427,447

JOHN P. HALVONIK
806 WEST DIAMOND AVE.
SUITE 301
GAITHERSBURG MD 20878