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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YASUO HIMURO

Appeal No. 2001-0780
Application No. 08/997,368

ON BRIEF

Before GARRIS, WALTZ, and MOORE, Administrative Patent Judges.
GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the Examiner to allow claims 1-10 as amended subsequent to the final rejection. These are all of the claims in the application.

The subject matter on appeal relates to a pneumatic radial tire for all-season passenger cars. With reference to the drawing of the subject application, the tire comprises steeply slant grooves 1, gently slant grooves 2, blocks 3 and sipes 6, wherein blocks formed in the central zone TC are defined by circumferential center groove 4 and steeply slant grooves 1 and are chamfered from

a tapered top end over a range of 10-30 mm in a longitudinal direction of the block so as to gradually shallow a depth of a surface of the block from the tapered top end toward an opposite end of the block. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

1. In a pneumatic radial tire for all-season passenger car comprising; a tread with a tread pattern defined by dividing the tread into many blocks through a plurality of slant grooves arranged at given intervals in a circumferential direction of the tire and at least one circumferential center groove extending in the circumferential direction of the tire at a center portion of the pattern, and consisting of a central zone having a width corresponding to 30-60% of a tread width and a pair of side zones located on both sides of the central zone; wherein

(1) the slant grooves comprise steeply slant grooves extending at a relatively small inclination angle with respect to the circumferential direction and gently slant grooves extending at a relatively large inclination angle with respect to the circumferential direction;

(2) the steeply slant grooves are opened to the circumferential center groove in the central zone of the tread, while the gently slant grooves are opened to a tread end in each of said side zones of the tread to form blocks in said side zones;

(3) the number of the gently slant grooves is made two or more times than the number of the steeply slant grooves so that an interval between the gently slant grooves in the circumferential direction is made 1/2 or less than an interval between the steeply slant grooves in the circumferential direction;

(4) each of the blocks is provided with at least one sipe; and

(5) blocks formed in the central zone are defined by the circumferential center groove and the steeply slant grooves and are chamfered from a tapered top end over a range of 10-30 mm in a longitudinal direction of the block so as to gradually shallow a

depth of a surface of the block from the tapered top end toward an opposite end of the block.

The references set forth below are relied upon by the Examiner as evidence of obviousness:

Europe ‘332	627,332	Dec. 7, 1994
Europe ‘718	705,718	Apr. 10, 1996
Japan ‘025	5-319025[1]	Dec. 3, 1993
Japan ‘215	6-40215[1]	Feb. 15, 1994
Europe ‘685	688,685	Dec. 27, 1995

All of the appealed claims are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP ‘332 in view of EP ‘718 and JP ‘025 and optionally either EP ‘685 or JP ‘215.[2]

We refer to the brief and reply brief and to the answer for a thorough discussion of the opposing viewpoints expressed by the Appellant and by the Examiner concerning the above noted rejection.

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[1] Our understanding of these references is geared from the English language translations thereof which are of record.

[2] On page 4 of the brief, the Appellant indicates that the appealed claims are grouped together and correspondingly that the patentability of all claims can be assessed by considering the patentability of the broadest claim, namely, independent claim 1. It follows that, in our disposition of this appeal, we will focus on appealed independent claim 1. See 37 CFR § 1.192(c)(7)(1999).

OPINION

We adopt as our own the findings of fact, conclusions of law and rebuttals to argument expressed by the Examiner in his well reasoned answer. We add the following comments for emphasis.

We agree with the Examiner that the Appellant's independent claim distinguishes over EP '332 only by the requirement that certain blocks be chamfered in accordance with the requirements of clause (5). We also agree with the Examiner's conclusion that it would have been obvious for one with an ordinary level of skill in this art to provide the corresponding blocks of EP '332 with a chamfer of the type and for the reasons taught by EP '718 and JP '025. In this way, the so-modified tire of EP '332 would possess the chamfer advantages expressly taught by EP '718 and JP '025. The resulting tire would fully satisfy each of the requirements defined by the independent claim before us.[3]

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[3] We here observe that the Appellant in his brief and reply brief describes the here claimed chamfer feature with terminology which differs from the terminology which is used in the subject specification including the appealed claims and which is used by the Examiner in his answer. Like the Examiner, we look with disfavor upon the Appellant's use of terminology in the brief and reply brief which is not consistent with the terminology used in the specification and claims for the self evident reason that such inconsistency pointlessly confounds the record. In any event, we are confident that the chamfer feature disclosed in EP '718 and JP '025 respectively corresponds to the

(continued...)

In support of his nonobviousness position, the Appellant argues that the chamfer feature in the directional tire patterns of EP ‘718 and JP ‘025 are not applicable to the non-directional tire pattern shown in Figure 1 of EP ‘332. Concerning this matter, the Appellant criticizes the Examiner by contending that “[n]ever once does the Examiner face up to the fundamental recognition between directional and non-directional tread patterns and differences in construction that flow from those divisible tread patterns” (reply brief, page 9). This criticism is inappropriate.

This is because the Examiner has repeatedly explained that the EP ‘332 disclosure at lines 41-45 on page 10 describes a tread pattern alternative (with respect to the pattern shown in Figure 1) which is directional (i.e., like the patterns of EP ‘718 and JP ‘025). See, for example, the last six lines in the paragraph bridging pages 7 and 8 of the answer and the last three lines in the paragraph bridging pages 15 and 16 of the answer. This finding by the Examiner has not been even acknowledged much less contested by the Appellant in the brief and reply brief. These circumstances compel us to accept the Examiner’s finding as factually correct. Moreover, as so accepted, the Examiner’s

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[3](...continued)
chamfer feature defined by appealed claim 1.

finding of a directional tread pattern disclosure in EP ‘332 completely vitiates the Appellant’s above noted argument and, for this reason alone, renders it unpersuasive.

In addition to the foregoing, the Appellant argues that appealed claim 1 requires at least one sipe on each of the blocks of the here claimed tire including the blocks which are chamfered. According to the Appellant, the applied prior art would not have suggested providing each block of the EP ‘332 tire with at least one sipe. As previously indicated, however, we share the Examiner’s viewpoint that the claim 1 requirement at clause (4) “each of the blocks is provided with at least one sipe” relates to the blocks previously recited in clause (2) and not to the blocks subsequently recited in clause (5). From our perspective, the disclosures in the subject specification (e.g., see lines 21-24 on page 10) and drawing are consistent with the Examiner’s interpretation (and inconsistent with the claim construction urged by the Appellant). See In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

As so interpreted, the independent claim before us defines a sipe feature which is met by the element 10a feature of the EP ‘332 tire. This is because the 10a “sipes” are provided in the blocks located in the side zones as required by clauses (2) and (4) of the

Appellant's independent claim. The Appellant's point that no sipes are provided in the blocks located in the central zone of the EP '332 tire is simply irrelevant since claim 1 contains no such requirement when properly interpreted as explained previously. In any case, like the Examiner, we conclude that it would have been obvious for an artisan to provide the central zone blocks of EP '332 with sipes for the reasons thoroughly expressed in the answer.

In summary, it is our ultimate determination that the Examiner has established a prima facie case of obviousness which the Appellant has not successfully rebutted with argument and/or evidence of nonobviousness. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Therefore, we hereby sustain the Examiner's § 103 rejection of all appealed claims as being unpatentable over EP '332 in view of EP '718 and JP '025 and optionally either EP '685 or JP '215.

The decision of the Examiner is affirmed.

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

AFFIRMED

BRADLEY R. GARRIS Administrative Patent Judge	)	
THOMAS A. WALTZ Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JAMES T. MOORE Administrative Patent Judge	)	

BRG/jrg

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