

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal No. 2002-1784
Application No. 09/583,333

ON BRIEF

Before FLEMING, DIXON, and LEVY, Administrative Patent Judges.
LEVY, 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 1-43, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to a remote start system for a vehicle having a data communications bus. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced as follows:

1. A remote start control system for a vehicle comprising a data communications bus, the remote start control system comprising:

at least one vehicle device associate with starting an engine of the vehicle;

a remote start transmitter;

a receiver at the vehicle for receiving signals from said remote start transmitter; and

a vehicle remote start controller connected to the data communications bus for communicating with said at least one vehicle device associated with starting the engine of the vehicle, said vehicle remote start controller also connected to said receiver and being responsive to signals from said remote start transmitter.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

| | | |
|--------------------|-----------|--|
| Drew | 5,612,578 | Mar. 18, 1997 (filed Oct. 31, 1993) |
| Dery et al. (Dery) | 5,673,017 | Sep. 30, 1997 (eff. filed Sep. 3, 1993) |
| Di Croce | 5,838,255 | Nov. 17, 1998 (filed Apr. 19, 1996) |

Claims 1-3, 7, 13, 19, 25-27, 29, 35-37, and 41 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dery.

Claims 4-6, 8, 14-18, 20, 28, 30, 38-40 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dery in view of Drew.

Claims 9-12, 21-24, 31-34, and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dery in view of Drew, and further in view of Di Croce.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 11, mailed March 15, 2002) and the final rejection (Paper No. 7, mailed July 3, 2001) for the examiner's complete reasoning in support of the rejections, and to appellant's brief (Paper No. 10, filed January 14, 2002) for appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a).

OPINION

In reaching our decision in this appeal, 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, appellant's 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.

Upon consideration of the record before us, we affirm-in-part.

We observe at the outset that appellant elects (brief, page 5) that

Group 1 Claims 1-3, 7, 13, 19, 25-27, 29, 35-37
and 41 stand or fall together;
Group 2 Claims 4-6, 8, 14-18, 20, 28, 30, 38-
40
and 42 stand or fall together; and
Group 3 Claims 9-12, 21-24, 31-34 and 43 stand or
fall together.

Accordingly, we select claims 1, 4, and 9 as representative of the three groups set forth by appellant.

We begin with the rejection of claims 1-3, 7, 13, 19, 25-27, 29, 35-37, and 41 under 35 U.S.C. § 102(e) as being anticipated by Drey. To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either

explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Appellant asserts (brief, page 7) that although Dery uses the term "bus", the patent fails to teach or suggest a data communications bus as in the claimed invention. It is argued (id.) that Dery discloses a conventional wiring arrangement to actuate the controlled devices shown in figure 2, and that in Dery, the remote starter interfaces with the controlled devices through conventional vehicle wiring and not through a data communications bus as claimed.

The examiner's position (final rejection, page 2) is that bus 24 of Dery is a data communications bus because (final rejection, page 8) it interfaces between the microprocessor unit and various vehicle components to carry out various controls. The examiner concludes (id.) that the bus is inherently a data communications bus for communicating with various components of the vehicle.

We find that the issue before us with respect to the claims rejected under 35 U.S.C. § 102(e) is whether bus 24 of Dery is a data communications bus. As stated by the court in In re Hiniker Co., 150 F.3d 1362, 1369, 47 USPQ2d 1523, 1529 (Fed. Cir. 1998) "[t]he name of the game is the claim." Claims will be given

their broadest reasonable interpretation consistent with the specification, and limitations appearing in the specification are not to be read into the claims. In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985).

Claim 1 recites, inter alia, "[a] remote start control system for a vehicle comprising a data communications bus . . . a vehicle remote start controller connected to the data communications bus" From the language of the claim, we find that the claim, as broadly drafted, reads on a data communication bus that is part of the remote start control system. Dery discloses (col. 6, lines 26-31) that the microprocessor unit 20 generates control signals on a bus 24 that leads to the various components of the vehicle that are controlled, and that the bus 24 interfaces with the vehicle wiring to carry out the desired functions. From the language that the bus interfaces with the vehicle wiring, we find that the bus is separate from the vehicle wiring. In addition, we take notice¹ that a bus is a communications link that uses one set of wires to connect multiple subsystems. Because the bus is shown to connect to the controlled components over individual lines, we

¹ Computer Organization & Design, by David A. Patterson et al, © 1994 Morgan Kaufman Publishers, Inc. A copy of the pertinent pages is attached to the Decision.

find that bus 24 is made up of a plurality of serial busses, each connecting to a controlled device. Dery further discloses (col. 8, lines 4-10) that when a match is found between function components in the list of function components that could be generated and the function components in the digital signal received from the transmitter, the microprocessor generates a unique command signal that either opens or closes a circuit in the vehicle wiring in order to bring the selected component into the desired operative state. In addition, Dery discloses (col. 6, lines 27-29) that the microprocessor generates control signals on bus 24 to the components that are controlled.

From the disclosure of Dery, we find that the command or control signals will include control data, in order to operate the controlled device. We are not persuaded by appellant's assertion (brief, page 9) that in Dery, "there is simply no address information that needs to be sent over the conventional point-to-point wiring circuits 31 of the so-called 'bus' 24." From our review of Dery, we disagree, and find that address information needs to be included in order for the information to be sent to the correct controlled device. Otherwise, a different item (see the list of controlled devices in figure 2) could be operated instead of the device intended. Thus, we find that Dery

includes a data communication bus 24 that communicates data from the microprocessor 20 to the controlled devices by interfacing with the vehicle wiring.

From all of the above, we find that the examiner has established a prima facie case of anticipation of claim 1, that has not been successfully rebutted by appellant. Accordingly, the rejection of claim under 35 U.S.C. § 102(e) is affirmed. As claims 2, 3, 7, 13, 19, 25-27, 29, 35-37, and 41 fall with claim 1 (brief, page 5) the rejection of claims 2, 3, 7, 13, 19, 25-27, 29, 35-37, and 41 is affirmed.

We turn next to the rejection of claims 4-6, 8, 14-18, 20, 28, 30, 38-40, and 42 under 35 U.S.C. § 103(a) as unpatentable over Dery in view of Drew. In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some

teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

We turn to claim 4, which is representative of the group. Appellant asserts (brief, page 10) that Dery and Drew fail to teach or suggest a "vehicle remote start controller connected to a data communications bus." At the outset, we make reference to our findings, supra, with respect to Dery, and note that

microprocessor 20 connects to the controlled device for turning on the motor of a vehicle, via data communication bus 24, which interfaces with the vehicle wiring. In addition, claim 4 requires that at least one vehicle device associated with starting the engine comprises at least one sensor. Dery (col. 7, lines 10-14) discloses that the controller monitors the location of the state of the shift lever switch 32, in order to prevent cranking of the engine when the vehicle is in other than the park or neutral positions. This is achieved by sensing the impedance between the conductor 30 at a point between the ignition switch and the shift lever switch to ground. From the disclosure of sensing the impedance, we find that Dery implies, but does not expressly disclose the use of a sensor.

Turning to Drew, we find that Drew discloses transmission sensor 54 which prevents the vehicle from being remotely started when the transmission is not in park (col.6, lines 20-27). From the teachings of Dery and Drew, we find that an artisan would have been motivated to use a sensor in Dery for determining the state of the transmission lever, in order to ensure that the vehicle is not inadvertently turned on when the vehicle is not in the park position.

From all of the above, we find that the combined teachings of Dery and Drew suggest the limitations claim 4. As claims 6, 8, 14-18, 20, 28, 30, 38-40, and 42 fall with claim 4 (brief, page 5), the rejection of claims 6, 8, 14-18, 20, 28, 30, 38-40, and 42 is affirmed. Accordingly, the rejection of claims 4-6, 8, 14-18, 20, 28, 30, 38-40, and 42 under 35 U.S.C. § 103(a) as affirmed.

We turn next to the rejection of claims 9-12, 21-24, 31-34, and 43 under 35 U.S.C. § 103(a) as unpatentable over Dery in view of Drew and further in view of Di Croce. The examiner's position (final rejection, page 5) is that neither Dery nor Drew disclose a remote start controller comprising a multi-vehicle compatible remote start controller. To overcome this deficiency in Dery and Drew, the examiner turns to Di Croce for a teaching of a programmable receiver 22. The examiner takes the position (id.) that:

[t]he receiver (22) is a multi-vehicle compatible receiver which is programmed by a programmer to acknowledge or recognized [sic] the program code for controlling various function within the vehicle including a remote vehicle starter (col. 5, lines 10-40). Thus, it would have been obvious and well known in the art that a remote controller of the vehicle is multi-vehicle compatible and programmable via the transmitter.

From our review of Di Croce, we find that remote module 20 is programmable, but find no teaching of the receiver 22 being multi-vehicle compatible. We agree with appellant (brief, pages 13 and 14) that Di Croce fails to disclose that the remote module 20 is multi-vehicle compatible. Accordingly, we find that the examiner has failed to establish a prima facie case of obviousness of claims 9-12, 21-24, 31-34, and 43. The rejection of claims 9-12, 21-24, 31-34, and 43 under 35 U.S.C. § 103(a) is therefore reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-3, 7, 13, 19, 25-27, 29, 35-37 and 41 under 35 U.S.C. § 102(e) is affirmed. The decision of the examiner to reject claims 4-6, 8, 14-18, 20, 28, 30, 38-40, and 42 under 35 U.S.C. § 103(a) is affirmed. The decision of the examiner to reject claims 9-12, 21-24, 31-34, and 43 under 35 U.S.C. § 103(a) is reversed.

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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| MICHAEL R. FLEMING |) | |
| Administrative Patent Judge |) | |
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| |) | BOARD OF PATENT |
| JOSEPH L. DIXON |) | APPEALS |
| Administrative Patent Judge |) | AND |
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| STUART S. LEVY |) | |
| Administrative Patent Judge |) | |

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ALLEN, DYER, DOPPELT, MILBRATH
& GILCHRIST, P.A.
1401 CITRUS CENTER
225 SOUTH ORANGE AVENUE
ORLANDO, FLORIDA 32802-3791