

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte Kevin A. O'Dea

Appeal No. 2004-2103
Application No. 10/026,033

ON BRIEF

Before STAAB, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 2 and 6. Claims 1, 3 to 5 and 7 are pending but not the subject of this appeal. No claim has been canceled.

We AFFIRM.

BACKGROUND

The appellant's invention relates to a system and method for proportioning braking between front and rear wheels (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

Claims 2 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,027,182¹ to Nakanishi et al. (Nakanishi).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the answer (Paper No. 11, mailed April 15, 2004) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 10, filed February 17, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied patent to Nakanishi, and to the

¹ Issued February 22, 2000.

respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claims 2 and 6 read as follows:

2. The brake circuit of claim 1 wherein the apply valve is a linear solenoid valve.
6. The method of claim 4 wherein the apply valve is a linear solenoid valve.

In the rejection under appeal, the examiner determined that the claimed linear solenoid valve was readable on holding valve 36 of Nakanishi. Nakanishi teaches (column 9, lines 50-53) that the holding valve 36 is a two-position solenoid valve which is normally open and is closed when a drive signal is supplied by an electronic control unit 10.

The appellant argues that holding valve 36 of Nakanishi is a two-position valve not a "linear" valve as claimed. The appellant asserts that "linear" as used in claims 2 and 6 means that the valve has a variety of positions between fully closed and fully open.

The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983).

In this case, the appellant has provided no evidence that "linear" as used in claims 2 and 6 would be understood by one of ordinary skill in the art to mean that the valve has a variety of positions between fully closed and fully open. Attorney argument in a brief cannot take the place of evidence. In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974). As such, we find ourselves in basic agreement with the position of the examiner as set forth in the answer (pp. 4-5).

The specification does not provide any definition of "linear" nor does it otherwise provide any enlightenment as to the meaning of "linear." Figure 1 does not depict the linear solenoid apply valve 60 as having a variable orifice. Thus, we believe that the broadest reasonable meaning of "linear" as used in claims 2 and 6 as it would be understood by one of ordinary skill in the art is that the valve moves in a straight line. Since the holding valve 36 of Nakanishi is a two-position valve that moves in a straight line, the claimed linear solenoid valve is readable thereon.

For the reasons set forth above, the decision of the examiner to reject claim claims 2 and 6 under 35 U.S.C. § 102(b) is affirmed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 2 and 6 under 35 U.S.C. § 102(b) 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

LAWRENCE J. STAAB
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

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