UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte KENNETH E. FLICK

Appeal No. 2005-2762
Application No. 09/859,973

ON BRIEF

Before FRANKFORT, NASE and BAHR, Administrative Patent Judges.

BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's rejection of claims 1-27, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a tracking and alerting system for a vehicle. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The Rejection

Claims 1-27 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Gioia[1].

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the rejection (mailed January 28, 2003), answer (mailed June 19, 2003) and supplemental answer (mailed March 23, 2005) for the examiner's complete reasoning in support of the rejection and to the supplemental brief (filed April 30, 2003), first reply brief (filed August 22, 2003) and second reply brief (filed May 26, 2005) 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 Gioia patent, and to the

[1] U.S. Pat. No. 6,067,007, issued May 23, 2000.

respective positions articulated by the appellant and the examiner. For the reasons which follow, we cannot sustain the examiner's rejection.

This application was remanded to the examiner by a panel of Administrative Patent Judges Irwin Charles Cohen, Lawrence J. Staab and Jennifer D. Bahr in a decision mailed November 10, 2004 to obtain the examiner's finding "as to how the noted feature of a controller selectively operating an engine starter interrupt device in each of claims 1, 12, and 20 reads on the Gioia teaching" (remand, page 2). Judges Cohen and Staab have subsequently retired. Accordingly, with further explanation from the examiner in the supplemental answer and response by the appellant in the second reply brief, this appeal is now before Judges Frankfort, Nase and Bahr.

Each of appellant's independent claims 1, 12 and 20 calls for a controller switching between an armed mode and a disarmed mode based upon operation of the engine starter interrupt device and said controller also selectively operating the engine starter interrupt device. According to the examiner (supplemental answer, page 3), the control unit 22 of Gioia responds to the claimed controller and the passive operator identification device 24 of Gioia responds to the claimed engine starter interrupt device. The examiner's position is as follows:

> When the key 30 is inserted to the lock switch 34, the transponder 32 is energized to transmit the security code associated with the key 30 to the theft control unit 22. If the transmitted security code is not equal to the security code stored in the memory 29 of the control unit 22, the vehicle is under abnormal condition, and then an alarm condition is indicated; the security system 12 disables the engine 42. In a condition that the transmitted security code is matched

> with the security code stored in the memory 29 of the control unit 22, the authorized user is operating the vehicle, none [*sic*] alarm condition is indicated, then the controller 22 selectively operates the ignition switch 34 with the passive operator identification device 24 which reads "selectively operating the engine starter interrupt device" as claimed [supplemental answer, page 3].

The flaw in the examiner's position, as aptly pointed out by the appellant on page 3 of the second reply brief, is that "[n]owhere does Gioia teach that the theft control unit 22 selectively operates any of the components of the passive operator identification device 24" (which includes lock switch 34, key 30, and key transponder 32). As explained in columns 3 and 4 of Gioia, when the key 30, which contains a transponder 32, is coupled to the lock switch 34 and the lock switch is in the "on" position, the transponder 32 is energized to transmit the security code associated with the key to the theft control unit 22. The theft control unit 22 then compares the security code received from the transponder to the security code stored in memory 29 of the theft control unit 22. If the received security code is not equal to the security code stored in memory 29, an unauthorized operator identification flag is set. The theft control unit 22 communicates with the electronic engine controller 36 which can disable the engine 42.

It is clear from the above disclosure that the passive operator identification device 24 controls the theft control unit, by transmitting the security code stored in the transponder of the key. Contrary to the examiner's contention, however, Gioia provides absolutely no disclosure that the theft control unit 22 provides any feedback to the lock switch 34, or to any other component of the passive operator identification device 24, or

otherwise controls the passive operator identification device 24 or any component thereof. It follows that the examiner's position that the theft control unit 22 and passive operator identification device 24 respond, respectively, to the claimed controller and engine starter interrupt device in appellant's claims 1, 12 and 20 is not well taken. Accordingly, the examiner's rejection of independent claims 1, 12 and 20, and claims 2-11, 13-19 and 21-27 depending therefrom, cannot be sustained.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-27 under 35 U.S.C. § 102(a) is reversed.

REVERSED

CHARLES E. FRANKFORT Administrative Patent Judge	)
JEFFREY V. NASE Administrative Patent Judge	) BOARD OF PATENT) APPEALS) AND) INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)

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