

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARKUS WIMMER, SERGE VOS and MARCUS JAUTZE

Appeal No. 2006 - 1920
Application No. 10/846,504

HEARD: JUNE 11, 2006

Before FRANKFORT, BAHR and FETTING, **Administrative Patent Judges**.

FETTING, **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 claims¹ 1, 2, 9, 19, 20, 33 and 34.

We REVERSE.

¹ Claims 1 through 35 are pending in the application. Claims 30, 31, 32 and 35 are allowed, and claims 3 through 8, 10 through 18 and 21 through 29 are objected to, but not rejected.

BACKGROUND

The appellants' invention relates to a method for detecting shock absorber damage. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

Claim 1. A method for detecting shock absorber damage, comprising:

detecting rotational wheel speed signals generated by a rotational wheel speed sensor which measures rotational wheel speed; and

determining a condition of said shock absorber by analyzing said rotational wheel speed signals.

PRIOR ART

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Magiawala et al. (Magiawala) 6,278,361 Aug. 21, 2001
(filed Dec. 3, 1999)

REJECTIONS

Claims 1, 2, 9, 19, 20, 33 and 34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Magiawala.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejection, we make reference to the examiner's

answer (mailed January 11, 2006) for the reasoning in support of the rejection, and to appellants' brief (filed October 13, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art reference, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Claims 1, 2, 9, 19, 20, 33 and 34 rejected under 35 U.S.C. § 102(e) as being anticipated by Magiawala.

We note that the appellants argue these claims as a group. Accordingly, we select claim 1 as representative of the group. In particular, the appellants urge that

The appellants argue that Magiawala measures and uses acceleration, not speed. More particularly, the appellants urge that

The Magiawala et al reference does not detect or utilize any measurement information regarding rotational wheel speed, for any purpose at all. Rather, as noted at Column 5, lines 32-35, "The present invention is based on Applicants' finding that the radial and/or lateral acceleration of the wheel or tire can be used to provide information regarding tread wear, shock absorber performance, balance condition and/or wheel rotation speed." [See Brief at p. 7].

The examiner responds that acceleration is a derivative of speed and therefore measuring acceleration inherently measures speed. More specifically,

The examiner further notes that the laws of physics provide a relationship to convert acceleration of a wheel to the rotation velocity or wheel speed of the wheel. [See Answer at p. 8].

While the examiner is correct that acceleration is derivable from velocity, Magiawala does not indicate whether the measurement of acceleration requires, and therefore inherently incorporates, the measurement of velocity, and furthermore, all of the independent claims require that it is the velocity signal, and not an acceleration signal, that is used in determining the condition of the shock absorber. Therefore, we find the examiner's arguments to be unpersuasive.

Accordingly, we **do not sustain** the examiner's rejection of claims 1, 2, 9, 19, 20, 33 and 34 as rejected under 35 U.S.C. § 102(e) as being anticipated by Magiawala.

CONCLUSION

To summarize,

- The rejection of claims 1, 2, 9, 19, 20, 33 and 34 under 35 U.S.C. § 102(e) as being anticipated by Magiawala, is **not sustained**.

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

REVERSED

AWF/ki

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