The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT ANTHONY SAYMAN, JAMES HENRY DeVORE, ,
RONALD PETER MUETZEL, MUNEER ABUSAMRA and RUPERT KRAMER

Appeal No. 2006-2414
Application No.10/668,514

ON BRIEF

Before THOMAS, RUGGIERO, and SAADAT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION

Appellants have appealed to Board from the examiner's final rejection of claims 1 through 18.

Representative independent claim 1 is reproduced below:

1. A vehicle driveline comprising:

at least one of clutch and transmission;

a sensor for determining a undesired condition at said at least one of said clutch and said transmission, said sensor communicating with a control, said control communicating with a primary warning device to pride a warning to an operator of a vehicle of said undesired condition; and

said control being operable to monitor the operation of said primary warning device and actuate a secondary warning device should an indication be received that said primary warning device has failed.

The following references are relied on by the examiner:

Ivey et al. (Ivey)	4,131,036	Dec. 26, 1978
Lang et al. (Lang)	4,488,140	Dec. 11, 1984
Sterler et al. (Sterler)	4,788,446	Nov. 29, 1988
Hallenstvedt et al. (Hallenstvedt)	5,992,599	Nov. 30, 1999
Steinel et al. (Steinel)	6,033,342	Mar. 7, 2000
Gould et al. (Gould)	6,065,138	May 16, 2000
Sasaki et al. (Sasaki)	6,125,316	Sep. 26, 2000

Claims 1 through 18 stand rejected under 35 U.S.C. § 103. As to claims 1 through 4, 9, 10 and 15, the examiner relies upon Sasaki in view of Sterler, further in view of Hallenstvedt as to claims 5 through 7, and still further in view of Ivey as to claim 8. Claim 10 stands rejected under 35 U.S.C. § 103 as being obvious over Sasaki in view of Sterler, further in view of Steinel. The examiner has rejected

claims 11 through 13, 16 and 17 as being obvious over Sasaki in view of Gould, with the addition of Lang as to claims 14 and 18.

Rather than repeat the positions of the appellants and the examiner, reference is made to the brief and reply brief for appellants' positions, and to the answer for the examiner's positions.

OPINION

For the reasons detailed below we sustain the rejections of claims 1 through 10 and 15, but we reverse the rejections of claims 11 through 14 and 16 through 18.

At the outset, we note that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of a primary reference. It is also not that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. In re Keller, 642 F.2d 414, 425, 208 USPQ 871, 881 (CCPA 1981); In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991).

We turn first to the rejection of claims 1 through 4, 9, 10 and 15 as being obvious over Sasaki in view Sterler. We agree with the examiner's observation that Sasaki does not specifically disclose the features of the last clause of independent claim 1 on appeal relating to the feature of the noted control circuit being operable to monitor the operation of a primary warning device and to actuate a secondary warning device should an indication be received that the primary warning device has failed.

Sasaki teaches and shows in figure 1 a sensor/monitoring-based system for an automatic transmission that is controlled by a microprocessor-based control unit U which, under certain circumstances, indicates a failure of an automatic transmission based upon a wrong gear and transmission slippage. Among the teachings in this reference relied upon by the examiner at columns 3 and 4, it is noted that the top of column 4 indicates that the two warning devices 21 and 22 both operate such as to indicate through warning devices 21 and 22 a warning to the user of the vehicle in the form of a buzzer and a lamp. It appears that both of these warning elements are actuated at the same time for both warning devices 21 and 22.

Although we agree with appellants' general urging in the brief as to this rejection that the examiner's reasons for combinability as expressed at the top of page 5 of the answer are weakly based, we agree with the examiner's responsive argument at page 13 of the answer that, based upon the additional teachings in Sterler, the artisan would have found it obvious to have utilized the teachings of Sterler to provide backup warning indications for any and all types of warning indicators including those in Sasaki. We are convinced of the propriety of the obviousness of this subject matter of independent claim 1 on appeal and its method version in independent claim 15 based upon the teachings in Sterler.

The significant point noted by the examiner's reference to the middle portion of column 1 is that, as set forth at lines 33 through 35, the improved circuit "provides a secondary indication of module failure when the primary indicator is inoperative." This teaching is carried through as to the operability of the circuit of figure 2 as best expressed at column 2, lines 49 through 54, which repeat the conditional/if nature of the additional reliance upon a secondary indicator of

inoperability to the user. Because the criticality of redundancy is taught in this reference for the airbag-system taught in Sterler, the teaching value of this reference would have been obvious to have been employed by the artisan in the system of Sasaki as urged by the examiner for additional safety reasons of the operator of the vehicle of Sasaki as well as to minimize damage to the entire drive train in the right of figure 1 of Sasaki including the engine and transmission. Moreover, column 3, lines 57 through 59 of Sterler indicate that lamp 30 in the various figures may comprise a safety lamp that switches to an alternate bulb or unit in the event that the lamp itself fails.

We are not persuaded of the patentability of the claims set forth in this rejection based upon the reasoning provided at pages 4 and 5 of the principal brief. The apparent focus of the arguments is that references to Sterler and Sasaki don't use a common single power circuit or a common power arrangement. This line of reasoning does not have any pertinence to the subject matter of independent claims 1 and 15 within this rejection. Moreover, the appellants appear to be arguing a structural combinability line of reasoning which is unpersuasive of patentability.

In the corresponding arguments at page 1 of the reply brief as to this rejection, appellants appear to be arguing a structural combinability line of reasoning again. The nature of the teachings and suggestions of Sasaki and Sterler clearly would have suggested to the artisan the combinability of their teachings to provide effectively a redundant alarm capability in Sasaki based upon the teachings and showings in Sterler.

When we turn to the next rejection of dependent claims 5 through 7 further based upon the teachings of Hallenstvedt, we note that appellants' arguments at page 5 of the brief do not argue the actual features of claim 5. Hallenstvedt is a control system for an engine transmission like that of Sasaki and, as relied upon by the examiner, the teachings at column 2 of this reference are persuasive of combinability to enhance the over all system arrangement of Sasaki and Sterler. From a safety feature perspective, we find that it would have been obvious to the artisan to have activated an engine cut off device as taught at the bottom of column 2 of Hallenstvedt as an additional safety feature for the operator of the vehicle as

well as to minimize the damage to the transmission/engine of the vehicle. The teachings suggest that this engine cut off is in response to a fault or warning operation.

We therefore find unpersuasive appellants' argument at page 5 of the principal brief that the types of faults that are detected in Sasaki are quite distinct for those if Hallenstvedt. The issue is more focused upon the nature of the type of responses to existing faults rather then upon the nature of the types of faults themselves. The other remarks by appellants at page 5 of the principal brief are based upon speculation and not upon an artisan's perspective of the combined teachings and suggestions of the references relied upon to reject claim 5.

Next, we turn to the rejection of dependent claim 8, which further adds the teachings of Ivey. As noted earlier, appellants' remarks at pages 5 and 6 of the principal brief do not directly argue the features of claim 8, which recites the use of a braking system to be actuated to provide a form of a secondary warning device. Since Ivey operates in the same context, as noted earlier with respect to the other applied prior art in an automatic transmission environment, therefore, the examiner's reliance upon the teachings at column 8 is persuasive of unpatentability.

The existence of the so-called plus signal at column 8 of Ivey is taught to indicate that when the torque is higher than a given amount, this condition causes a controller to operate to engage a brake in response to this plus error signal. Thus, the operation of the braking action occurs in the context of what amounts to an error signal, thus further enhancing the safety value of protection of the transmission/engine and overall drive train to the extent noted earlier.

We disagree with appellants' urgings at pages 5 and 6 of the reply brief that the nature of the operation of Ivey does not suggest actuating a brake to provide a warning. The examiner's reliance upon the teachings at column 8 in our view clearly would have suggested the opposite to the artisan.

Other than appellants' response as to claims 1 and 15, claim 5 and claim 8, no arguments are presented to us with respect to any other claim on appeal among claims 1 through 10 and 15 rejected in this first series of rejections. In fact, there are no arguments at all presented in the separately stated rejection of claim 10 in view of Sasaki and Sterler, further in view of Steinel.

On the other hand, we agree with appellants' general observations in the brief and reply brief as to the nonobviousness of the subject matter of claims 11 through 14 and 16 through 18.

Although not explicitly stated at page 6 of the principal brief on appeal as to the rejection of independent claims 11 and 16 on appeal, appellants' more focused argument at pages 2 and 3 of the reply brief that Gould is not analogous art is well-taken.

The test to determine whether the prior art is analogous is: "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." In re Clay, 966 F.2d 656, 658-59, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992)(citing In re Deminiski, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); In re Wood, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979). Note also the common sense analysis in In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992) as to what fields of endeavor an artisan would reasonably be expected to look for a solution to the problems facing the appellants.

Gould relates to a monitoring system for a user or user activity rate monitor in a microprocessor-based system per se and it does not have any disclosed teachings or suggestions to any type of vehicle monitoring at all. Therefore, Gould is not in the same field of invention or endeavor as the disclosed and claimed invention and does not appear to us to be reasonably pertinent to the particular problem addressed by the inventor herein. The examiner has not filed a supplemental answer to address the arguments of appellants relating to the nonanalogous art of Gould.

Notwithstanding these considerations with respect to the rejections of claims 11 through 14 and 16 through 18, we note in passing that the artisan may well have considered the teaching value of Sasaki and Sterler, further in view of Hallenstvedt, as a broad change of warning if the clutch slippage continues over time since Sasaki operates in the environment of a torque converter 2 and clutch 4 and slippages related thereto. Stopping the vehicle as taught by Hallenstvedt would have been an enhanced warning capability over the buzzer and lamp arrangement taught by Sasaki and Sterler.

In view of the foregoing, we have affirmed the rejections of claims 1 through 10 and 15 under 35 U.S.C. § 103 and have reversed the outstanding rejections of claims 11 through 14 and 16 through 18 under 35 U.S.C. § 103. Therefore, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR §1.136(a). See 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JAMES D. THOMAS Administrative Patent Judge	)))))) BOARD OF PATENT
JOSEPH F. RUGGIERO Administrative Patent Judge	) APPEALS) AND) INTERFERENCES
MAHSHID D. SAADAT Administrative Patent Judge	))))

JDT/pgc

Carlson, Gaskey & Olds P.C.
400 West Maple Road
Suite 350
Birmingham, MI 48009