

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

---

Appeal No. 2006-2480  
Application No. 10/384,862

---

ON BRIEF

---

Before JERRY SMITH, BARRY, and BLANKENSHIP, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests that we reconsider our decision of Sept. 27, 2006, in which we sustained the rejection of claims 1 and 3-10 as unpatentable under 35 U.S.C. § 103.

We have reconsidered our decision of Sept. 27, 2006, in light of appellant's comments in the request for rehearing, and we find no errors therein. We, therefore, decline to change our prior decision for the following reasons.

Appellant first argues that Bevan does not teach or suggest the limitation calling for “the magnitude of the warning signal varies depending upon the variable that represents the degree of driver inattentiveness” as claimed. Appellant emphasizes that the magnitude of the warning signal is varied only if there is no change in the degree of driver inattentiveness (*i.e.*, the driver’s alertness does not change after the first stage alert is issued) [request, page 3].

But as we indicated in our decision, the duration of inattentiveness corresponds to the degree of inattentiveness [decision, page 7]. That is, drivers that are inattentive longer (*e.g.*, inattentive drivers that do not respond to the first stage alert) are more inattentive than drivers that respond more promptly (*e.g.*, inattentive drivers that respond to the first stage alert).

Turning to the prior art, Bevan changes the magnitude of the warning signal (*i.e.*, activates the more pronounced second stage alert) if the driver’s inattentiveness continues after the first stage alert. Thus, the warning signal’s magnitude is raised (*i.e.*, from the lower-magnitude first stage alert to the higher-magnitude second stage alert) for drivers that are inattentive longer than drivers that respond to the first stage alert [Bevan, col. 7, line 43 – col. 8, line 4].

Appellant argues that our interpretation is flawed since Bevan teaches raising the magnitude of the alarm when a driver’s alertness has not changed after the first stage alarm [request, page 3]. But an unchanging or constant inattentiveness for a longer period of time, in our view, reasonably corresponds to a higher degree of inattentiveness. As we noted in our decision, drivers that

are inattentive longer (e.g., inattentive drivers that do not respond to the first stage alert) are more inattentive than drivers that respond more promptly (e.g., inattentive drivers that respond to the first stage alert) [decision, pages 7 and 8]. We find no error in this interpretation.

Appellant also argues that the duration of inattentiveness is not a variable that is derived from at least one operating variable that in turn influences the magnitude of the warning signal [request, pages 3 and 4]. We disagree. In our view, the duration of inattentiveness is a “variable” in the sense that its magnitude varies with respect to time. Furthermore, the inattentiveness duration variable is derived from multiple operating “variables,” including (1) elapsed time, and (2) other detected parameters that determine driver inattentiveness (e.g., eye blinking, driver movement, etc.). And as we noted previously, the inattentiveness duration variable represents a degree of driver inattentiveness. In short, given the scope and breadth of the claim language and the broadest reasonable interpretation of the term “variable,” we find no error in our conclusion that Bevan fully meets the independent claims. Although we sustained the examiner’s obviousness rejection based on an anticipatory reference, it is well settled that obviousness rejections can be based on references that happen to anticipate the claimed subject matter. In re Meyer, 599 F.2d 1026, 1031, 202 USPQ 175, 179 (CCPA 1979).

We have carefully considered the arguments raised by appellant in the request for rehearing, but none of these arguments are persuasive that the original decision was in error. We are still of the view that the invention set forth in claims 1 and 3-10 is not patentable over the applied prior art based on the record before us in the original appeal.

We have granted appellant's request to the extent that we have reconsidered our decision of Sept. 27, 2006, but we deny the request with respect to making any changes therein.

REHEARING DENIED

JERRY SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	
LANCE LEONARD BARRY	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

JS/jaj/rwk

Appeal No. 2006-2480  
Application No. 10/384,862

KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK NY 10004