

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 AKIRA TSUMIYAMA and NOBUKATSU HARA

Appeal 2007-0801
Application 10/654,357
Technology Center 3600

Decided: February 28, 2007

Before EDWARD C. KIMLIN, CATHERINE Q. TIMM, and
LINDA M. GAUDETTE, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 58-81. Claims 58 and 81 are illustrative:

58. A control lever comprising a proximal end and a distal end, the proximal end being configured for pivotal connection to a shaft, the control lever being operable in a shifting plane and a braking plane, the control lever having a pulling direction lying in the shifting plane, a releasing direction lying in the shifting plane, and a braking direction lying in the braking plane, wherein the shifting plane is substantially perpendicular to the braking plane, the control lever comprising:

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- a releasing surface;
- a pulling surface opposite the releasing surface;
- a braking surface adjacent the pulling surface and the releasing surface;
- the pulling surface having a pulling surface proximal portion adjacent the proximal end of the lever and a first distal projection adjacent the distal end of the lever, wherein the first distal projection projects away from the pulling surface proximal portion in a first direction away from the braking plane;
- the releasing surface having a releasing surface proximal portion adjacent the proximal end of the lever and a second distal projection adjacent the distal end of the lever, wherein the second distal projection projects away from the releasing surface proximal portion in a second direction away from the braking plane; and
- the braking surface having a braking surface proximal portion adjacent the proximal end of the lever and a third distal projection adjacent the distal end of the lever, wherein the third distal projection projects away from the braking surface proximal portion in a third direction away from the shifting plane.

81. A control lever as shown in Figures 12 and 13.
The Examiner relies upon the following reference in the rejection of
the appealed claims:

Negano US 5,400,675 Mar. 28, 1995

Appellants' claimed invention is directed to a control lever for a bicycle comprising a releasing surface having a "distal projection" (claim 58), a "bump" (claim 76), or a releasing surface "shaped to interfere with the movement of the rider's fingers along the respective surfaces in the lengthwise direction" (claim 71).

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Appealed claim 81 stands rejected under 35 U.S.C. § 112, 2nd ¶.
Claims 58-80 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Negano.

We consider first the Examiner’s rejection of claims 58-80 under § 102 over Negano. As stated at page 1 of Appellants’ Reply Brief, the “determinative issue” on appeal is whether the releasing surface of Negano’s control lever has the presently claimed “distal projection,” “bump,” or is “shaped to interfere with the movement of the rider’s fingers along the respective surfaces in the lengthwise direction.” The Examiner cites Figure 16 of Negano for depicting “the top surface, as indicated by 2, as being raised (or bumped out)” (Answer 6). However, we concur with Appellants that one of ordinary skill in the art would not reasonably find a fair description of a projection or bump on surface 2 of Negano’s control lever which interferes with movement of the rider’s finger along the surface. In our view, the ever so slight departure from a straight line does not constitute a fair description of the claimed projection or bump within the meaning of § 102. It is noteworthy that Negano does not disclose any projection or bump on surface 2, and it is well settled that a patent’s drawings should not be considered as being to scale. Accordingly, we cannot sustain the Examiner’s § 102 rejection.

We will sustain the Examiner’s § 112, 2nd ¶ rejection of claim 81 which simply recites “[a] control lever as shown in Figures 12 and 13.” The Examiner properly cites MPEP § 2173.05(s) and *Ex parte Fressola*,

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27 USPQ2d 1608, 1609 (Bd. Pat. App. & Int. 1993) as support for the conclusion that claim 81 fails to particularly point out and distinctly claim the invention. Appellants' conclusory remarks do not offer any explanation why the cited MPEP and prior Board decision are not applicable to claim 81 on appeal. As noted above, patent drawings are not considered to be to scale and, therefore, one of ordinary skill in the art could not readily ascertain the metes and bounds of the invention encompassed by claim 81.

In conclusion, based on the foregoing, we are constrained to reverse the Examiner's § 102 rejection, but we affirm the Examiner's rejection under § 112, 2nd ¶. Consequently, the Examiner's decision rejecting the appealed claims is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2006).

AFFIRMED-IN-PART

clj

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