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 WILLIAM PAUL SCHMIDT

Appeal No. 2007-1188
Application 10/621,131[1]

Decided: June 18, 2007

Before RICHARD E. SCHAFER, JAMESON LEE, and JAMES T. MOORE, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Statement of the Case

This is a Decision on Appeal by the Applicant under 35 U.S.C. § 134(a) from a rejection of claims 1-3, 6 and 7 of Application 10/621,131. We have jurisdiction under 35 U.S.C. § 6(b).

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[1] The real party in interest is Mirror Lite Company.

Reference Relied on by the Examiner

Foster	US 2,877,686	Mar. 17, 1959
Bateman	US 3,610,736	Oct. 5, 1971
Englander	US 6,636,822	Oct. 21, 2003

The Rejections on Appeal

The Examiner rejected claims 1-3, 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Englander and either Foster or Bateman.

B. Issue

Has the Applicant shown error in the rejection of claims 1-3, 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Englander and either Foster or Bateman?

C. Summary of the Decision

The Applicant has not shown error in the rejection of claims 1-3, 6 and 7 under 35 U.S.C. § 103(a) as unpatentable over Englander and either Foster or Bateman.

D Findings of Fact (Referenced as FF. ¶ No.)

1. The claimed invention is directed to a remote controlled crossover mirror assembly which is mounted on an exterior surface of a vehicle and which meets a particular forward, rightward, and leftward visual orientation in front of school buses as mandated by the Federal Motor Vehicle Safety Standard 111. (Preamble, Claim 1).

2. A “crossover mirror” refers to a mirror designed to reduce blind spots in front of a vehicle such as a bus and such mirrors are mounted on the front corner of the vehicle to provide visual access to the driver of the front area of the vehicle as well as the sides of the vehicle. (Specification, ¶ 11).

3. The Applicant does not purport to be the first to invent a crossover mirror assembly, and there are preexisting crossover mirror assemblies for school buses. (Specification, ¶ 11).

4. There are even preexisting government regulations, i.e., Federal Motor Vehicle Safety Standard 111, concerning the forward, leftward, and rightward view that a crossover mirror on a new school bus must provide, which is based on the eye ellipses of a 25th percentile hypothetical female driver. (Specification, ¶ 11).

5. According to the Applicant, while in actual use, prior art crossover mirrors must be manually adjusted without remote control, rightward or leftward, based on the size of the bus driver. (Specification, ¶ 11).

6. The Applicant's disclosure states that manual adjustment of crossover mirrors is a time consuming process that typically requires two people, one inside the bus and one adjusting the mirror, and that if the process is not performed properly, blind spots may occur in front of or alongside the vehicle. (Specification ¶ 12). We take the statement as representing that at the time of the Applicant's invention there was a known and preexisting problem, not yet solved, in that crossover mirrors had to be adjusted manually and the process was time consuming.[2]

7. Claim 1 is the only independent claim on appeal. It reads as follows:

> 1. A crossover mirror assembly for mounting on an exterior front surface of a vehicle, the vehicle having a cab region, the crossover mirror assembly meeting a particular forward, rightward

[2] The Applicant does not claim to be the first in recognizing either that prior art crossover mirrors had to be manually adjusted or that manual adjustment of crossover mirrors was time consuming.

> and leftward visual orientation in front of school buses as mandated by Federal Motor Vehicle Safety Standard 111 and comprising:
>
> an arcuate mirror having a reflective surface;
>
> a frame coupled to said arcuate mirror, said frame having a tubular region, said tubular region defining a center point;
>
> a mirror mounting support coupled within said tubular region and to the exterior front surface of the vehicle;
>
> an electronic actuator coupled to said arcuate mirror, said electronic actuator being actuated to swivel said arcuate mirror along an x-axis and about said center point; and
>
> an electronic controller electrically coupled to said electronic actuator and contained within the cab region, said electronic controller controlling the actuation of said electronic actuator to move said arcuate mirror clockwise or counterclockwise along a horizontal plane about said center point.

8. Englander discloses that school buses are required to include so-called cross-view mirrors which are typically highly convex mirrors that are mounted on the front fenders of the school buses, and that each such mirror is capable of providing views both alongside of the bus and over a portion of the front space as well. (Englander, col. 1, ll. 13-21).

9. Englander discloses that crossover mirrors must be certified to comply with strict regulatory requirements and that one such requirement comprises the Federal Motor Vehicle Safety Standard FMVSS 111 regulations. (Englander, col. 1, ll. 25-28).

10. Englander discloses a testing facility and a method for certifying whether vehicle mirrors comply with government regulations.

11. The Applicant does not dispute the Examiner's finding that the crossover mirror 22 shown in Englander's Figure 3 is an arcuate mirror.

12. Englander does not disclose any particular concern with whether a vehicle mirror assembly being tested is capable of being adjusted by remote control or with the design of the mirror's frame and support structure.

13. Englander does not disclose, for a crossover mirror assembly, a frame having a tubular region defining a center point, a mirror mounting support coupled within the tubular region, an electronic actuator, or an electronic controller.

14. The Examiner determined that Foster and Bateman each disclose a vehicular mirror frame having a tubular region defining a center point, and a mirror mounting support coupled within the tubular region. (Answer 5-6).

15. The Examiner determined that Foster and Bateman each disclose an electronic actuator and an electronic controller, specifically, as is required by Applicant's claim 1, albeit for a vehicle rearview mirror and not a crossover mirror. (Answer 3-4).

E. Principles of law

A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907, 225 USPQ 20, 25 (Fed. Cir.), *cert. denied*, 474 U.S. 843 (1985).

If a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007).

For an obviousness determination, any need or problem known in the field of endeavor at the time of the invention and addressed by the applicant can be a reason for combining prior art elements in the manner claimed. *KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396.

F. Analysis

The Applicant does not dispute that Foster and Bateman each disclose a mirror frame with a tubular region which defines a center point. The Applicant does not dispute that Foster and Bateman each disclose a mirror mounting support coupled within the tubular region. The Applicant correctly points out, however, that the mirror frame and mounting support disclosed by both Foster and Bateman are for a vehicle rearview mirror and not a crossover mirror which is attached to a front surface of the vehicle.

The Applicant does not dispute that Foster and Bateman each disclose an electronic actuator and an electronic controller precisely as recited in Applicant's claim 1, except that the actuator and controller of Foster and Bateman are for controlling a vehicle rearview mirror and not a crossover mirror.

The Applicant's argument in this Appeal is this -- that there is no motivation for one with ordinary skill in the art to apply the teachings of either Foster or Bateman with regard to the physical support structure and the electronic remote control of rearview mirrors to the crossover mirror assembly illustrated and discussed in Englander. The argument is not persuasive.

The Applicant asserts (Br. 7): "[T]here is no motivation to add an electronic control element to the software based mirror testing method taught in Englander." The Applicant also stated (Br. 6): "[T]here is no motivation to modify Englander to include an electronic actuator and electronic controller system, contrary to the

Examiner's position, because it serves no useful purpose in certifying regulatory compliance."

The Applicant's arguments are in error because the Applicant places the emphasis on the testing procedures of Englander and ignores the disclosure, as would be recognized by one with ordinary skill in the art, that school buses transport passengers using arcuate crossover mirrors. From that perspective, one with ordinary skill in the art would recognize that the crossover mirrors will benefit from remote control adjustment just the same as the rearview mirror assemblies do in Foster and Bateman.

The fact that Englander is not concerned with the support structure or movability of any mirror being tested does not take away from one's ability to appreciate that the crossover mirror has to be adjusted during actual use, just like the rearview mirrors of Foster and Bateman, especially where, as here, it has already been recognized in the art that crossover mirrors have to be manually adjusted and that the manual process is time consuming. (FF. 6).

The Applicant's approach in reading a prior art reference only for the invention it is attempting to protect is improper. A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp.*, 755 F.2d at 907, 225 USPQ at 25; *see also In re Bode*, 550 F.2d 656, 661, 193 USPQ 12, 17 (CCPA 1977). The Applicant improperly limits the problem to be considered to that addressed by Englander's invention, and fails to consider the acknowledged preexisting problem in this field, which would have been known to one with ordinary skill in the art, i.e., that crossover mirrors have to be manually adjusted and the manual adjustment process is time consuming. (FF. 6). As the Supreme Court has stated in *KSR International Co.*, 127 S. Ct. at 1742, 82

USPQ2d at 1397 (2007): "Under the correct [obviousness] analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the [applicant] can provide a reason for combining the elements in the manner claimed."

Applicant's argument is similarly misplaced with regard to the Examiner applying the mirror frame and support structure disclosed in Foster and Bateman to a crossover mirror. The Applicant argues that Englander is not concerned about the particular configuration or the support structure of the mirror being tested (Br. 6: 26-27), and thus any modification properly combinable "should be directed to the [testing] method, not to improvements to the mirror structure itself. (Br. 7: 21-23). The argument is erroneous.

The Applicant mistakenly limits the pertinence of a prior art reference to the particular invention and objectives disclosed in the reference. A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. It is true that Englander does not provide the details of the crossover mirror and its supporting structure. But one with ordinary skill in the art would have known that the mirror had to have a certain structure as well as a supporting structure that attaches the mirror to the vehicular surface, and would have known to consider other vehicle mirror frames and supporting structure as disclosed in Foster and Bateman for a rearview mirror.

The Applicant advances no argument that Foster and Bateman constitute nonanalogous art or that the frame and supporting structure disclosed in Foster and Bateman for rearview mirrors cannot or would not work for crossover mirrors. Note also that in *KSR International Co.*, 127 S. Ct. at 1742-43, 82 USPQ2d at 1397, with regard to motivation to combine teachings, the Supreme Court stated:

"Rigid preventative rules that deny factfinders recourse to common sense, however, are neither necessary under our case law nor consistent with it." A person of ordinary skill in the art is also a person of ordinary creativity, not an automaton. *Id*.

Finally, we observe that each of the elements of claim 1 are known elements being used for their established functions. The crossover mirror is used as a known crossover mirror for a school bus (Englander) meeting known safety standards. The crossover mirror is mounted in accordance with known tubular mounting methods (Bateman). A mirror remote control is used as is known to remotely adjust a mirror (Foster). "The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR*, 127 S. Ct. at 1739, 82 USPQ2d at 1395. The Examiner has established obviousness. The burden now rests with the Applicant to establish why the results were not predictable or were beyond the skill of the person of ordinary skill in the art. The Applicant has not come forth with any persuasive evidence in support of its position.

Although the Appeal Brief contains a separate section for each of dependent claims 2, 3, 6 and 7, each such section merely recites the additional claim feature of the dependent claim and refers by reference to the same argument and evidence as presented for independent claim 1. No separate substantive argument has been presented for any dependent claim. Accordingly, dependent claims 2, 3, 6 and 7 stand and fall with independent claim 1.

Conclusion

The rejection of claims 1-3, 6 and 7 under 35 U.S.C. § 103 as unpatentable over Englander and either Foster or Bateman is affirmed.

AFFIRMED

mtv

By First Class Mail

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