

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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* GERALD L. SIELAGOSKI, MARK PETER FRIEDRICH, and  
SAM G. RAHAIM

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Appeal 2007-1288  
Application 10/195,744  
Technology Center 2100

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Decided: June 12, 2007

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Before JAMES D. THOMAS, JOSEPH F. RUGGIERO, and  
ALLEN R. MACDONALD, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1, 9, 17, and 18. We have jurisdiction under 35 U.S.C. § 6(b). In a facsimile communication received on April 18, 2007, Appellants waived the confirmation of attendance at the Oral Hearing set for May 23, 2007.

Appellants' claimed invention relates to an adaptive speed control system and method for controlling vehicle deceleration in which a maximum allowed vehicle deceleration is set based on a determination of vehicle speed.

We affirm.

Claim 1 is illustrative of the invention and it reads as follows:

1. In an adaptive speed control system for a vehicle, a method for controlling vehicle deceleration, the method comprising:

determining a speed of the vehicle; and

setting a maximum allowed vehicle deceleration based on the vehicle speed determined.

The Examiner relies on the following prior art references to show unpatentability:

Grosseau	US 3,953,691	Apr. 27, 1976
Minowa	US 2001/0008989 A1	Jul. 19, 2001
	(effectively filed May 28, 1996)	

Claims 1 and 9 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Minowa. Claims 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Minowa in view of Grosseau.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details.

## ISSUES

(i) Under 35 U.S.C. § 102(e), does Minowa have a disclosure which anticipates the invention set forth in claims 1 and 9?

(ii) Under 35 U.S.C § 103(a), with respect to appealed claims 17 and 18, has the Examiner established a prima facie case of obviousness based on the combination of Minowa and Grosseau?

## PRINCIPLES OF LAW

### 1. ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

### 1. OBVIOUSNESS

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Furthermore, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)).

## ANALYSIS

### 35 U.S.C. § 102(e) REJECTION

With respect to the 35 U.S.C. § 102(e) rejection of independent claims 1 and 9 based on the teachings of Minowa, the Examiner indicates (Answer 3) how the various limitations are read on the disclosure of Minowa. In particular, the Examiner directs attention to the disclosure at page 7, second column, lines 1-7 of Minowa.

In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of anticipation. The burden is, therefore, upon Appellants to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)].

Appellants' arguments in response assert that the Examiner has not shown how each of the claimed features is present in the disclosure of Minowa so as to establish a prima facie case of anticipation. Appellants' arguments (Br. 7; Reply Br. 2-3) initially focus on the contention that, in contrast to the claimed invention which is directed to adaptive cruise control (ACC), the system of Minowa operates only in response to a driver's request for acceleration/deceleration.

In our view, however, to whatever limited meaning Appellants' arguments assert should be applied to the terminology "adaptive cruise control," such arguments are unpersuasive since no such terminology appears in the claims. It is our opinion that Appellant's arguments improperly attempt to narrow the scope of the claim by implicitly adding disclosed limitations which have no basis in the claim. *See In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Further, aside from the fact that the terminology actually used in the claims, i.e., "adaptive speed control," appears only in the claim preamble as an intended use, we fail to see how the speed control system of Minowa,

which functions to control vehicle speed by limiting vehicle acceleration/deceleration based on detected speed and road conditions, thereby “adapting” the vehicle speed control to the sensed conditions, can be considered anything other than “adaptive.” Similarly, Appellants’ arguments to the contrary notwithstanding, we find nothing in the language of the appealed claims which precludes control of vehicle deceleration in response to a driver request for deceleration.

We further find to be without merit Appellants’ arguments attacking the Examiner’s interpretation of the claim language “setting a maximum allowed vehicle deceleration.” According to Appellants (Reply Br. 5), Minowa only determines an actual vehicle deceleration value, not a maximum allowed value relative to the actual value. As with Appellants’ previous arguments, however, we find such argument to be not commensurate with the scope of claims 1 and 9.

The system of Minowa, as correctly characterized by Appellants (Reply Br. 4), is a driver override system in which, dependent on detected speed conditions, a driver’s request for a specific deceleration value may be overridden and the vehicle deceleration limited to determined maximum allowed value. The fact that the actual vehicle deceleration implemented by the system of Minowa is equal to the maximum determined allowed deceleration is not precluded by the language of claims 1 and 9. While Appellants are correct (Reply Br. 5) that in their disclosed invention, the actual vehicle deceleration “may” be a value different from the maximum allowed deceleration value, such a requirement is not present in the claims before us on appeal.

In view of the above discussion, it is apparent to us that Minowa's disclosure (page 7, second col. ll. 1-7) of determining vehicle speed and limiting the maximum vehicle deceleration based on the determination of vehicle speed satisfies all of the requirements of appealed claims 1 and 9.<sup>1</sup> Accordingly, since all of the claimed limitations are present in the disclosure of Minowa, the Examiner's 35 U.S.C. § 102(e) rejection of claims 1 and 9 is sustained.

#### 35 U.S.C. § 103(a) REJECTION

Appellants' arguments (Br. 9-10) in response to the Examiner's obviousness rejection of dependent claims 17 and 18 based on the combination of Minowa and Grosseau assert a failure by the Examiner to establish a *prima facie* case of obviousness since all of the claimed limitations are not taught or suggested by the applied Minowa and Grosseau references. Initially, Appellant reiterates (Br. 9) the arguments that Minowa does not disclose the setting of maximum allowed vehicle deceleration in an adaptive speed control system, which arguments we found to be unpersuasive as discussed *supra*.

Further, to whatever extent Appellants are suggesting (Brief 10) that the Examiner's proposed combination of Minowa and Grosseau must fail since Grosseau does not provide a disclosure of adaptive vehicle speed control, we find such contention to be without merit since the Examiner has relied upon Minowa for this teaching. It is apparent from the Examiner's

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<sup>1</sup> While the portion of the Minowa reference relied on by the Examiner is actually Minowa's dependent claim 4, Appellants correctly recognize (Reply Br. 2) that all portions of a reference may be relied upon by an Examiner in making a rejection.

line of reasoning in the Answer that the basis for the obviousness rejection is the combination of Minowa and Grosseau. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F. 2d 413, 425, 208 USPQ 871, 881(CCPA 1981); *In re Merck & Co., Inc.*, 800 F. 2d 1091, 1096, 231 USPQ 375, 380 (Fed. Cir. 1986).

We further find no error in the Examiner's establishment (Answer 4) of proper motivation for the combination of Minowa and Grosseau. In our view, the ordinarily skilled artisan would have recognized and appreciated that the inclusion of the wheel locking prevention teachings of Grosseau, which are based on detection of varying deceleration detection thresholds, would serve as an obvious enhancement to the system of Minowa.

For the above reasons, since it is our opinion that the Examiner's *prima facie* case of obviousness has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 17 and 18 based on the combination of Minowa and Grosseau is sustained.

## CONCLUSION

In summary, we have sustained the Examiner's rejections of all the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1, 9, 17, and 18 is affirmed.

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

AFFIRMED

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