

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALF WOLLENHAUPT, MATTHIAS PIETSCH, and
MATTHIAS MICHANICKI

Appeal 2007-3142
Application 10/911,060
Technology Center 3700

Decided: March 13, 2008

Before TERRY J. OWENS, LINDA E. HORNER, and ANTON W.
FETTING, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ralf Wollenhaupt et al. (Appellants) seek our review under 35 U.S.C. § 134 of the non-final rejection of claims 1-23. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The Appellants' claimed invention is to a method and apparatus for controlling air conditioning of a vehicle seat to prevent overcooling of the passenger (Specification 1:10-11, 4:27-29). During cooling of the seat, air is aspirated from the passenger compartment by the ventilating device, which may lead to overcooling if the passenger activates the ventilating device at air temperatures that are too low (Specification 5:4-7). To prevent this situation, when a ventilating device is manually switched on by the passenger, the heating device for heating the vehicle seat is also switched on and regulated automatically as a function of at least seat surface temperature (Specification 4:27-32). The Specification also describes one example embodiment having a single operating element for allowing the passenger to manually operate both the heating device and the ventilating device of the vehicle seat (Specification 6:4-8).

Claims 1 and 19, reproduced below, are representative of the subject matter on appeal.

1. A method for controlling an apparatus for air conditioning a vehicle, the apparatus including at least one heating device configured to heat the vehicle seat and at least one ventilation device configured to ventilate the vehicle seat, comprising:

when the ventilation device is manually

switched on, automatically regulating the heating device to heat the seat at least as a function of a seat surface temperature.

19. An apparatus for controlling a device for air conditioning a vehicle seat, comprising:

at least one heating device configured to heat the vehicle seat;

at least one ventilation device configured to ventilate the vehicle seat; and

a single, manually-operable control element configured to set both the heating device and the ventilation device.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Faust	US 5,934,748	Aug. 10, 1999
Orizaris	US 6,186,592 B1	Feb. 13, 2001

The following rejections are before us for review:

1. Claims 1-5, 10-16, and 18-23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Orizaris.¹

¹ The Examiner withdrew the rejection of claims 1-5, 10-16, and 18-23 under 35 U.S.C. § 102(e) as anticipated by Orizaris and claims 6 and 7 under 35 U.S.C. § 102(b) as anticipated by Orizaris (Ans. 2). Despite the Examiner's assertion that claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as unpatentable over Orizaris (Ans. 3), no such rejection was made in the Office Action of December 7, 2005, from which this Appeal was

2. Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Faust.

ISSUES

The Examiner found both Orizaris and Faust teach the claimed invention with the possible exception of the ventilation device being operated manually (Ans. 3-4). The Examiner concluded that the claimed subject matter is obvious because it is well settled that it is not “invention” to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result (*Id.*).

The Appellants contend that neither Orizaris nor Faust discloses or suggests automatically regulating a heating device to heat a seat at least as a function of a seat surface temperature when the ventilation device is manually switched on (claim 1), a control unit configured to automatically regulate a heating device when a ventilation device is manually switched on (claim 10), or a single, manually-operable control element configured to set both a heating device and a ventilation device (claim 19) (App. Br. 7, 8, Reply Br. 2-5, 8-9). The Appellants further contend that the Examiner’s reliance on *In re Venner*, 262 F.2d 91 (CCPA 1958) is misplaced (App. Br. 7, 9, Reply Br. 5-7, 9).

taken. If the Examiner had intended to include claims 6 and 7 in the rejection under 35 U.S.C. § 103(a) as unpatentable over Orizaris, he should have designated this as a new ground of rejection in the Answer pursuant to 37 C.F.R. § 41.39(a)(2) (2007).

The issues before us are whether the Appellants have shown that the Examiner erred in rejecting claims 1-5, 10-16, and 18-23 as unpatentable over Orizaris and whether the Appellants have shown that the Examiner erred in rejecting claims 1-23 as unpatentable over Faust.

FINDINGS OF FACT

We find that the following enumerated findings are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Orizaris discloses a vehicle seat having a seat heating arrangement, a ventilation device, and a control unit for controlling the seat heating arrangement and the ventilation device, where the control unit temporarily activates the ventilation device immediately after the seat heating arrangement is switched on in order to shorten the response time of the seat heating arrangement (Orizaris, col. 1, ll. 9-13; col. 1, l. 62 – col. 2, l. 2; and col. 3, ll. 43-50).
2. Orizaris discloses that the control unit automatically controls activation of the ventilation device and does not disclose that the user can manually switch on the ventilation device and further does not disclose automatically regulating the heating device to heat the seat as a function of a seat surface temperature when a ventilation device is manually switched on.

3. Faust discloses a vehicle seat having a ventilation device for ventilating the cushions and a heating device for heating the cushions and a control unit to operate the ventilation and heating devices to prevent overcooling, so that if the cushion surface temperature is below an indicated value, the control unit switches off the ventilation device or changes the ventilation device to a lower power stage, and/or switches on the heating device or changes the heating device to a higher power stage (Faust, col. 1, l. 48 – col. 2, l. 3).
4. Faust does not disclose that the user can manually switch on the ventilation device. Rather, the only disclosure in Faust describing initial operation of the ventilation device teaches that the vehicle is configured so that the ventilation device is started automatically when the vehicle door is unlocked (Faust, col. 1, ll. 33-35).

PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’” *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the

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prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S.Ct. at 1734 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

ANALYSIS

The Examiner based the determinations of obviousness over Orizaris and Faust on the rationale that “it is not ‘invention’ to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result” (Ans. 3, 4; *see also* Final Office Action 3, citing *In re Venner*, 262 F.2d 91 (CCPA 1958)). In *Venner*, the claim at issue was directed to an apparatus for molding trunk pistons of aluminum and magnesium alloys using old permanent-mold structures together with a timer and solenoid to automatically actuate the known pressure valve system to release the inner core after a predetermined time had elapsed. *Id.* at 92-93. The court found that the claimed subject matter was obvious in view of the prior art, stating “it is well settled that it is not ‘invention’ to broadly

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provide a mechanical or automatic means to replace manual activity which has accomplished the same result.” *Id.* at 95. In *Venner*, however, all limitations in the claims, including the automating means, were disclosed in the applied references. *See id.* at 95-96. In the present case, unlike in *Venner*, the Examiner has not provided a reference which discloses an apparatus or method that allows for manual operation of the ventilation device (FF 2, 4). As such, we find the Examiner’s reliance on *Venner* is misplaced. While “[t]he 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, in this case the Examiner has not provided a combination of references showing all of the claim elements in the prior art. This is not to imply that obviousness cannot be based on a single reference. In this case, however, the Examiner’s rationale supporting the conclusion of obviousness was based on an application of the holding in *Venner* as a *per se* rule of obviousness. For the reasons set forth *supra*, such an application of *Venner* was in error. Because the Examiner has not provided a prior art reference which discloses manual operation of a vehicle seat ventilation device, and because the Examiner’s stated motivation to modify the prior art references was incorrectly based on *Venner*, we find that the Examiner has failed to set forth a *prima facie* case of obviousness.

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CONCLUSIONS OF LAW

We conclude the Appellants have shown that the Examiner erred in rejecting claims 1-5, 10-15, and 18-23 under 35 U.S.C. § 103(a) as unpatentable over Orizaris and claims 1-23 under 35 U.S.C. § 103(a) as unpatentable over Faust.

DECISION

The decision of the Examiner to reject claims 1-23 is reversed.

REVERSED

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