

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JENS DESENS, STEFAN HAHN, and FRIDTJOF STEIN

Appeal 2008-2619
Application 10/497,770
Technology Center 3600

Decided: January 13, 2009

Before WILLIAM F. PATE, III, LINDA E. HORNER, and MICHAEL W. O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Jens Desens et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1-7. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The claimed invention is directed to an improvement in an automatic following-distance control system that includes automatic lane change operations. (Specification 2:¶0006.) In particular, the improvement comprises the addition of lateral sensors that monitor the space next to the vehicle and the space behind the vehicle. (Specification 6:¶00020.)

The claimed feature, reproduced below, is representative of the subject matter on appeal.

at least one lateral sensor (8; 10) for monitoring a lateral space (12; 14) in an adjacent lane beside and/or behind the motor vehicle (E).

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Dobler	US 6,038,496	Mar. 14, 2000
Yano	US 6,282,483 B1	Aug. 28, 2001
Nakamura	US 6,311,123 B1	Oct. 30, 2001

THE REJECTIONS

The following Examiner's rejections are before us for review:

Claims 1-3, 5, and 6 are rejected under 35 U.S.C. § 102(a)¹ as being anticipated by Yano.

¹ While the Examiner rejected claims 1-3, 5, and 6 under § 102(a) as being anticipated by Yano (and the Appellants agree, see Br. 3), Yano qualifies

Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Yano and Nakamura.

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Yano and Dobler.

ISSUE

The Appellants contend the Examiner erred in rejecting the claims because the lateral sensor disclosed in Yano is not “capable of monitoring a lateral space in an adjacent lane besides [sic] and/or behind the motor vehicle.” (Br. 5.)

The Examiner posits the lateral sensor in Yano “is capable of detecting a lateral distance to a vehicle (B) *if it is arranged to the rear side of the motor vehicle (E).*” (Ans. 5-6.)(Emphasis ours.)

The issue before us is as follows:

Does Yano’s lateral sensor expressly or inherently monitor a lateral space in an adjacent lane beside and/or behind the motor vehicle?

FINDINGS OF FACT

We find that the following enumerated findings of fact 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).

also as prior art under § 102(e)(2), i.e., a patent (US 6,282,482 B1) granted on an application for patent (Appl. No.: 09/628,442) by another (Yano) filed in the United States (filed: Jul. 28, 2000) before the invention by the applicant for patent (Appellants’ asserted priority date is Dec. 5, 2001).

1. Yano discloses a lateral sensor 1507 that detects the traveling direction distance and the lateral distance to a front obstacle. (Yano, col. 17, ll. 25-27.) As such, Yano's lateral sensor monitors the space in front of the vehicle.
2. The Examiner has not used Nakamura or Dobler to disclose, teach, or suggest a lateral sensor that monitors a lateral space in an adjacent lane beside and/or behind the motor vehicle.

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987).

It is well settled that in order for the examiner to establish a *prima facie* case of anticipation, each and every element of the claimed invention, arranged as required by the claim, must be found in a single prior art reference, either expressly or under the principles of inherency. *See generally, In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677-78 (Fed. Cir. 1988); *Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick*, 730 F.2d 1452, 1458 (Fed. Cir. 1984).

When relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. *See Ex parte Levy*, 17 USPQ2d 1461, 1464 (BPAI 1990).

ANALYSIS

The claims require that the lateral sensor on the motor vehicle monitors the lateral space in an adjacent lane beside and/or behind the motor vehicle. Therefore, in order for the prior art to anticipate the claim, the lateral sensor must expressly or inherently monitor the lateral space in an adjacent lane beside and/or behind the motor vehicle.

Yano's lateral sensor monitors the space in front of the motor vehicle and not beside and/or behind the motor vehicle. (Fact 1.) The Examiner commented that Yano's lateral sensor could monitor the lateral space as called for in the claim, "if it is arranged to the rear side of the motor vehicle (E)." (See Ans. 6.) As such, the Examiner concluded Yano anticipates the claims. However, for a single prior art reference to anticipate a claimed feature, it must disclose, either explicitly or inherently, the claimed feature as arranged in the claim. Yano's lateral sensor, as it is arranged on the motor vehicle, does not expressly monitor the lateral space in an adjacent lane beside and/or behind the motor vehicle. Neither can the lateral sensor inherently monitor the lateral space in an adjacent lane beside and/or behind the motor vehicle because there is no basis in fact or technical reason to conclude such monitoring necessarily flows from the teachings of Yano, i.e. the lateral sensor's present location and position preclude it from inherently monitoring the lateral space as claimed. The Examiner's rejection requires a structural change to the position of Yano's lateral sensor, *viz.*, moving it to the rear side of the motor vehicle (E), for the sensor to monitor the space claimed and this is the error in the Examiner's rejection.

The rejections of claims 4 and 7 under § 103(a) are grounded in part on the Examiner's flawed finding that Yano's lateral sensor monitors the lateral space in an adjacent lane beside and/or behind the motor vehicle. The Examiner does not use Nakamura or Dobler to cure this deficiency in Yano. (Fact 2.) Accordingly, these rejections of claims 4 and 7 are improper for the reason discussed above.

CONCLUSION

Yano's lateral sensor does not expressly or inherently monitor the adjacent lane beside and/or behind the motor vehicle.

DECISION

The Examiner's decision to reject claims 1-3, 5, and 6 as being anticipated by Yano; claim 4 as being unpatentable over Yano and Nakamura; and claim 7 as being unpatentable over Yano and Dobler is reversed.

REVERSED

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LV:

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