

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 37

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte TAKASHI NAKANO

---

Appeal No. 1998-1968  
Application 08/425,293

---

HEARD: May 1, 2000

---

Before COHEN, MCQUADE, and BAHR, Administrative Patent Judges.  
MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Takashi Nakano appeals from the final rejection of claims 1 through 15, all of the claims pending in the application.

The invention relates to "a rear body structure of a vehicle such as an automobile of the so-called hatch-back type which has a door at a rear end surface thereof"

Appeal No. 1998-1968  
Application 08/425,293

(specification, page 1). Claim 1 is illustrative and reads as follows:

1. A rear body structure of a vehicle, said rear body structure comprising:  
a rear inner panel forming a rear side portion of a vehicle body and having an inner projection partially bent transversely inwardly of said vehicle body;  
a rear pillar stiffener for reinforcing said rear inner panel, said rear pillar stiffener having an outer projection partially bent transversely inwardly of said body; and  
a roof rail disposed at an upper portion of said rear body structure, said roof rail including an upper roof rail outer member and a lower roof rail inner member, said roof rail outer member having a hinge stiffener as a reinforcing member, which has a stiffener projection projecting transversely outwardly of said vehicle body, said inner projection, said outer projection, and said stiffener projection being laid sequentially one over the other and joined together at ends thereof, said inner projection positioned at a bottom and said roof rail outer member positioned at a top jointly defining a box-shaped structure with bracing means diagonally extending within said box-shaped structure, whereby a plurality of closed sections are defined within said box-shaped structure.

Claims 1 through 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,775,181 to Shoda.

Appeal No. 1998-1968  
Application 08/425,293

Reference is made to the appellant's main, revised reply, and supplemental reply briefs (Paper Nos. 23, 29 and 32)<sup>1</sup> and to the examiner's main and supplemental answers (Paper Nos. 24 and 30) for the respective positions of the appellant and the examiner regarding the merits of this rejection.

Shoda discloses a hatch-back automobile rear body structure designed to withstand forces from various directions. As described in the reference,

a rear body structure [comprises] a rear pillar [4] of a closed cross-section constituted by a pillar inner panel [8] and a pillar outer panel [9], a rear header [5] of a closed cross-section constituted by a rear header upper panel [10] and a rear header inner panel [11], a roof side rail [6] of a closed cross-section constituted by the pillar inner panel [8] and a rear fender [12], said rear pillar [4], rear header [5] and roof side rail [6] being interconnected with one another, the pillar outer panel [9] at the upper portion thereof being formed with first and second extensions [13 and 14] extending toward the rear header and the roof side rail, and the extensions being interposed in a space defined by the closed cross-section[s] so as to divide said space into small compartments. Preferably, at the rear end of the rear header [5], there is formed a transversely extending closed cross-section by the rear header inner panel [11]

---

<sup>1</sup> The examiner (see Paper No. 27) has refused entry of the appellant's original reply brief (Paper No. 25).

Appeal No. 1998-1968  
Application 08/425,293

and either the pillar outer panel [9, 13] or a roof panel [1]. The first extension of the pillar outer panel may be connected to a hinge reinforcement [17] for a back door [column 1, line 50 through column 2, line 2].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Independent claim 1, reproduced above, requires the inner projection of the rear inner panel, the outer projection of the rear pillar stiffener and the stiffener projection of the hinge stiffener to be laid sequentially one over the other and joined together at ends thereof. Similarly, independent claim 11 requires the inner projection, outer projection and stiffener projection to be disposed together in a stacked manner and joined together at ends thereof. The examiner (see pages 15 and 24 in the main answer) considers Shoda's pillar inner panel 8, first extension 13 and hinge stiffener 17 to

Appeal No. 1998-1968  
Application 08/425,293

respectively embody an inner projection, outer projection and stiffener projection meeting these limitations.

To support this determination, the examiner relies on a version of Shoda's drawings (see the main answer, Appendix I) which differs from the version actually contained in the reference. The examiner generated the modified drawings by resolving several purported inconsistencies in the reference drawings (see pages 6 through 8 in the main answer). The problem here is that the examiner's analysis of the reference drawings, which are inconsistent to some degree, is unduly speculative. By way of example, it is critical to the examiner's position that the lowermost structural component depicted in cross-section in Figures 3 and 7 is pillar inner panel 8 rather than the indicated rear head inner panel 11. According to the examiner, this interpretation of Figures 3 and 7 is compelled by the content of the other drawing figures, particularly Figures 1, 2 and 5. It is just as conceivable, however, that Figures 3 and 7 as shown in the reference are correct, and that the other drawing figures are in need of modification.

Appeal No. 1998-1968  
Application 08/425,293

Indeed, the detailed descriptions of Figures 3 and 7 in the underlying specification (see column 3, lines 3 through 50), which expressly refer to the rear head inner panel 11 and make no mention of pillar inner panel 8, lend credence to the latter view.

At best, from the examiner's standpoint, the portions of the Shoda disclosure relied upon to meet the above noted limitations in claims 1 and 11 are ambiguous. It is well established that an anticipation rejection cannot be predicated on an ambiguous reference. In re Turlay, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962). Therefore, the examiner's determination that Shoda discloses each and every element of the invention set forth in independent claims 1 and 11 must fall.

Accordingly, we shall not sustain the standing 35 U.S.C. § 102(b) rejection of claims 1 and 11, or of claims 2 through 10 and 12 through 15 which depend therefrom, as being anticipated by Shoda.

Appeal No. 1998-1968  
Application 08/425,293

The decision of the examiner is reversed.

REVERSED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
	)	
JOHN P. MCQUADE	)	APPEALS AND
Administrative Patent Judge	)	
	)	INTERFERENCES
	)	
	)	
	)	
JENNIFER BAHR	)	
Administrative Patent Judge	)	

JPM/kis

WEINER, CARRIER, BURT & ESSER, P.C.  
24101 Novi Road  
Suite 100  
Novi, MI 48375-3248