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11/154,726	06/15/2005	Davor Hrovat	81120293	1579
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EXAMINER

MAWARI, REDHWAN K

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVOR HROVAT, MICHAEL FODOR, and
MITCH McCONNELL

Appeal 2010-006519
Application 11/154,726
Technology Center 3600

Before: PHILLIP J. KAUFFMAN, MICHAEL L. HOELTER, and
HYUN J. JUNG, *Administrative Patent Judges*.

KAUFFMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 8-11, 22, and 24-38. Appellants' representative presented oral argument on November 5, 2012. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

The Invention

Appellants' claimed invention relates to utilization of communication between vehicles about road surface conditions in order to improve the highway throughput of those vehicles by improving vehicle performance. Spec. 1:4 to 2:3. Claims 8 and 28 are the independent claims on appeal. Claim 8, reproduced below, is illustrative of the claimed subject matter (emphasis added):

8. A first vehicle traveling on a road, comprising:
 - a communication device coupled in the first vehicle configured to receive information transmitted by a second vehicle traveling on the road, said information identifying road surface conditions experienced by said second vehicle and a location of said road surface conditions;
 - a pedal operated by a driver of the first vehicle;
 - an electronically controlled throttle positioned based at least on a position of the pedal; and
 - a controller for adjusting a powertrain output of the first vehicle in response to actuation of said pedal, and during said adjusting, receiving said transmitted information from said second vehicle, and adjusting a control resolution of a relationship of the pedal position corresponding to the electronically controlled throttle position in response to said received information.*

Rejections

Appellants seek review of the following rejections:

1. Claims 8, 10, 11, 22, 24, 25, 28, 32, and 35-38 under 35 U.S.C. § 103(a) as unpatentable over Nakao (US 6,577,943 B2; iss. Jun. 10, 2003), Iwata (US 5,732,380; iss. Mar. 24, 1998), Ironside (US 5,074,267; iss. Dec. 24, 1991), and Unuvar (US 5,521,825; iss. May 28, 1996).¹ Ans. 3.
2. Claims 9, 26, 27, 29, 30, 31, 33, and 34 under 35 U.S.C. § 103(a) as unpatentable over Nakao, Iwata, Ironside, Unuvar, and Miller (US 6,650,252 B2; iss. Nov. 18, 2003). Ans. 11.

OPINION

Obviousness over Nakao, Iwata, Ironside, and Unuvar

Independent claim 8 calls for a controller capable of adjusting the powertrain output of a first vehicle in response to actuation of the driver operated pedal and adjusting the control resolution of the driver operated pedal position to the electronically controlled throttle position in response to information received regarding road surface conditions experienced by a second vehicle. Similarly, independent claim 28 calls for a controller that is capable of such adjustments.

The Examiner found that Nakao discloses the subject matter of independent claim 8 except a pedal operated by a driver and a controller for

¹ Though an Advisory Action (Office Action dated Feb. 17, 2009, at p.2) failed to acknowledge that claims 37 and 38 are subject to this ground of rejection, they are subject to this ground of rejection. *See* App. Br. 11; Ans. 2 (stating Appellants' grounds of rejection are correct), 3, 11 (addressing claims 37 and 38).

adjusting the powertrain in response to actuation of the pedal. Ans. 4. The Examiner concluded that it would have been obvious to modify Nakao,

where means of controlling the vehicle on the basis of the information received and the actuating of said pedal. The motivation of combining both prior arts is that the traction control system ensures that when a driver has performed a voluntary operation to reduce wheel speed during of a traction control, a deceleration greater than required is avoided, therefore avoiding an uncomfortable feeling provided to the driver. This can be done by having a traction control system including a control unit for stopping the traction control in response to the driver's operation to reduce the wheel speed during carrying-out of the traction control.

Ans. 5-6.

The Examiner also concludes that it would have been obvious “to incorporate Nakao's reference (controlling the vehicle based on the received information i.e. road surface) with the secondary reference, Iwata, (more specifically controlling the throttle based on road surface).” Ans. 23.

Though unclear, the Examiner appears to propose to modify Nakao's controller so that it is capable of discontinuing application of traction control (“stopping the traction control”) of a first vehicle in response to actuation of the driver operated pedal (“the driver's operation to reduce wheel speed”) in response to information received regarding road surface conditions experienced by a second vehicle. *See* Ans. 5-6. We agree with Appellants that this proposed combination does not adjust the control resolution of a relationship of the driver's pedal position relative to the electronically controlled throttle position as claimed. App. Br. 13-14; Reply Br. 2.

Further, the rejection is based upon four references, yet the conclusion of obviousness only provides a reason for combining “*both* prior arts.” Ans.

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5 (emphasis added). The Examiner's statement that Nakao and Unuvar both serve the same purpose, namely, "controlling the vehicle based upon certain conditions by controlling the powertrain output and or brakes" does not explain how or why the modified Nakao and Iwata controller would have been further modified in view of the disclosure of Unuvar. Ans. 18, 20 (similarly stating that "both references teach controlling a vehicle based on certain driving conditions"). Similarly, the Examiner's findings related to Ironside and Unuvar are not accompanied by a reasonable explanation of how and why such disclosures are utilized in the proposed combination. *See* Ans. 3, 5.

Thus, the Examiner has not adequately explained how the subject matter of independent claims 8 and 28 would have been obvious over Nakao, Iwata, Ironside, and Unuvar. Accordingly, we do not sustain the rejection of claims 8 and 28 and their respective dependent claims 10, 11, 22, 24, 25, 32, and 35-38.

Obviousness over Nakao, Iwata, Ironside, Unuvar, and Miller

Claims 9, 26, and 27 depend from independent claim 8 and claims 29, 30, 31, 33, and 34 depend from independent claim 28.

The rejection does not utilize Miller to overcome the shortcomings identified in the analysis of the first rejection, *supra*. *See* Ans. 11-16. Consequently, the rejection of claims 9, 26, 27, 29, 30, 31, 33, and 34 is also in error.

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DECISION

We reverse the Examiner's decision to reject claims 8-11, 22, and 24-38.

REVERSED

Klh