

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CHRISTOPHER J. RIXON and CHRISTOPHER BORTOLON

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Appeal No. 2001-0088  
Application No. 09/271,571

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ON BRIEF

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Before COHEN, NASE, and LAZARUS, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 16 to 22 and 31 to 35. Claim 23, the only other claim pending in this application, has been objected to as depending from a non-allowed claim.

We AFFIRM.

BACKGROUND

The appellants' invention relates to an adjustable pedal apparatus adapted to be mounted on a vehicle structure for a motor vehicle (claims 16 to 22) and a method of adjusting the position of a pedal assembly having a carrier slidably mounted to a support structure in a vehicle and a drive mechanism for driving the carrier in fore or aft directions relative to the support structure (claims 31 to 35). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Cicotte et al. (Cicotte) 5, 1991	4,989,474	Feb.
Murphy 1998	5,712,625	Jan. 27,

Claims 16 to 22 and 31 to 35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Cicotte in view of Murphy.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (Paper No. 16, mailed April 13, 2000) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 15, filed April 3, 2000) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

In accordance with 37 CFR § 1.192(c)(7), we have selected claims 16 and 20 as the representative claims from the appellants' grouping of claims 16-19, 31-33 and 35 as Group A and claims 20-22 and 34 as Group B to decide the appeal on

this rejection under 35 U.S.C. § 103. See page 5 of the appellants' brief.

The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). Moreover, in evaluating such references it is proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom. In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

**Claim 16**

We sustain the rejection of claim 16 under 35 U.S.C. § 103.

Claim 16 reads as follows:

An adjustable pedal apparatus adapted to be mounted on a vehicle structure for a motor vehicle comprising:

a carrier for movement relative to the vehicle structure;  
a support assembly mounting said carrier for fore and aft movement relative to the vehicle structure;  
a drive assembly for providing said fore and aft movement of said carrier along said support assembly;  
at least one pedal operatively connected to said carrier for pivotal movement independent of said fore and aft movement of said carrier along said support assembly;  
and  
an actuating mechanism for remotely controlling said drive assembly to move said pedal to a desired position relative to the vehicle structure.

Cicotte's invention relates to a control pedal apparatus and more particularly to adjustment means for selectively adjusting the position of one or more of the control pedals of a motor vehicle. Cicotte teaches (column 2, lines 7-10) that his arrangement allows the pedal to be selectively adjusted to suit the individual driver while selectively maintaining desired ergonomic relationships between the control pedal assembly and the driver. In the BACKGROUND OF THE INVENTION section, Cicotte provides that

In a conventional automotive vehicle, pedals are provided for controlling brakes and engine throttle. If the vehicle has a manual transmission, a clutch pedal is also provided. These pedals are foot operated by the driver. In order for the driver to obtain the most advantageous position for working these controls, the vehicle front seat is usually slidably mounted on a seat

track with means for securing the seat along the track in a plurality of adjustment positions.

The adjustment provided by moving the seat along the seat track does not accommodate all vehicle operators due to differences in anatomical dimensions. Further, there is growing concern that the use of seat tracks, and especially long seat tracks, constitutes a safety hazard in that the seat may pull loose from the track during an accident with resultant injuries to the driver and/or passengers. It is therefore desirable to either eliminate the seat track entirely or shorten the seat track to an extent that it will be strong enough to retain the seat during an impact. Shortening or eliminating the seat track requires that means be provided to selectively move the various control pedals to accommodate various size drivers.

The control pedal apparatus shown in Figures 1 and 2 of Cicotte, includes a bracket 10, an adjustor member 12, a pedal arm 14, and a screw assembly 16. Bracket 10 includes a flange portion 10a for attachment of the bracket to the fire wall of the motor vehicle and a main body portion 10b. A generally vertical slot 10c is formed in the upper portion of main body portion 10b adjacent its forward edge 10d. An arcuate slot 10e is formed in main body portion 10b adjacent its lower edge 10f. Adjustor member 12 includes a main body portion 12a, a lug portion 12b, and a pin 18. Main body portion 12a is generally planar and defines an upper generally vertically

extending slot 12c corresponding to slot 10c in bracket 10, and a pair of parallel generally horizontally extending straight slots 12d and 12e. Pin 18 extends normally from main body portion 12a between slots 12d and 12e and is sized to fit slidably in slot 10e in bracket 10. A brake master cylinder push rod 20 is pivotally mounted on pin 18 so that pin 18 defines an attachment point for the brake master cylinder control rod.

Pedal arm 14 of Cicotte includes an oblique slot 14a in the upper end 14b of the arm, a pair of vertically spaced pins 14c and 14d projecting laterally from the arm, a nut 14e rigidly secured to the arm between pins 14c and 14d, and a lower arm portion 14f. A brake pedal pad 22 is secured to the lower end of pedal arm 14. Screw assembly 16 comprises a screw 24, an adapter member 26, and a motor 28. Screw 24 has a size and pitch to match the size and pitch of nut 14e on pedal arm 14 and includes a pilot portion 24a at its forward end journaling in a suitable bore in lug portion 12b of adjustor member 12. Adapter member 26 mounts the rear end of screw 24 and functions in known manner to convert rotary

movement of a flexible cable 30 connected to the output of a motor 28 into rotary movement of screw 24. In operation of the brake pedal, motor 28 is suitably actuated to rotate screw 24 which causes nut 14e to travel along the rotating screw to slidably move pedal arm 14 relative to adjustor member 12 with the precise direction of the relative movement defined by sliding movement of pins 14c and 14d in slots 12d and 12e. This sliding movement of pedal arm 14 on adjustor member 12 moves pedal 22 forwardly and rearwardly to ergonomically accommodate drivers of various statures.

Murphy's invention relates generally to a system for verifying a vehicle operator identification code and, more particularly, to a system for verifying a vehicle operator identification code by determining positional information of various personalized vehicle devices such as a seat positioning device, a mirror positioning device, a steering wheel tilt positioning device and a head-up display positioning device. Figure 1 of Murphy shows a diagram depicting a vehicle operator identification verification system 10. The system 10 includes a key fob transmitter 12

intended to represent known key fob transmitters that remotely transmit a coded signal where the coded signal includes an operator identification code as well as other coded function information for performing certain vehicle functions associated with a vehicle (not shown). For example, the key fob transmitter 12 can be part of a remote keyless entry system that remotely activates the vehicle door locks, trunk, etc. as the vehicle operator approaches or walks away from the vehicle.

The coded signal transmitted by Murphy's key fob transmitter 12 is received by a key fob reader 14 that is part of a receiver system within the vehicle. The key fob reader 14 receives and deciphers the coded signal from the key fob transmitter 12, and provides a signal to a personalization command module 16 that is indicative of the received vehicle operator identification code. The personalization command module 16 will then determine which of one or more preprogrammed vehicle operator identification codes the received identification code corresponds to. The

personalization command module 16 will then know which vehicle operator is going to be operating the vehicle.

Once Murphy's personal command module 16 determines that the received identification code is a valid identification code that corresponds to a stored identification code, the personalization command module 16 will output a signal to a system 18 that sets each of a series of personalization devices (discussed below) to a valid state. The personal command module 16 will also cause the appropriate parameters of an adaptive system 20 to be activated. In other words, the command module 16 will output a signal to the adaptive system 20 indicative of the received identification code so that the system 20 will know which of one or more different stored adaptations should be initiated and updated. Thus, the adaptive system 20 is capable of adapting independently to a plurality of different vehicle operators. The personalization command module 16 will also output a vehicle operator identification signal to a series of personalization devices that can be adjusted according to which identification signal is received. For example, a seat front/back positioning

device 22 represents a known memory seat module and associated electric seat motor that automatically adjusts the front/back position of the drivers side vehicle seat (not shown) to the appropriate location as previously set by the particular vehicle operator corresponding to the identification code. Likewise, a seat up/down positioning device 24 represents a known memory seat module and associated electric seat motor that automatically adjusts the vertical position of the driver side seat depending on the particular signal received from the personalization module 16 as previously set by the particular vehicle operator. A third personalization device is a side mirror positioning device 26 that automatically adjusts the position of the side mirrors (not shown) of the vehicle as previously set by the particular vehicle operator in association with the vehicle operator's identification code.

Murphy teaches (column 5, lines 19-42) that

Other personalization devices represented as a personalization device 28 can position other vehicle devices that are personalized in the same manner. For example, other appropriate positioning devices may be incorporated in the vehicle including, but not limited to, devices that automatically adjust the steering wheel tilt position and a head-up display position.

Each of the different personalization devices can be set and reset by a vehicle operator. For example, for a particular vehicle operator identification code, the vehicle operator can readjust the seat front/back positioning device 22 to position the seat to a particular location, then activate a personalization switch 30 that sets the personalization parameters for the activated vehicle operator identification code. In other words, the vehicle operator can adjust the seat front/back positioning device 22 to a different position, and then activate the switch 30 so that the next time the vehicle operator ID code is received, the positioning device 22 will automatically be positioned to the new location. Likewise, a personalization switch 32 is provided for the seat up/down position device 24, a personalization switch 34 is provided for personalizing the side mirror position, and a personalization switch 36 sets the parameters of the personalization device 28.

A position signal from each of Murphy's positioning devices 22-26 and the personalization device 28 is applied to a threshold system 38. The threshold system 38 determines if the positioning of the personalization devices 22-28 has been adjusted more than a certain predetermined percentage (e.g., 10%), from the previously personalized setting for that particular device without the switches 30-36 being activated. In other words, once the vehicle operator has adjusted the particular positioning devices 22-28 to his/her preferences, and has activated the personalization switches 30-36 for the

particular positioning devices 22-28, the system 10 will monitor whether the current vehicle operator has adjusted this position by more than a predetermined percentage. Thus, the system 10 is notified that the current vehicle operator may not be the vehicle operator that is normally associated with the particular vehicle operator identification code that was received by the personalization command module 16. An example is where a parent has loaned his/her particular key fob transmitter to a child. Murphy's system 10 operates on the assumption that it is better not to adapt the adaptive system 20 if it is unclear whether the right vehicle operator is operating the vehicle.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on the examiner's analysis and review of Cicotte and claim 16, it was the examiner's determination (answer, p. 3) that Cicotte discloses the adjustable pedal apparatus

except for a memory device which remotely controls the drive to move the pedal to a preselected desired position (i.e., Cicotte does not disclose "an actuating mechanism for remotely controlling said drive assembly to move said pedal to a desired position relative to the vehicle structure" as recited in claim 16). The appellants have not disputed this determination of the examiner.

With regard to this difference, the examiner then determined (answer, pp. 3-4) that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cicotte by including a memory device which remotely controls the drive to move the pedal to a preselected desired position in view of Murphy so that a driver can easily move the pedal to a preselected desired position even after another driver has moved it. We agree.

The appellants argue (brief, pp. 5-9) that there is no suggestion or motivation in the applied prior art to arrive at the claimed subject matter. The appellants point out that neither reference (Cicotte or Murphy) discloses, teaches or

suggests remotely controlling a pedal drive assembly or use of a memory device to remember pedal position that can be remotely actuated. The appellants' argument is unpersuasive for the following two reasons.

First, while the appellants have pointed out the deficiencies of each reference on an individual basis, it is well settled that nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. See In re Merck & Co. Inc., 800 F.2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

Second, it is our conclusion that the subject matter of claim 16 would have been obvious at the time the invention was made to a person having ordinary skill in the art from the combined teachings of Cicotte and Murphy. In that regard, Murphy clearly teaches and suggests that other appropriate positioning devices may be incorporated in the vehicle and Cicotte clearly teaches and suggests to utilize his control pedal apparatus which allows the pedal to be selectively

adjusted to suit the individual driver, instead of an adjustable seat track or with a shorter adjustable seat track. From these combined teachings, in applying the test for obviousness, it is our opinion that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have utilized Cicotte's control pedal apparatus as a personalization device in Murphy's system for the self-evident advantages thereof.

For the reasons set forth above, the decision of the examiner to reject claim 16 under 35 U.S.C. § 103 is affirmed.

**Claim 20**

We sustain the rejection of claim 20 under 35 U.S.C. § 103.

Claim 20 reads as follows:

An apparatus as recited in claim 16 including a controller adapted to be associated with the vehicle for selectively positioning said pedal relative to the vehicle structure, said controller including a first control for moving the pedal in a first direction and a second control for moving said pedal in a second

direction opposite from said first direction wherein said first and second controls are manually activated.

The appellants further argue (brief, pp. 9-10) with respect to claim 20 that neither reference discloses the pedal position be adjustable by both manual activation and remote activation. However, this further argument is unpersuasive since it is our conclusion that the subject matter of claim 20 would have been obvious at the time the invention was made to a person having ordinary skill in the art from the combined teachings of Cicotte and Murphy.

As pointed out above with respect to claim 16, the combined teachings of Cicotte and Murphy are suggestive of the remote activation of the pedal position. As to the manual activation of the pedal position, it is our view that such would have been obvious at the time the invention was made to a person having ordinary skill in the art from the teachings of Cicotte. In that regard, Cicotte teaches that his motor is

"suitably actuated" and an artisan<sup>1</sup> from that teaching of Cicotte would have, in our opinion, been led to include manual controls to actuate the motor to cause either forward or reverse movement of the pedal.

For the reasons set forth above, the decision of the examiner to reject claim 20 under 35 U.S.C. § 103 is affirmed.

**Claims 17 to 19, 21, 22 and 31 to 35**

In accordance with the appellants grouping of claims, noted above, and 37 CFR § 1.192(c)(7), claims 17 to 19, 21, 22 and 31 to 35 fall with claims 16 and 20. Thus, it follows that the decision of the examiner to reject claims 17 to 19, 21, 22 and 31 to 35 under 35 U.S.C. § 103 is also affirmed.

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<sup>1</sup> We observe that an artisan is presumed to know something about the art apart from what the references disclose (see In re Jacoby, 309 F.2d 513, 516, 135 USPQ 317, 319 (CCPA 1962)) and the conclusion of obviousness may be made from "common knowledge and common sense" of the person of ordinary skill in the art (see In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969)). Moreover, skill is presumed on the part of those practicing in the art. See In re Sovish, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985).

CONCLUSION

To summarize, the decision of the examiner to reject claims 16 to 22 and 31 to 35 under 35 U.S.C. § 103 is affirmed.

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

AFFIRMED

IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
JEFFREY V. NASE	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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RICHARD B. LAZARUS	)	
Administrative Patent Judge	)	

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