

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORGE R. PAYNE

Appeal No. 2002-1717
Application No. 09/089,153

ON BRIEF

Before BARRETT, LEVY, and SAADAT, Administrative Patent Judges.
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-9, which are all of the claims pending in this application.

BACKGROUND

Appellant's invention relates to a vehicle backup monitor and alarm system. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced as follows:

1. A vehicle backup monitoring and alarm system for assisting a trailer with its associated tractor in approaching a loading dock in a rearward or backing up fashion, said system comprising:

a rear detection module located on the rear of the trailer near the bottom, said rear detection module contains a small video camera, a laser-based distance detection system and a pair of high intensity lamps for increased rearward illumination over that normally provided by the reverse light provided on the trailer;

a driver's side detection module mounted on the trailer approximately one-third of the way back from the front near the bottom on the driver's side;

a passenger side detection module mounted in a manner symmetrical to said driver's side detection module on the passenger side of the trailer;

a series of interconnecting cables routed from the rear detection module, the driver's side detection module, and the passenger side detection module, under the trailer and up to the tractor, said interconnecting cables connecting a display monitor located near the head liner of the tractor in a position easily viewable by the driver.

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

Gauthier	5,373,482	Dec. 13, 1994
Schofield et al. (Schofield)	5,670,935	Sep. 23, 1997

Claims 1-9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Schofield in view of Gauthier.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejection, we make reference to the final rejection (Paper No. 5, mailed April 13, 1999) and the answer (Paper No. 16, mailed January 16, 2003) for the examiner's complete reasoning in support of the rejection, and to the brief (Paper No. 14, filed August 15, 2000) for the appellant's arguments thereagainst. Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered. See 37 CFR 1.192(a).

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner.

Upon consideration of the record before us, we affirm-in-part.

We observe at the outset appellant's statement (brief, page 3): "Claims 1-9 form a single group of claims." Notwithstanding

appellant's assertion, appellant presents separate arguments (brief, page 9) directed toward dependent claim 2. Accordingly, as claim 2 has been separately argued, we will separately consider the patentability of claim 2.

We initially note that the rejection of all of the claims is under 35 U.S.C. § 103(a). 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).

A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

In making our determination, we have considered the disclosures of Schofield et al. and Gauthier for what each one fairly teaches one of ordinary skill in the art, including not only the specific teachings, but also the inferences which one of ordinary skill in the art would reasonably have been expected to draw therefrom. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966); In re Preda, 401 f.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Additionally, in our evaluation of the obviousness issues before us, we have presumed skill on the part of the artisan, rather than the lack thereof. See In re Sovish, 769 F.2d 738, 742, 226 USPQ 771, 774 (Fed. Cir. 1098).

We first turn to independent claim 1. The examiner's position (final rejection, pages 5-6) is that Schofield shows all of the recited features except for a rear detection module that contains not only a small video camera, but also a laser-based distance detection system and a pair of high intensity lamps. To overcome this deficiency in Schofield, the examiner turns to Gauthier (final rejection, page 6) for the use of a tractor-trailer backup system that includes back-up lights and a rear detection module containing a distance detection system.

In response, appellant argues (brief, pages 4-5) that the examiner has failed to present evidence of motivation to combine

the references. Specifically, appellant states (id.): "[i]n the video monitoring system in the Schofield et al. reference, there is no suggestion or teaching as to the desirability of incorporating an object distance detection system in order to enhance the effectiveness of the system as a whole."

Schofield discloses (col. 7, lines 14-17) that "[e]ach image capture device could be a combination of different types of devices, such as one sensitive to visible radiation combined with one sensitive to infrared radiation." The reference further suggests (col. 11, lines 21-28):

In order to determine the distance of objects behind vehicle 10, a separate distance-measuring system may be used. Such separate system may include radar, ultrasonic sensing, infrared detection, and other known distance-measuring systems. Alternatively, stereoscopic distance-sensing capabilities of side image capture devices 14 may be utilized to determine the separation distance from trailing objects utilizing known techniques.

Accordingly, we are not persuaded by appellant's argument that motivation to combine the references is lacking. We find that Schofield et al. suggests providing the image capture devices taught in that reference with a combination of video and distance detection systems, such as those further disclosed by Gauthier.

Appellant also argues (brief, page 6) that in Schofield, "[t]here is no mention of the placement of the image capture

devices on a 'trailer' as the examiner states" (meaning a tractor-trailer), and that "[t]his distinction is key to the patentability of the present invention. . . ." However, appellant acknowledges (id.) that Schofield teaches the use of its rearview vision system in conjunction with "a vehicle 10, which may be an automobile, a light truck, a sport utility vehicle, a van, a bus, a large truck, or the like" (col. 3, lines 50-52) (emphasis added).

From the disclosure of Schofield, we find that the reference discloses providing a large truck or the like, with a rearview vision system reads on the claimed "trailer with its associated tractor." Furthermore, assuming arguendo that Schofield does not disclose a tractor-trailer, an artisan would have been motivated to apply Schofield's system to a tractor-trailer as taught by Gauthier.

It is further argued (brief, page 7) that in the present invention, the detection modules "are located only on the trailer of a semi-tractor/trailer combination," and (brief, page 6) that in Schofield, the image capture devices were meant to be located forward on the body of the vehicle. From our review of claim 1, we find that the claim recites "a driver's side detection module mounted on the trailer approximately one-third of the way back

from the front near the bottom of the driver's side." In Gauthier, figure 2 discloses transceivers 60 mounted on the side of the trailer of the tractor-trailer. The left-most transceiver 60 is located approximately one-third of the way back from the front of the tractor-trailer. We note that claim 1, as broadly drafted, does not require the detector be approximately one-third of the way back from the front of the trailer, but reads on the detector being approximately one-third of the way back from the front of the tractor trailer. From the disclosure of Gauthier, we find that an artisan would have been motivated to locate the detectors of Schofield in the location disclosed by Gauthier, in view of Gauthier's disclosed placement on a tractor-trailer. In addition, we note that Schofield does not seem to disclose that the rear detection module includes a laser-based distance detection system. Neither does Gauthier. However, the appellant does not argue this as a difference and thus it will be assumed that limitation is met or made obvious to one skilled in the art by Schofield and Gauthier. Cf. In re Baxter Travenol Labs, 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious

distinctions over the prior art."); In re Wiseman, 596 F.2d 1019, 1022, 201 USPQ 658, 661 (CCPA 1979) (arguments must first be presented to the Board).

Appellant further argues (brief, page 8) that the claimed distance detection system is not disclosed by Gauthier because "the distance measuring system in Gauthier has limitations in how accurate it can measure the distance from behind the trailer to an object such as the loading dock." In support of this assertion, appellant contrasts the language of claim 6 of the reference, which recites detecting "the presence of an object within ten feet of a portion of said vehicle," with the purported capability of the claimed invention to "measure the distance between the trailer and an object within fractions of an inch."

While we find that the language of the reference pertains to the range, not the accuracy, of the distance sensors, the examiner correctly states (answer, page 6): "Regardless of Gauthier's limitations as to how far he is able to measure, there is no mention within the appellant's claims as to the precise measurement of distance." Although claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art, In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983), limitations are not to be

imported or read into the claims from the specification. In re Van Geuns, 988 F.2d 1181, 1184, 26 USPQ2d 1057, 1059 (Fed. Cir. 1993) citing In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Priest, 582 F.2d 33, 37, 199 USPQ 11, 15 (CCPA 1978). Accordingly, because claim 1 does not recite any particular distance of the detector module, we find that appellant's argument regarding the accuracy of the recited distance detection system does not distinguish claim 1 over the teachings of Schofield and Gauthier.

From all of the above, we find that the examiner has established a prima facie case of obviousness of claim 1 that has not been successfully rebutted by appellant. The rejection of claim 1 under 35 U.S.C. § 103(a) is affirmed.

We turn next to dependent claim 2, which appellant has separately argued (brief, page 9). Claim 2 recites: "The vehicle backup monitoring and alarm system of claim 1, wherein said display monitor comprises a flat panel display mounted on a hinge and spring system, that is capable of being folded up and away when not in use." The examiner's position (answer, page 6) is that

[s]ince Schofield discloses that the display may be placed in various places that are convenient to the driver, it would have been obvious to one skilled in

the art to design a display system that may be folded up to be inconspicuous to the driver when not wanted.

Appellant responds (brief, page 9) that "there is no teaching or suggestion of the proposed combination of flat panel display and a spring and hinge system."

We find that Schofield teaches the use of a flat panel display (col. 6, lines 46-48) that "may be mounted/attached to the dashboard, facia or header, or to the windshield at a position conventionally occupied by an interior rearview mirror" (col. 6, lines 46-48). Schofield also teaches that "[d]isplay 20 is of a size to be as natural as possible to the driver" (col. 6, lines 22-23) and that "display 20 is preferably positioned within the driver's physiological field of view without obstructing the view through the windshield" (col. 6, lines 29-32).

From the disclosure of Schofield, we agree with appellant's statement (brief, page 9) that the reference includes "no teaching or suggestion of the proposed combination of flat panel display and a spring and hinge system." We find that the prior art fails to disclose the claimed limitation that the "display monitor comprises a flat panel display mounted on a hinge and spring system, that is capable of being folded up and away when not in use."

The examiner's unsupported conclusion of obviousness is not a substitute for evidence and does not provide a sufficient factual basis for a showing of incentive or motivation to provide the prior art flat panel display of Schofield with a hinge and spring system. Accordingly, we find that the examiner has failed to establish a prima facie case of obviousness with respect to claim 2 and, consequently, has failed to establish a prima facie case of obviousness with respect to each of claims 3-9, which depend from claim 2.

The rejection of claims 2-9 under 35 U.S.C. § 103 as unpatentable over Schofield et al. in view of Gauthier is therefore reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1-9 under 35 U.S.C. § 103 as being unpatentable over Schofield et al. in view of Gauthier is affirmed with respect to claim 1 and reversed with respect to claims 2-9.

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

AFFIRMED-IN-PART

LEE E. BARRETT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
STUART S. LEVY)	APPEALS
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