

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 32

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOMOMITSU NIWA

Appeal No. 1998-2748
Application No. 08/429,783

HEARD: MAY 1, 2000

Before HAIRSTON, KRASS, and GROSS, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 6, 20 and 21, all of the claims remaining in the application.

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The invention pertains to numerically controlled machine tools. More particularly, a machining program is permitted to be executed from a stopped position wherein a system is created in which the number of subprogram repetition times and the number of its execution times can be corrected.

Independent claim 6, reproduced as follows, is representative of the claimed invention:

6. A numerically controlled machine tool operative to execute a machining program having a nest structure and being executable in block form, comprising:

monitor means for monitoring the execution block position of said machining program being executed;

display means for displaying the nest structure of said machining program being executed; and

correcting means for correcting said nest structure of the machining program displayed on said display means.

The examiner relies on the following reference:

Shimano et al. (Shimano) 4,835,730 May 30, 1989

Claims 6, 20 and 21 stand rejected under 35 U.S.C. 102(b) as anticipated by Shimano.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

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Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the

recited functional limitations. RCA Corp. V. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Assoc. Inc. V. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The instant claims require the execution of a machining program having a nest structure. They also require correcting the nest structure of the machining program being executed. The examiner points to Table 48 in column 41 of Shimano for the teaching of these claimed limitations.

First, it appears that Table 48 of Shimano is directed to a "walk-through training" mode of operation where actual programming, rather than the execution of the program, is of interest. Thus, any editing performed by an operator in Shimano would not be a correction of a nest structure of the

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machining program "being executed." In contrast, the instant claims require the correction of a nest structure of the machining program "being executed."

With regard to the "nest structure" limitation of the instant claims, the examiner contends that all that is required for "nesting" is a "routine or block of data included within a larger routine or block of data" [answer-page 5]. The examiner then argues that since the loop in Table 48 is within a larger routine, it is a nested subroutine, as claimed.

It appears from the disclosure of Shimano that an operator cannot rearrange a plurality of sequences which would be required for a "nest structure" correction as intended by appellant. Various portions of Shimano appear to indicate that each sequence is completed in its entirety before it is again executed in another "loop." See, for example, column 44, lines 57-60 and column 47, lines 55-59 of Shimano. Therefore, it would appear to us that, in Shimano, an operator has no opportunity to return to any desired point within a "nested structure" in order to correct the structure, as claimed.

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Based on our reading of Shimano, a determination that there is, in fact, disclosed therein the execution of a machining program having a nested structure and a correction of said nested structure, as claimed, can only be bottomed, at best, on speculation and hindsight, improper criteria on which to base a finding of anticipation under 35 U.S.C. 102(b). The examiner has not persuaded us of a prima facie case of anticipation of the instant claimed subject matter based on Shimano.

Accordingly, we will not sustain the rejection of claims 6, 20 and 21 under 35 U.S.C. 102(b).

The examiner's decision is reversed.

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REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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ANITA PELLMAN GROSS)	
Administrative Patent Judge)	

rwk

SUGHRUE MION ZINN
MACPEAK & SEAS

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2100 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037