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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LARS LEIN, JAN GUNNAR ROYLAND,
OLE ANDRE GJERPE, CHRISTER SVENKERUD,
OLE JONNY WAERP, and VIGGIO L. NORUM

Appeal 2010-010993
Application 11/440,765
Technology Center 3600

Before: PHILLIP J. KAUFFMAN, BRETT C. MARTIN, and
BEVERLY M. BUNTING, *Administrative Patent Judges*.

MARTIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Lars Lein et al. (Appellants) appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 1-4 and 6¹. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

Appellants' claims are directed generally to a method and device for controlling a gearshift mechanism. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for controlling a gearshift mechanism, said gearshift mechanism having at least one shifting element, a gear release element, a shift actuator and a selector actuator, in which the shifting element is movable by the selector actuator along a selector track, and is movable from the selector track at sites spaced from each other into shift tracks by means of the shift actuator for engagement of a gear, and the gear release element is coupled to the shifting element, so that during engagement of the gear, the gear release element disengages a previously engaged gear, comprising the step of moving the shifting element by the shift actuator, after engagement of the gear, in the direction toward the selector track into a rest position located adjacent to the intersection of the shift track and the selector track, in which rest position the shifting element remains, until the shifting element is moved for engagement of a new gear, wherein moving the shifting element into the rest position after engagement of the gear significantly

¹ Claim 5 was originally rejected as both obvious and indefinite, but Appellants cancelled claim 5 via an Amendment dated June 4, 2010. This cancellation also effectively withdraws the rejection of claim 5 under 35 U.S.C. § 112, second paragraph because it was the only claim subject to this ground of rejection. Therefore, we do not address the rejections of claim 5. *See* Reply Br. 1-2; *see also* Ans. 3.

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shortens a first path the shifting element must travel between the gear and the new gear during engagement of the new gear.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Norum	US 2004/0112158 A1	Jun. 17, 2004
Zimmermann	US 2004/0129100 A1	Jul. 8, 2004

THE REJECTION ON APPEAL

The Examiner made the following rejection:

Claims 1-4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Norum and Zimmermann. Ans. 3.

ANALYSIS

The Examiner finds that Zimmermann teaches a shift position 676 in which a shift element resides after a shift. Ans. 4. The Examiner refers to this as a rest position “located adjacent to the intersection of the shift and the selector track” and also finds that this movement occurs “after engagement of the gear.” Ans. 4-5.

Appellants challenge the rejection of independent claims 1 and 3, from which claims 2, 4, and 6 variously depend, because the cited references fail to teach or suggest all of the elements of the claimed invention. *See* App. Br. 14-18. Appellants specifically argue that

[i]n particular, the Examiner has failed to identify a gear mechanism in which, after engagement of a gear, a shift element is moved to a rest position adjacent to an intersection of a shift track with a selector track, wherein movement of the shifting element to the rest position significantly shortens a path the shifting element must travel to engage a new gear.

App. Br. 14. Both claim 1 and claim 3 make it clear that the rest position is a distinct position into which the shifting element moves after engagement of the gear. The claims also make it clear that this resting position is intended to “significantly shorten[] a first path the shifting element must travel” and that the rest position be “adjacent to the intersection of the shift track and the selector track.” *See* App. Br. 27-28. Appellants’ Figure 1 shows that, in one embodiment, this rest position T lies at a position fairly close to selector track W and substantially opposite from end stop S_{II}, which is near gear position P_{II}, along shift track S₂.² Spec. para. [0020].

Appellants argue that Zimmerman teaches that “[w]hen the gears are engaged, the selector fork is positioned in predetermined selector fork positions” and that this “strongly implies that the selector forks are already in the predetermined positions, such as position 676, before and during engagement of the gear.” App. Br. 17 (emphasis removed). Appellants further argue that Zimmermann, thus, fails to teach “moving the shifting element...into a rest position...wherein moving the shifting element into the rest position...significantly shortens a first path the shifting element must travel between the gear and the new gear.” App. Br. 18. As we understand Zimmermann’s teaching of position 676, engagement of the gear is associated with position 676 so the engagement of the gear in position 676 cannot properly be considered a rest position as claimed in each of claims 1 and 3. The Examiner refers to Zimmermann at paragraph [0350], which makes clear that “[w]hen the gears are engaged, the selector fork is positioned in predetermined selector fork positions **672, 674, 676, 678, 680, 682**, which are assigned to the respective gears, in accordance with a predetermined coding characteristic.” Accordingly, position 676 is not a rest

² Referring to Figure 1 as amended July 7, 2008.

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position as claimed (one that is distinct from a position associated with engagement of the gear) because position 676 *is* the position associated with engagement of the gear. Thus, we do not see a teaching in Zimmermann that involves moving the shifting element into a rest position *after* engagement of the gear, as claimed in both of claims 1 and 3. As such, we do not sustain the Examiner's rejection of claims 1-4 and 6 as obvious over Norum and Zimmermann.

DECISION

For the above reasons, we REVERSE the Examiner's decision to reject claims 1-4 and 6.

REVERSED

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