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| CROWELL, I. & MORING I.I.P<br>INTELLECTUAL PROPERTY GROUP<br>P.O. BOX 14300<br>WASHINGTON, DC 20044-4300 |             |                      | DAGER, JONATHAN M   |                  |
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RAINER ANDRES,  
THOMAS JAEGERS, and FRANK GIELISCH

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Appeal 2011-003046  
Application 11/712,997  
Technology Center 3600

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Before PHILLIP J. KAUFFMAN, JILL D. HILL, and  
BEVERLY M. BUNTING, *Administrative Patent Judges*.

HILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Rainer Andres et al. (Appellants) appeal under 35 U.S.C. § 134 from a final rejection of claims 1-10. App. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

### REJECTIONS

Appellants seek review of the Examiner's rejection of claims 1-9 under 35 U.S.C. § 102(b) as anticipated by Giefer (US 2002/0170376 A1, pub. Nov. 21, 2002), and the Examiner's rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Giefer.<sup>1</sup> App. Br. 3, Ans. 2.

### ANALYSIS

The claimed subject matter relates to a method for emergency unlocking of an automatic transmission of a vehicle. Spec. para. [0002].

Claim 1 is the only independent claim on appeal, and is reproduced below.

A method for emergency unlocking of a vehicle automatic transmission from a blocked state to protect against unauthorized use, comprising the acts of:

placing an emergency unlocking unit in at least one of mechanical and electrical communication with a vehicle in the blocked state to protect against unauthorized use, the vehicle being configured to prevent operation of the automatic transmission in a forward driving mode in response to emergency unlocking unit use;

actuating the emergency unlocking unit to unlock the automatic transmission in a manner which prevents shifting of the transmission into a forward driving mode.

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<sup>1</sup> Although Appellants state the Grounds of Rejection to be Reviewed on Appeal as whether "claims 1-10" are anticipated by Giefer, claim 10 was not rejected under 35 U.S.C. § 102(b). Ans. 3; Office Action dated Sep. 25, 2009, at 7.

The issue in this appeal is whether Giefer's transmission is ever in a "blocked state" as recited in claim 1. The Examiner finds that Giefer discloses a "method of unlocking an automatic vehicle transmission" and that, "without activation of the unlocking device 15, there is no possibility to shift the transmission normally." Ans. 4. The examiner also finds that Giefer discloses a method of unlocking a "vehicle automatic transmission from a blocked state (parking position), the blocked state achieved to protect against unauthorized use (theft protection)." Ans. 5. The Examiner supports the finding that Giefer's automatic transmission is "blocked" with Giefer's teaching that it is possible to utilize its mechanical coupling as a vehicle immobilizer or theft protection because, without activation of unlocking device 15, there is no ability to shift the transmission normally and independent driving of the vehicle is prevented. Ans. 7-8 (citing Giefer, para. [0030]).

Appellants argue that "[t]he primary error underlying the Examiner's application of the Giefer reference to the pending claims is his position that by placing the Giefer transmission shift lever in the 'Park' position, the transmission is in the claimed 'blocked state'." Reply Br. 1. Appellants contend that that claim limitation "blocked state" is used consistently throughout the Specification and is defined in paragraph [0007] as follows:

The blocked state of the vehicle is when, for example, no user of the vehicle can be identified and the engine is off. . . . In general terms, a blocked state should prevail when no use of the vehicle is intended. As long as the vehicle is in a blocked state, the automatic transmission is locked, usually in the park setting and thus it is impossible to shift gears.

Reply Br. 3-4.

Based on this definition, the transmission is locked in the blocked state and cannot be shifted into gear without actuation of the emergency unlocking device. *See* Reply Br. 4. One skilled in the art would consider Appellants' Specification to teach a shift from park P to neutral N as a shift of gears of the automatic transmission, despite Appellants' reference to neutral and park as a "modes," because the gear selector GH selects the park and neutral modes and the neutral mode cannot be achieved without activation of the emergency unlocking unit. Spec., paras. [0024] – [0027]. Thus, according to the limitations set forth in claim 1, when read in light of the Specification, shifting from park to neutral cannot occur without actuation of the emergency unlocking unit to cause the transmission to unlock.

Appellants argue that, because Giefer's shift lever can be moved to place its automatic transmission from park to neutral without the automatic transmission being unlocked by an emergency unlocking unit, Giefer's automatic transmission can shift gears without actuation of an emergency unlocking unit and therefore is never locked and is never in the claimed blocked state. *See* Reply Br. 4.

The Examiner states, at page 8 of the Answer, that Appellants' proffered definition of the term "blocked state" is an inappropriate attempt to read a limitation from the Specification into the claims. We do not agree with the Examiner that Appellants' definition of "blocked state" improperly reads a limitation from the Specification into the claims. An Applicant is entitled to be his or her own lexicographer, and can rebut the presumption that claim terms are to be given their ordinary and customary meaning, by

clearly setting forth a definition of a term. *See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change” in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)).

Appellants clearly set forth a definition of the term “blocked state” in paragraph [0007] of the Specification, and that definition includes the automatic transmission being locked such that it is impossible to switch gears without actuating an emergency unlocking unit to unlock the transmission. Because a switch from park to neutral was contemplated by Appellants as a shift of gears that is prohibited in the blocked position, and because Giefer never blocks a shift from park to neutral, Giefer does not teach the claimed “blocked state to protect against unauthorized use.”

We therefore do not sustain the rejection of claim 1 under 35 U.S.C. § 102(b). Claims 2-10 depend directly or indirectly from claim 1 and are rejected solely as anticipated by or unpatentable over Giefer. We therefore do not sustain the rejection of claims 2-9 under 35 U.S.C. § 102(b). Claim 10 depends from independent claim 1, and the rejection of claim 10 relies upon the same erroneous finding of fact with regard to Giefer so that we also do not sustain the rejection of claim 10 under 35 U.S.C. § 103(a).

#### DECISION

We reverse the Examiner’s rejection of claims 1-9 under 35 U.S.C. § 102(a) as anticipated by Giefer.

Appeal 2011-003046  
Application 11/712,997

We reverse the Examiner's rejection of claim 10 under 35 U.S.C.  
§ 103(a) as unpatentable over Giefer.

REVERSED

JRG