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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TERENCE DANIEL PICKETT and SHUFENG HAN

Appeal 2014-009507
Application 11/655,492
Technology Center 3600

Before JENNIFER D. BAHR, ARTHUR M. PESLAK, and
SEAN P. O’HANLON, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Terrence Daniel Pickett and Shufeng Han (“Appellants”) appeal under
35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–14.¹

We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants submit the real party in interest is Deere & Company. Appeal
Br. 2.

THE CLAIMED SUBJECT MATTER

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A system for controlling the position of an agricultural implement coupled to an agricultural vehicle, the implement being movable with respect to the vehicle by an electrohydraulic valve structure configured to move the implement in response to position control signals, the system comprising:

a field topography database containing three-dimensional data of the topography of a field;

a location signal generation arrangement for providing location data of the position of at least one of the vehicle and the implement in the field;

an implement position sensor arranged to sense the implement position of the implement with respect to the ground, the implement position comprising the height of the implement with respect to the ground; and

a control unit connected to the field topography database, the location signal generation arrangement, the implement position sensor and the electro-hydraulic valve structure, the control unit operable to provide position control signals to the electro-hydraulic valve structure based upon actual implement position data received from the implement position sensor and expected required position change data, where the expected required position change data is based on a difference between an elevation of the ground below the implement and another elevation of the ground in a predetermined area ahead of the implement, the predetermined area calculated consistent with further movement in a steering direction or heading of the vehicle, a distance between the vehicle and the predefined area determined depending upon vehicle speed; where the expected required position change data are derived from elevation data recalled from the field topography database based upon the location data and heading data of the vehicle to automatically move the implement into a predefined position within a pre-selected range of operating heights with respect to the surface of ground.

REJECTION

Claims 1–14 are rejected under 35 U.S.C. § 112, first paragraph for failure to comply with the written description requirement.

DISCUSSION

The Examiner cites the following limitation in each of independent claims 1, 12, and 14²:

the control unit operable to provide position control signals to the electro-hydraulic valve structure based upon actual implement position data received from the implement position sensor and expected required position change data, where the expected required position change data is based on a difference between an elevation of the ground below the implement and another elevation of the ground in a predetermined area ahead of the implement, the predetermined area calculated consistent with further movement in a steering direction or heading of the vehicle, a distance between the vehicle and the predefined area determined depending upon vehicle speed.

Final Act. 2–3. The Examiner cites to paragraphs 16 and 36 of the Specification and determines that these paragraphs fail “to show support for the claimed limitation.” *Id.* at 3.

Appellants divide the claim limitation at issue into two parts (Section A and Section B) for analysis. Appeal Br. 11. Appellants first address Section A, i.e., the “control unit operable . . . and expected required position change data” part of claim 1. *Id.* Appellants contend that Specification Paragraphs 12, 14, 28–30, 33, 36, 37, and 45, as well as Figures 1–3, provide

² We note that the subject section of claim 14 begins with slightly different wording (“operating the control unit to provide . . .”). Appeal Br. 20 (Claims App.).

support for the Section A part of the claim limitation. *Id.* Second, Appellants divide Section B into three subparts. *Id.* at 12. Appellants contend that Specification Paragraphs 17, 35, and 36 provide support for the Section (B)(1) limitation “a difference between an elevation of the ground below the implement and another of the ground in a predetermined area ahead of the implement.” *Id.* Appellants contend that Specification Paragraphs 16, 34, and 35 provide support for the Section (B)(2) limitation “the predetermined area calculated consistent with further movement in a steering direction or heading of the vehicle.” *Id.* at 13. Appellants contend that Specification Paragraph 35 provides support for the Section (B)(3) limitation “a distance between the vehicle and the predetermined area determined depending upon vehicle speed.” *Id.*

In the Answer, the Examiner agrees with Appellants that the Specification provides support for the part of the claim limitation identified by Appellants as Section A. Ans. 5. The Examiner also agrees with Appellants that the Specification provides support for the claim limitation identified by Appellants as Section (B)(2). *Id.* at. 7. The Examiner maintains the rejection with respect to the remaining parts of the claim limitation at issue, and explains that Specification Paragraphs 17, 35, and 36 fail to disclose a nexus or connection between the claimed “expected required position change data” and a “difference between an elevation of the ground below the implement and another elevation of the ground in a predetermined area ahead of the implement.” *Id.* at 6, 8. For the following reasons, we do not sustain the rejection.

In order to comply with the written description requirement, the Specification “must describe the invention sufficiently to convey to a person

of skill in the art that the patentee had possession of the claimed invention at the time of the application, i.e., that the patentee invented what is claimed.”

LizardTech, Inc. v. Earth Resource Mapping, Inc., 424 F.3d 1336, 1345

(Fed. Cir. 2005). The Federal Circuit has explained that:

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claim language. . . . The content of the drawings may also be considered in determining compliance with the written description requirement.

In re Kaslow, 707 F.2d 1366, 1375 (Fed. Cir. 1983) (citations omitted).

The Specification discloses that the control unit can change the height of the implement “based upon the difference between the elevation of the ground below the implement and the elevation of the ground in a forward direction ahead of the implement.” Spec. ¶ 17. The Specification also discloses that “in step 108 [in Figure 3] a difference between the elevation of the ground ahead the platform 16 and the elevation of the ground beneath the platform 16 is calculated. . . . Afterwards, in step 110 a required change of the platform height is calculated based upon this difference.” *Id.* ¶ 36. The Specification also discloses the distance between the vehicle and the predetermined area is determined based on vehicle speed. *Id.* ¶ 35. Based upon the foregoing, we determine that the Specification and Appellants’ Figure 3 would reasonably convey to one of ordinary skill in the art that Appellants had possession of the recited control unit, including Section B1 and Section B3, of claim 1. Further, we agree with Appellants that paragraph 36 discloses that the expected required position change data (i.e.,

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the required change in platform height) “is based on a difference between an elevation of the ground below the implement and another elevation of the ground in a predetermined area ahead of the implement,” as required in the claims. *See* Reply Br. 3. For the foregoing reasons, we do not sustain the rejection of claims 1–14 under 35 U.S.C. § 112, first paragraph.

DECISION

The Examiner’s decision rejecting claims 1–14 is reversed.

REVERSED