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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TAKAHIKO TSUTSUMI, ICHIRO KITAORI, KOKI
UENO, KEISUKE SEKIYA, and TOSHINARI SUZUKI

Appeal 2015-001069
Application 13/260,032
Technology Center 3600

Before STEFAN STAICOVICI, LEE L. STEPINA, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

PESLAK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Takahiko Tsutsumi et al. (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–8.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellants submit the real party in interest is Toyota Jidosha Kabushiki Kaisha. Appeal Br. 2.

THE CLAIMED SUBJECT MATTER

Independent claim 1, reproduced below with emphasis added, is illustrative of the claimed subject matter.

1. A control apparatus for a vehicle having a shift switch mechanism for switching a shift range of a transmission by driving an actuator, said shift switch mechanism including a rotational member coupled to said actuator, and a restriction member for restricting rotation in a predetermined direction of said rotational member by contacting a predetermined portion of said rotational member when a rotational position in said predetermined direction of said rotational member is caused to reach a reference position corresponding to a predetermined shift range by driving said actuator,

said control apparatus comprising:

a first device for detecting that a user of said vehicle performs a start manipulation for starting said vehicle; and

a second device activated in response to detection of said start manipulation by said first device or in response to occurrence of a factor different from said start manipulation, for controlling driving of said actuator,

said second device determining, when said second device is activated, whether activation of said second device is caused by said start manipulation or said factor different from said start manipulation, said second device controlling said actuator so that press control is executed by rotating said rotational member in said predetermined direction to cause said predetermined portion of said rotational member to be pressed against said restriction member for detecting said reference position, when activation of said second device is caused by said start manipulation, and said second device controlling said actuator so that said press control is not executed, when activation of said second device is caused by said factor different from said start manipulation.

REJECTIONS

- 1) Claims 1–4 and 8 are rejected under 35 U.S.C. § 102(b) as anticipated by Amamiya (US 2006/0207373 A1, pub. Sept. 21, 2006).
- 2) Claims 5 and 6 are rejected under 35 U.S.C. § 103(a) as unpatentable over Amamiya.
- 3) Claim 7 is rejected under 35 U.S.C. § 103(a) as unpatentable over Amamiya and Kamio (US 2006/0108966, pub. May 25, 2006).

DISCUSSION

Rejection 1: Claims 1–4 and 8: Anticipation by Amamiya

Appellants contend Amamiya does not anticipate independent claims 1 and 8 because it fails to disclose determining whether a start manipulation or other factor activates the recited second device. Appeal Br. 11.

Appellants next contend that Amamiya “discloses only that P-ECU executes press control” and “is completely silent with regard to . . . external factors different from start manipulation for activation of the P-ECU, and that the claimed second device distinguishes between these different ways that the P-ECU is activated.” *Id.* at 12. Appellants also contend that in Amamiya “the factor that causes a vehicle’s power supply to be turned on (i.e., a factor for activation of the P-ECU) is only the manipulation of a vehicle’s power switch (i.e., start manipulation). Amamiya provides **no other factor for activation** of the P-ECU.” *Id.*

In response, the Examiner referring to Figure 12A of Amamiya finds:

When the vehicle is powered on (S100), the P-ECU is activated and “press control” / “wall hit learning” is performed (S-108). . . At S-112, Examiner asserts that the P-ECU goes into an inactive state where it is simply waiting for a switch request. Upon receipt of a signal, the P-ECU is again activated and a determination is made whether a switch was requested (S-114). If the answer is “YES,” another determination is made as to whether a rotatable amount is stored (S116). If the answer is “NO,” “press wall control” / “wall-hit learning” is performed. However, if the answer is “YES,” no “press wall control” / “wall-hit learning” is performed. Examiner asserts that the flow of the diagram from answering “YES” at S114 to answering “YES” at S116 corresponds to “a factor different from said start manipulation” causing the activation of the P-ECU after being in an inactive state at S112.

Ans. 3–4.

Appellants respond that Amamiya’s P-ECU is activated at step S100, remains active between steps S100 and S112, and does not become inactive until it is powered off at step S124 or S128. Reply Br. 5. For the following reasons, we do not sustain the rejection.

Amamiya’s Figure 12A illustrates that when the vehicle is powered on at step S100 and a switch request is received at step S104, P-ECU is activated and performs wall-hit learning. Amamiya, Fig. 12A, ¶¶ 102–108.² Amamiya discloses that P-ECU powers off at step S124 or S128. *Id.* ¶¶ 110, 117–119. The Specification describes Appellants’ P-ECU as being “activated” when electric power is supplied to it. Spec. 10, ll. 4–6, 17–18. The Examiner does not point to any disclosure in Amamiya that P-ECU no longer has electric power supplied to it at step S112. Thus, the Examiner’s finding that “[a]t S112 . . . the P-ECU goes into an inactive state” (Ans. 4.) is

² The Examiner finds that the recited “‘press control’ directly corresponds to Amamiya’s ‘wall-hit learning.’” Ans. 3. Appellants do not dispute this finding. See Reply Br. *passim*.

not supported by the disclosure of Amamiya. In the absence of disclosure that P-ECU is powered off or otherwise inactive at step S112, the Examiner's further finding that "[u]pon receipt of a signal, the P-ECU is again activated" (*Id.*) at step S112 is also not supported by the disclosure of Amamiya. Hence, as Amamiya's P-ECU is active at step S112, the Examiner's finding that the process steps from "YES" at S114 to "Yes" at S116 correspond to the limitation "a factor different from said start manipulation" that causes "activation of the P-ECU after being in an inactive state at S112" is not supported by a preponderance of the evidence. Therefore, we do not sustain the rejection under 35 U.S.C. § 102(b) of independent claims 1 and 8 and claims 2–4, which depend directly or indirectly from claim 1.

Rejection 2: Claims 5 and 6: Obviousness over Amamiya

The Examiner rejects claims 5 and 6 as unpatentable over Amamiya. Final Act. 8. Claims 5 and 6 are dependent on claim 1. Appeal Br. 18 (Claims App.). The Examiner's modification of Amamiya does not remedy the deficiencies discussed *supra*. See Final Act. 8–10. We thus do not sustain the rejection under 35 U.S.C. § 103(a) of claims 5 and 6 for the same reasons stated as for claim 1.

Rejection 3: Claim 7: Obviousness over Amamiya and Kamio

The Examiner rejects claim 7 as unpatentable over Amamiya and Kamio. Final Act. 10. Claim 7 is dependent on claim 1. Appeal Br. 19 (Claims App.). The Examiner does not cite Kamio to cure the deficiencies

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in Amamiya noted above for claim 1. *See* Final Act. 10–11. Therefore, we do not sustain the rejection under 35 U.S.C. § 103(a) of claim 7 for the same reasons stated as for claim 1.

DECISION

The Examiner's decision rejecting claims 1–8 is reversed.

REVERSED