



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/441,392	04/06/2012	Horst DIETEWICH	080437.64399US	5844
23911	7590	11/02/2016	EXAMINER	
CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			HUYNH, LUAT T	
			ART UNIT	PAPER NUMBER
			3661	
			NOTIFICATION DATE	DELIVERY MODE
			11/02/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

edocket@crowell.com
tche@crowell.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HORST DIETEWICH, PATRICK MOLL,
KARL-JOSEF HUBER, and GEORG STROBL

Appeal 2015-002880
Application 13/441,392¹
Technology Center 3600

Before BIBHU R. MOHANTY, MICHAEL C. ASTORINO, and
TARA L. HUTCHINGS, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellants appeal under 35 U.S.C. § 134 from the Examiner's decision finally rejecting claims 1–10, 14, 15, 19, and 20 under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Djordjevic (US 2008/0154465 A1, pub. June 26, 2008) and Ondracek (US 2011/0148143 A1, pub. June 23, 2011). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellants, the real party in interest is the assignee Bayerische Motoren Werke Aktiengesellschaft. Appeal Br. 1.

Claimed Subject Matter

Claims 1 and 20 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. An aerodynamic device for a motor vehicle, comprising:
 - an air guide element movable between a position of rest and at least one operating position;
 - a drive unit operatively coupled to the air guide element for moving the air guide element; and
 - a control unit operatively configured to control the drive unit to move the air guide element from the position of rest into the operating position upon reaching a first vehicle speed threshold value, the control unit being further operatively configured to perform a function test of the drive unit below the first vehicle speed threshold value.

ANALYSIS

The Examiner relies on Djordjevic to teach the claimed air guide element and drive unit (i.e., a spoiler and drive device 5, respectively). Final Act. 2 (citing Djordjevic, para. 23, Fig. 2). The Examiner also relies on Djordjevic to teach a control unit that performs a functional test of the drive unit from a position of rest into an operating position (i.e., evaluation unit 6 and information device 7). Final Act. 2.

The Examiner finds that “Djordjevic does not explicitly disclose a control unit operatively configured to control the drive unit to move the air guide element from the position of rest into the operating position upon reaching a first vehicle speed threshold value.” *Id.* at 3. The Examiner turns to Ondracek to remedy the deficiency of Djordjevic and finds “Ondracek teaches that ‘the speed of the motor vehicle is above a predetermined minimum threshold, at least one of the plurality of extendable spoilers . . . is

moved from a retrac[t]ed state to an extended state.” *Id.* (citing Ondracek, para. 25). The Examiner concludes that “it would have been obvious to one having ordinary skill in the art at . . . to combine the teachings of Ondracek (speed detection mechanism) into the invention of Djordjevic to determine whether and when to extend and retract the air guide element.” *Id.*

The Appellants argue that the proffered combination of teachings from Djordjevic and Ondracek fail to teach “a control unit . . . operatively configured to perform a function test of the drive unit below the first vehicle speed threshold value,” as recited in independent claims 1 and 20. *See* Appeal Br. 3–6, Reply Br. 1–3. The Appellants’ argument is persuasive.

As correctly pointed out by the Appellants, *Djordjevic fails to use the word speed in its disclosure* (Appeal Br. 3) and “*there is no disclosure of when Djordjevic’s spoiler is moved*” (Reply Br. 2 (emphasis added)). As such, the Examiner’s findings that “specific citations to Djordjevic . . . clearly show evaluation unit 6 and information device 7 (function test) in Fig. 2 can be done for all vehicle speeds from the first position to the second position of the spoiler” (Ans. 7–8, emphasis omitted) and that “[d]ifferent vehicle speeds fairly constitute different spoiler positions as mentioned in Djordjevic” (*id.* at 8) are not adequately supported. *See* Reply Br. 1.

Moreover, although the Examiner finds that “[i]t is well [k]now[n] in the art that many retractable spoilers automatically extend around 60 to 80 mph and they usually retract around the same speed or slightly lower to improve driving stability at high speeds” (Ans. 8), the Examiner does not adequately explain why Djordjevic discloses that its *control unit* performs a function test of drive device 5 below a vehicle speed threshold value. And, the Examiner does not adequately explain that it would have been obvious at

the time of the invention to modify Djordjevic's *control unit* to perform a function test of drive device 5 below a vehicle speed threshold value. Additionally, the Examiner's findings based on Ondracek's disclosure does not remedy these deficiencies. As such, the Examiner fails to adequately explain how the combined teachings of Djordjevic and Ondracek teach "a control unit . . . operatively configured to perform a function test of the drive unit below the first vehicle speed threshold value," as recited in independent claims 1 and 20.

Thus, the Examiner's rejection of independent claims 1 and 20, and depending claims 2–10, 14, 15, and 19, as unpatentable over Djordjevic and Ondracek is not sustained.

DECISION

We REVERSE the Examiner's decision rejecting claims 1–10, 14, 15, 19, and 20.

REVERSED