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MICHAEL BEST & FRIEDRICH LLP (Bosch) 100 EAST WISCONSIN AVENUE MILWAUKEE, WI 53202			SOOD, ANSHUL	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* VERN TRAGESER

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Appeal 2015-002895  
Application 13/325,748<sup>1</sup>  
Technology Center 3600

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Before JOSEPH A. FISCHETTI, MICHAEL C. ASTORINO, and  
AMEE A. SHAH, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Appellant appeals under 35 U.S.C. § 134 from the Examiner’s decision rejecting claims 1–20 under pre-AIA 35 U.S.C. § 102(b) as clearly anticipated by Okabe (US 2007/0032943 A1, pub. Feb. 8, 2007). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> According to the Appellants, “[t]he real party in interest is Robert Bosch LLC.” Appeal Br. 2. Additionally, “[c]ertain limited naming rights were granted to Robert Bosch GmbH.” *Id.*

*Claimed Subject Matter*

Claims 1, 14, and 19 are the independent claims on appeal. Claim 1, reproduced below with emphasis added, is illustrative of the subject matter on appeal.

1. A merge assistance system for a vehicle, the merge assistance system comprising:
  - a camera configured to be coupled to the vehicle and to monitor an area;
  - at least one sensor configured to be coupled to the vehicle and to detect information about at least one moving target object;
  - an electronic control unit having a processor, the electronic control unit in electronic communication with the camera and the sensor to receive information about the monitored area and the at least one moving target object; and
  - a computer readable medium storing instructions that, when executed by the processor, cause the processor to:
    - receive information about a velocity and an acceleration of the vehicle,
    - determine a merging location based on the information received from the camera,
    - determine a velocity and an acceleration of the at the least one moving target object based on the information from the at least one sensor,
    - identify a merge assist situation, and
    - initiate a merge driving maneuver including a change in direction to control the vehicle during the merge assist situation.*

ANALYSIS

The Examiner and the Appellant are in dispute as to whether Okabe's disclosure corresponds to the limitation of claim 1, "a computer readable medium storing instructions that, when executed by the processor, cause the processor to . . . initiate a merge driving maneuver including a change in direction to control the vehicle during the merge assist situation." *See, e.g.,*

Appeal Br. 6–7, Ans. 2–4. The Examiner’s position is primarily based on a description from Okabe’s paragraph 24, which recites with added emphasis in italics:

The electric steering actuator **23** is provided with an electric actuator such as a servomotor or the like and *controls the steering angle to provide merging support guidance, for example, by imparting a tiny amount of vibration to the steering wheel.*

See Final Act. 2, 3–4; Ans. 4. The Examiner explains that “[a] change in the steering angle of a vehicle directly changes the direction of the vehicle, simply by the definition of steering angle.” Ans. 4 (emphasis omitted). In response, the Appellant argues that “Okabe does not expressly or inherently disclose ‘initiat[ing] a merge driving maneuver including a change in direction to control the vehicle during the merge assist situation’” (Reply Br. 4 (emphasis omitted)) and that “the Examiner is taking the disclosure of Okabe out of context and imparting his own meaning to the disclosure” (Reply Br. 2).<sup>2</sup> See also Appeal Br. 6–7.

At the outset, we note that the disputed claim limitation is directed to an executable instruction that causes a processor to “initiate a merge driving maneuver including a change in direction to control the vehicle during the merge assist situation.” The Examiner finds that the disputed claim limitation reads on Okabe’s electric steering actuator 23, which controls steering angle, and as such, includes an instruction for controlling steering angle. Accordingly, if Okabe’s electric steering actuator 23, e.g., a

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<sup>2</sup> The Reply Brief lacks page numbers. We designate page 1 as the page that includes the heading “**REPLY BRIEF**” and number the remaining pages in the Reply Brief consecutively therefrom.

servomotor, lacks the capability to change the direction of host vehicle 41, then the instructions that emanate from Okabe's electric steering actuator 23 would not logically or reasonably include the disputed claimed instruction.

The capability of electric steering actuator 23 to impart a tiny amount of vibration to the steering wheel (i.e., tactile output) is used to provide merging support guidance to a driver. *See Okabe*, para. 44. To the extent that electric steering actuator 23 does have greater capabilities, it is unclear if those capabilities extend so far as to provide a change in direction of host vehicle 41. Other merging support guidance includes audio (voice output) and visual (images on display unit 22) output to the driver. *See id.* These audio and visual types of merging support guidance — similar to the tactile output — do not act as an instruction to control the vehicle's direction, only to provide output to a driver. Additionally, Okabe includes another type of actuator, i.e., electric brake actuator 24, which has the capability to control vehicle 41 by applying automatic braking to decelerate the vehicle. *See id.* paras. 24, 44, 84. Although the capability of electric brake actuator 24 includes a control of the vehicle's speed and acceleration, this capability does not control a vehicle's direction. Moreover, the capabilities of electric brake actuator 24 do not suggest that electric steering actuator 23 includes the capability to control steering angle beyond that of imparting tiny vibrations to the steering wheel.

As such, there is inadequate support to find that electric steering actuator 23 includes the capability to initiate a change in direction of Okabe's host vehicle 41. Hence, there is inadequate support to find that the instruction(s) that emanate from Okabe's electric steering actuator 23 correspond to the disputed claimed instruction, i.e., "initiat[ing] a merge

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driving maneuver including a change in direction to control the vehicle during the merge assist situation.”

Thus, the Examiner’s rejection of independent claim 1 and claims 2–13, which depend therefrom, as anticipated by Okabe is not sustained. Additionally, independent claims 14 and 19 include substantially similar limitations as claim 1. Because the rejection of claims 14 and 19 relies on the same inadequately supported finding as discussed above, the rejection of claims 14–20 as anticipated by Okabe is not sustained.

#### DECISION

We REVERSE the Examiner’s decision rejecting claims 1–20.

REVERSED