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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KAZUHIKO ONO and KOJI SUZUKI

Appeal 2015-007237
Application 12/461,756
Technology Center 2600

Before ROBERT E. NAPPI, KEN B. BARRETT, and JAMES W. DEJMEK
Administrative Patent Judges.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 6, 11, and 16 through 18. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We reverse and enter new grounds of rejection pursuant to our authority under 37 C.F.R. § 41.50(b).

INVENTION

Appellants' invention relates to a garage door opening device for a motorcycle. *See* Abstract. Claim 1 is illustrative of the invention and reproduced below:

1. A garage door opening device for a motorcycle, comprising:

a vehicle-side communicating device configured to transmit an opening or closing signal to a garage-side communicating device; and

a manual operation switch configured to initiate sending of the opening or closing signal via the vehicle-side communicating device,

wherein the manual operation switch is disposed in front of a rider and on an inner panel joined to an inside of a side cowl of the motorcycle,

wherein the vehicle-side communicating device and the manual operation switch are located separately from each other,

wherein the vehicle-side communicating device is disposed inside a front cowl that is forward of a meter housing provided on the inside of the front cowl of the motorcycle where there is no metal portion of the motorcycle obstructing communication,

wherein the vehicle-side communicating device is disposed on a vehicle body centerline of the motorcycle, and wherein the vehicle-side communicating device comprises an antenna, and

wherein wiring used to connect the vehicle-side communicating device and the manual operation switch is housed inside a vehicle body of the motorcycle.

REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 6, and 11 under 35 U.S.C. § 103(a) as being unpatentable over Piper (US 6,707,377 B2; iss. Mar. 16, 2004), and Sano (US 6,372,304 B1; iss. Apr. 16, 2002). Final Act. 2–12.¹

¹ Throughout this Opinion, we refer to the Appeal Brief (filed March 16, 2015); Reply Brief (filed July 30, 2015); Final Office Action (mailed November 17, 2014); and the Examiner’s Answer (mailed June 12, 2015).

The Examiner has rejected claims 16 through 18 under 35 U.S.C. § 103(a) as being unpatentable over Piper, Sano, and Stewart (US 6,879,122 B1; iss. Apr. 12, 2005). Final Act. 12–13.

ANALYSIS

Appellants argue the rejection of independent claims 1, 6, and 11 is in error as the Examiner’s interpretation of the panel in Piper, which contains the actuating switch of the garage door opener, as the claimed cowl is unreasonable. App. Br. 11–17. Thus, Appellants argue that the Examiner has not shown the combination of the references teaches the claimed location of the operation switch or the communicating device.

In response to Appellants’ arguments, the Examiner disagrees with Appellants’ proposed interpretation of a cowl and finds the combination of Piper and Sano teach a motorcycle cowl is well known. Answer 3.

We agree with the Examiner that motorcycle cowls are well known in the art. However, we disagree with the Examiner that the combination of Piper and Sano teaches mounting the manual operating switch in front of a rider and on an inner panel joined to an inside of a side cowl as claimed. However, we find the newly cited reference to Murayama (US 4,630,160, iss. Dec. 16, 1986 (assignee Honda)) teaches a motorcycle cowl with manual operating switches for a radio transceiver located in front of a rider and on an inner panel joined to an inside of a side cowl as claimed. (*See* Fig. 1, items 1AA and 1AB, col. 1, ll. 34–48). We consider the skilled artisan, viewing this teaching, would recognize that the switches and communication unit of Piper, could be similarly mounted in the cowl. Thus, Appellants’ arguments have persuaded us of error in the Examiner’s rejection. However, we now enter a new ground of rejection against claims 1, 6, and 11 under 35

Appeal 2015-007237
Application 12/461,756

U.S.C. § 103(a), adopting the Examiner's findings related to Piper and Sano and supplementing the Examiner's findings with Murayama's teaching of a cowl with manual operating switches mounted thereto.

Appellants also argue the Examiner erred as there is insufficient rationale to move the communication device of Piper to the front of the cowl as claimed. App. Br. 17–20. We address this argument as it applies to the new rejection based upon Piper, Sano, and Murayama. The Examiner finds Piper teaches that placement of the communication unit should be such that it allows easy access for programming and reduces exposure to the elements (e.g., rain or snow), and thus, the skilled artisan would be motivated to locate the communication unit in other locations, such as the front cowl. Answer 4–5. We concur, and note that the newly cited teachings of Murayama, further support this, as Murayama teaches that several of the electronic components (which are controlled by the aforementioned switches on the cowl) are mounted in the cowl (*see* Figs. 1, 2, and 3 (note especially, that items 11 and 6 are depicted as being in front of gauge cluster item 20)). Thus, in as much as Appellants' arguments apply to the new rejection, they are not persuasive.

With respect to claims 16 through 18 under 35 U.S.C. § 103(a), we enter a new ground of rejection, based upon Piper, Sano, Stewart, and Murayama. We adopt the Examiner's findings regarding Piper, Sano, and Stewart, as supplemented with our findings related to Murayama, as discussed above with respect to claims 1, 6, and 11.

DECISION

The decision of the Examiner to reject claims 1, 6, 11, and 16 through 18 is reversed. However, we enter new grounds of rejection against claims

Appeal 2015-007237
Application 12/461,756

1, 6, 11, and 16 through 18, by supplementing the Examiner's findings with the teachings of Murayama.

This Decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). This section provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under §41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

REVERSED; 37 C.F.R. § 41.50(b)