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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEVEN SULLIVAN

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Appeal 2017-001789  
Application 11/924,653  
Technology Center 3600

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Before JOSEPH L. DIXON, ST. JOHN COURTENAY III, and  
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

Appellant seeks rehearing of the August 29, 2017 Decision on Appeal (the “Decision”), in which we affirmed the Examiner’s rejections of claims 1–12 and 64–74.

ANALYSIS

Appellant argues that (1) we overlooked arguments relating to claims 67 and 69–72 made in the Reply (Request 1–2), (2) we overlooked arguments relating to written description and indefiniteness (*id.* at 2–4), and (3) we misapprehended facts relating to the Arnold reference and/or claims

73 and 74 (*id.* at 4). We address Appellant’s arguments in the order presented.

***Claims 67 and 69–72***

In the Appeal Brief, Appellant argued “[t]he Examiner does not address claims 67 and 70–72, which recite limitations not contained in any prior art references.” (App. Br. 14.) In the Answer, the Examiner provided additional detail regarding those claims. (*See* Ans. 14.) In the Reply Brief, Appellant made arguments regarding the new information in the Answer. (*See* Reply Br. 4.) Appellant’s objection that we overlooked these Reply Brief arguments concerning claims 67, 70, and 72 is noted, and we accordingly address those arguments below.

Claim 67 recites that the motorized braking control of claim 6 “is configured to be controlled by processor control signals in applying motorized braking commands.” The Examiner found that “col. 8 lines 21–31 have previously been identified for the motorized braking” and that it is “readily apparent from figure 7 that Goldman discloses a controller for applying these commands, for instance element 209.” (Ans. 14.) Appellant argues “Goldman discloses a controller, but not that a motorized braking control applies motorized braking commands under control of processor control signals.” (Reply. Br. 4.) We agree with the Examiner that one of skill in the art would have understood Goldman’s use of a “microprogrammed controller” to involve application of braking commands “under control of processor control signals.”

Claim 70 recites that the electric devices of claim 1 “are configured for dynamic braking.” The Examiner states that “col. 3, lines 39–41 of DeVries and col. 8, lines 21–31 of Goldman have been noted in the rejection

of claim 1 which describe active (dynamic) control of the magnets for braking.” (Ans. 14.) Appellant argues the “active (dynamic) control of the magnets for braking” cited by the Examiner “is the use of electric traction motors of a vehicle as generators when slowing, with the generated electrical power dissipated as heat” and that “Goldman does not teach or suggest such a configuration, nor does the Examiner argue otherwise.” (Reply. Br. 4.) We agree with the Examiner, as DeVries column 3, lines 39–41 states “[w]hen the knob is turned counterclockwise, the polarity of electro-magnets reverse and powerful electro-magnetic braking begins,” which we find sufficient to describe the claimed “dynamic braking.” Appellant does not argue for a construction of “dynamic braking” that would exclude what is described in DeVries from the broadest reasonable interpretation of that term.

Claim 72 further limits the method of claim 1 “using the electric devices to motor the wheel and accelerate the wheeled vehicle and using the electric devices to effect a combination of regenerative or dynamic braking and motorized braking of the wheel and decelerate the wheeled vehicle and bring it to a stop.” The Examiner states that “[s]upport [for] the braking features have been provided within the rejection of claim 1,” and particularly identifies “col. 3, lines 39–41 of DeVries and col. 8, lines 21–31 of Goldman and the modification to Goldman provided in the rejection of claim 1.” (Ans. 14.) The Examiner further explains that “[t]he feature of accelerating the vehicle can readily be found in DeVries at col. 3, lines 35–38 and Goldman in the abstract, col. 6, lines 46–51.” (*Id.* at 14–15.) Appellant argues “the cited references do not disclose a combination of regenerative or dynamic braking and motorized braking (which are not required by claim 1),

nor does the Examiner argue otherwise.” (Reply Br. 4.) We find this argument unpersuasive because Appellant does not explain why the portions of the references cited by the Examiner do not describe regenerative/dynamic and motorized braking, and Appellant does not address the finding that it would have been obvious to combine the two.

Because we find Appellant’s arguments regarding claims 67, 70, and 72 unpersuasive, we sustain the rejections of those claims, along with the rejection of claim 71, which is not separately argued.

***Written Description and Indefiniteness***

Appellant asserts it did “present arguments directed to [written description and indefiniteness] in the Appeal Brief, on page 7, first two paragraphs” and “submits that a mistake in the headings of an appeal brief, reflected in the ‘grounds of rejection’ identified in section VI of the appeal brief, is a formality only.” (Request 2.) We do not agree that Appellant argued these issues in the Appeal Brief. Both the Table of Contents *and* the “Grounds of Rejection to be Reviewed on Appeal” sections of the Brief omit written description and indefiniteness entirely, and the arguments at the top of page 7 are most reasonably read as applying to enablement only, particularly given that they are made in a section titled “ARGUMENTS TRAVERSING § 112, FIRST PARAGRAPH REJECTION BASED ON LACK OF ENABLEMENT,” which concludes “the rejection [singular] of claims 1–12 and 64–74 under 35 U.S.C. [§] 112, first paragraph [which does not include indefiniteness] is improper and should be withdrawn.” (App. Br. 7.) To be clear, the Brief was not “non-complaint” such that it should have been rejected; instead, it only addressed a subset of the issues raised below, which

is an appellant's prerogative. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).<sup>1</sup>

### *Claims 73 and 74*

Appellant argues “[c]aims 73 and 74 recite a parking brake used to lock the rotor in place,” that “[t]he Board did not address this claim limitation,” and that “Arnold does not teach a parking brake that locks a rotor in place, nor do any of the other reference.” (Request 4.) We are not persuaded. First, Appellant did not specifically argue the “lock the rotor in place” language in the Brief (*see* App. Br. 15), so this is not an issue that was overlooked.<sup>2</sup> Second, we agree with the Examiner that “Arnold describes a parking brake system” (*see* Decision 10) and we conclude that, as one of skill in the art would appreciate, application of a parking brake—the point of which is to prevent movement of the wheels—would have the effect of locking a rotor.

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<sup>1</sup> We note that the material Appellant cites at the top of page 7 of the Appeal Brief was also included in the earlier Appeal Brief, which was filed before the written description and indefiniteness rejections had been made, a fact that undercuts Appellant's argument that the material was intended to address those issues.

<sup>2</sup> The argument in the Brief was that “the parking brake function involves clamping a permanent magnet of the rotor to a corresponding stator” (App. Br. 15), and we see no reason why “the parking brake function” should be limited to magnetic clamping.

DECISION

We grant Appellant's Request for Rehearing of our Decision, but decline to modify the ultimate results, which remain the same, as follows: the rejections of claims 1–12 and 64–74 under 35 U.S.C. § 112 as indefinite, lacking adequate written description, and non-enabled are affirmed; the rejection of claims 1–4, 64, and 68 under 35 U.S.C. § 102 is affirmed; the rejection of claims 70–72 under 35 U.S.C. § 102 is reversed; and the rejections of claims 1–12, 64–67, and 69–74 under 35 U.S.C. § 103 are affirmed.

Our Decision is final for purposes of judicial review. *See* 37 C.F.R. § 41.52(a)(1).

DENIED