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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALEX MAURICE MILLER and  
STEPHEN WILLIAM ROUHANA

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Appeal 2018-008390  
Application 14/505,728  
Technology Center 3600

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Before: EDWARD A. BROWN, ANNETTE R. REIMERS, and  
BRENT M. DOUGAL, *Administrative Patent Judges*.

DOUGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134 from a final rejection of claims 1–4, 6, 7, 9–14, 16, 17, and 19–22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Ford Global Technologies, LLC. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

The claims are directed to a vehicular post-impact forward movement mitigation. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A system, comprising a computer for a first vehicle, the computer comprising a processor and a memory, wherein the computer is programmed to:

upon determining that all of the following conditions are met: (a) that an impact of the first vehicle with a second vehicle is likely to occur based on sensor data;

(b) that a speed of the first vehicle is below a first predetermined threshold and that a pedal condition of the first vehicle is met; and

(c) that an acceleration of the first vehicle is between predetermined upper and lower bounds, the lower bound being greater than zero;

then provide at least one instruction in the first vehicle that includes at least one of an instruction to override an acceleration request and an instruction to suppress a throttle.

### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

|          |                    |               |
|----------|--------------------|---------------|
| Bauerle  | US 2008/0060613 A1 | Mar. 13, 2008 |
| Kondoh   | US 2010/0228445 A1 | Sept. 9, 2010 |
| Moshchuk | US 2012/0101701 A1 | Apr. 26, 2012 |
| Morimoto | US 2015/0291031 A1 | Oct. 15, 2015 |

### REJECTIONS<sup>2,3</sup>

Claims 1, 2, 4, 9–12, 14, 19, and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bauerle and Morimoto.

Claims 21 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bauerle, Morimoto, and Kondoh.

Claims 3, 6, 7, 13, 16, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bauerle, Morimoto, and Moshchuk.

### OPINION

The Examiner finds that Bauerle teaches all of the features of independent claims 1 and 11, except “that a first vehicle acceleration is between predetermined upper and lower bounds, the lower bound being greater than zero.” Final Act. 4. The Examiner relies on Morimoto for making a determination of vehicle acceleration between predetermined limits. *Id.* (citing Morimoto ¶¶ 362–363).

Appellant argues that Morimoto does not determine the acceleration of the vehicle. Appeal Br. 9–10. Appellant also correctly argues that paragraphs 362–363 of Morimoto only discuss determining vehicle speed, rather than acceleration. *Id.* at 10.

In response, the Examiner argues that “[a]cceleration is . . . a derivative of speed, so the speed bounds in the reference clearly make obvious the acceleration bounds.” Ans. 6. However, to make such a

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<sup>2</sup> The 35 U.S.C. § 112 rejection has been withdrawn. Ans. 3.

<sup>3</sup> The Examiner entered Appellant’s amendments to the claims after the Final Office Action (Adv. Act. 1), in which Appellant cancelled claims 8 and 18, but also added claims 23 and 24, which are not addressed by the Examiner.

calculation requires a determination of change of speed of the vehicle over time. *See* Appeal Br. 8 (Appellant’s definition of acceleration); *see also* Ans. 5 (where the Examiner agrees with Appellant’s definition). The Examiner does not show that either reference makes such a determination. Nor does the Examiner explain sufficiently why such a determination would have been obvious. The fact that speed and acceleration are related is not in itself enough to show obviousness where, such as in this case, particular measurements are required to determine the relationship, which the Examiner does not adequately address.

The Examiner does find that Morimoto calculates the “pressed amount of the accelerator pedal,” that the throttle is open and “that there is a received signal to accelerate the vehicle.” Ans. 5–6. The Examiner concludes that “therefore the vehicle is accelerating.” *Id.* However, the fact that the accelerator pedal is depressed and the throttle is open does not mean that the vehicle is accelerating, nor does it mean that acceleration of the vehicle is being determined “between predetermined upper and lower bounds.” Reply Br. 3. The claim requires that the computer determine whether the vehicle is actually accelerating, not just if acceleration is desired. Further, under the conditions identified by the Examiner there would be no way of knowing whether the vehicle is traveling at a constant speed, actually accelerating, or whether something was preventing acceleration.

For these reasons, we do not sustain the Examiner’s rejection of the independent claims. We also do not sustain the Examiner’s rejections relying on Kondoh or Moshchuk, as these rejections also rely on the same unsupported determinations rejected above.

DECISION SUMMARY

In summary:

| <b>Claims Rejected</b>    | <b>35 U.S.C. §</b> | <b>References</b>           | <b>Affirmed</b> | <b>Reversed</b>                |
|---------------------------|--------------------|-----------------------------|-----------------|--------------------------------|
| 1, 2, 4, 9–12, 14, 19, 20 | 103                | Bauerle, Morimoto           |                 | 1, 2, 4, 9–12, 14, 19, 20      |
| 21, 22                    | 103                | Bauerle, Morimoto, Kondoh   |                 | 21, 22                         |
| 3, 6, 7, 13, 16, 17       | 103                | Bauerle, Morimoto, Moshchuk |                 | 3, 6, 7, 13, 16, 17            |
| <b>Overall Outcome</b>    |                    |                             |                 | 1–4, 6, 7, 9–14, 16, 17, 19–22 |

REVERSED