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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YU SHIBUYA and TAKASHI KAIEDA

Appeal 2019-003397
Application 15/128,454
Technology Center 3600

Before JENNIFER D. BAHR, MICHELLE R. OSINSKI, and
SEAN P. O’HANLON, *Administrative Patent Judges*.

OSINSKI, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 7, 11, and 12 under 35 U.S.C. § 102(a)(1) as anticipated by Marcacci (US 2005/0167174 A1, pub. Aug. 4, 2005).² We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Yamaha Hatsudoki Kabushiki Kaisha. Appeal Br. 2.

² Claims 1–6 and 8 are canceled. Appeal Br. 8 (Claims App.). Claims 9 and 10 are objected to as being dependent upon a rejected base claim, but, according to the Examiner, would be allowable if rewritten in independent form. Final Act. 3.

THE CLAIMED SUBJECT MATTER

Claim 7, the sole independent claim, is reproduced below and is representative of the claimed subject matter on appeal.

7. A saddle riding type vehicle comprising:
 - a vehicle body frame;
 - a pair of front wheels;
 - a linkage that connects the pair of front wheels to the vehicle body frame;
 - a lock that locks the linkage by preventing operation of the linkage and unlocks the linkage by allowing the linkage to operate;
 - a controller that controls locking and unlocking of the linkage by the lock; and
 - a notifier that notifies a rider that the lock has locked the linkage when both the vehicle travels at least at a prescribed vehicle speed and the lock has locked the linkage.

OPINION

In rejecting claim 7, the Examiner finds that Marcacci discloses a vehicle including, in relevant part, “a notifier (speed limited motor, depressed button or warning light) that notifies a rider when the vehicle travels at least at a prescribed vehicle speed and the lock has locked the linkage (Reference is made to Paragraphs 0051–0056).” Final Act. 3.³ The Examiner explains that

the safety device and/or speed limited motor (Reference is made to Paragraph 0051) through its operation, notifies the rider that the linkage is locked by limiting the motor speed, which meets both of the claimed conditions. The driver is ultimately notified, either directly or indirectly, that the linkage

³ In the Answer, the “Examiner concedes [that] the warning light and button of Marcacci do not meet the limitations under 35 U.S.C. [§] 102, but maintains [that] the speed limited motor meets all of the limitations as detailed in the Final Office Action.” Ans. 6.

is locked when both the set speed is reached and the linkage is locked through the abnormal change in operation of the vehicle.

Ans. 4.

Appellant argues that Marcacci's motor does not constitute a notifier as claimed. *See* Appeal Br. 4–5; Reply Br. 2–7. In particular, Appellant asserts that Marcacci's maximum motor rotation speed “could be limited for a variety of other reasons including various other engine control purposes, e.g., a well-known motor protection device that limits the maximum speed of rotation of the motor when an abnormal increase of temperature of the motor is detected.” Appeal Br. 5. According to Appellant, “the Examiner's assumption that a rider would not only recognize that the maximum rotation speed of the motor is being limited (i.e., how the safety device functions), but also positively attribute this engine control to the locking element 3 being closed is speculative at best.” *Id.* at 4. We are not persuaded by these arguments.

Marcacci discloses that “locking element 3, locking the position of the stop element with respect to the frame of the vehicle 100, prevents the movements of the articulated kinematism 42, 41, 37, 36 and therefore the rolling of the vehicle.” Marcacci ¶ 29 (boldface omitted). Marcacci also discloses that “a safety device (not shown) is foreseen to limit the maximum speed of rotation of the motor with locking element 3 closed, in the case in which the driver forgets to disengage the anti-rolling device after setting off.” *Id.* ¶ 51 (boldface omitted). In other words, if a user rides off on the vehicle without opening locking element 3, Marcacci's safety device limits the maximum rotation speed of the motor. However, Appellant does not point to, nor do we discern, any disclosure in Marcacci that the maximum rotation speed of the motor is limited for other reasons. In this regard,

Appellant’s speculative assertions amount to nothing more than attorney argument unsupported by evidence and, thus, are entitled to little, if any, weight. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (An attorney’s arguments in a brief cannot take the place of evidence.).

Moreover, even assuming *arguendo* that “other conditions, such as faulty spark plugs, electrical connections, fuel, etc., could be the proximate cause of the maximum speed of rotation of the motor being limited” (Reply Br. 7), the Examiner correctly points out that there is nothing recited in the claim that would preclude limiting maximum motor rotational speed for other reasons in addition to the lock being engaged. *See* Ans. 5 (explaining that “[t]he open-ended claim would not preclude one or more conditions from corresponding to the speed limited motor situation”). It is well established that limitations not appearing in the claim cannot be relied upon for patentability. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

For the above reasons, Appellant does not apprise us of error in the Examiner’s finding that Marcacci anticipates the subject matter of claim 7. Accordingly, we sustain the rejection of claim 7, and its dependent claims 11 and 12, for which Appellant relies on the same arguments (Appeal Br. 7), under 35 U.S.C. § 102(a)(1) as anticipated by Marcacci.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
7, 11, 12	102(a)(1)	Marcacci	7, 11, 12	

Appeal 2019-003397
Application 15/128,454

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

AFFIRMED