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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/370,136	12/06/2016	Dieter Blattert	2178-1658	3783
10800	7590	12/16/2019	EXAMINER	
Maginot, Moore & Beck LLP One Indiana Square, Suite 2200 Indianapolis, IN 46204			HSIAO, JAMES K	
			ART UNIT	PAPER NUMBER
			3657	
			MAIL DATE	DELIVERY MODE
			12/16/2019	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DIETER BLATTERT and HELMUT WOLFF

Appeal 2019-004727
Application 15/370,136
Technology Center 3600

Before MURRIEL E. CRAWFORD, MICHAEL C. ASTORINO, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–3, 5–7, and 10–13.² We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. The Appellant identifies the real party in interest as Robert Bosch GmbH. Appeal Br. 2.

² The Examiner identifies dependent claims 4 and 8–9 as having allowable subject matter. Final Act. 4.

STATEMENT OF THE CASE

Subject Matter on Appeal

The Appellant's invention "concerns a method for adjusting the brake pedal counter force in a vehicle with a brake system, in which both a hydraulic vehicle brake and also an electromechanical brake device displace a brake piston for producing a braking force." Spec. 1.

Claims 1, 10, and 11 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A method for adjusting the brake pedal counter force in a brake system of a vehicle, the brake system including a hydraulic vehicle brake and an electromechanical brake device with an electric brake motor, both the hydraulic vehicle brake and the electromechanical brake device configured to displace a brake piston to produce a braking force, the method comprising:

simultaneously operating the hydraulic vehicle brake via a brake pedal and the electric brake motor; and

automatically modulating a hydraulic brake pressure in the hydraulic vehicle brake during the simultaneous operation of the hydraulic vehicle brake and the electromechanical brake device by operating an electrically controlled actuator such that the brake pedal counter force follows a predetermined target profile.

Rejection

Claims 1–3, 5–7, and 10–13 are rejected under 35 U.S.C. § 102(a)(1) as being anticipated by Svensson (US 2014/0277981 A1, pub. Sept. 18, 2014).

ANALYSIS

The Examiner construes claim 1 as follows:

Claim 1 requires automatic modulation of brake pressure during simultaneous operation of the hydraulic vehicle brake and the actuator. Claim 1 also does not require brake pedal depression, only simultaneous operation of a hydraulic vehicle brake via a brake pedal and the electric motor. It is noted that allowable claim 4 requires pedal depression.

Ans. 6; *infra* (claim 4).

The Appellant argues that the Examiner's construction is incorrect.

Reply Br. 3. The Appellant points out that “[c]laim 1 requires ‘*simultaneously operating the hydraulic vehicle brake via a brake pedal and the electric brake motor,*’ and the modulation is performed “during the simultaneous operation.”” *Id.* Additionally, the Appellant argues:

If, as the Examiner alleged, the Appellant[’s] claim does not require pedal activation during the simultaneous operation of the brake via the brake pedal and electric brake motor, then the brake pedal counter force would be irrelevant or nonexistent. In particular, since the brake pedal would not be activated, there can be no counter force acting against the actuation.

Id. at 4. We agree with the Appellant's arguments. Put simply, one of ordinary skill in the art would understand that to operate a hydraulic vehicle brake via a brake pedal requires the depression of the brake pedal.

It is notable that the Examiner points out that allowable claim 4, which depends from claim 1, requires pedal depression. Ans. 6. *See* Response to First Office Action 2, filed June 18, 2018. The Examiner's point suggests that because claim 4 requires pedal depression, pedal depression is not required by claim 1. The Examiner's construction of claim 4 fails to account for its proper scope. Claim 4 recites:

4. The method according to claim 1, wherein:
simultaneously [sic] operation of the hydraulic vehicle
brake includes depressing the brake pedal; and
the counter position of the depressed brake pedal is held
constant as the brake pedal counter force follows the
predetermined target profile.

See id. Although claim 4 recites, “simultaneously [sic] operation of the hydraulic vehicle brake includes depressing the brake pedal,” which was not explicitly recited in claim 1, one of ordinary skill in the art would understand that this recitation provides antecedent basis back to claim 1 while presenting a suitable context for the remainder of the subject matter of claim 4. *See id.* at 5 (“Claim 4 was rejected under 35 U.S.C. §112 as being indefinite in the recitation of ‘the brake pedal counter position’. Applicant has amended claim 4 to provide antecedent basis for this term.”). Therefore, the basis for the Examiner’s construction of claim 1 — as not requiring brake pedal depression — is inaccurate.

The Appellant argues that Svensson fails to teach “automatically modulating a hydraulic brake pressure in the hydraulic vehicle brake during the simultaneous operation of the hydraulic vehicle brake and the electromechanical brake device by operating an electrically controlled actuator such that the brake pedal counter force follows a predetermined target profile,” as recited in independent claim 1. *See* Appeal Br. 6, 7–8. The Appellant points out that the motor of Svensson’s brake booster builds up an initial pressure in the vehicle brakes to remove air from the brake lines, which “is necessarily insufficient to initiate any braking response in the hydraulic brakes, because no brake demand has been initiated.” *Id.* at 7 (citing Svensson ¶¶ 57, 60, Fig. 3). The Appellant’s argument persuades us that the Examiner’s rejection is inadequately supported.

In this case, the Examiner fails to explain on the record how Svensson teaches the “automatically modulating” recitation of claim 1 when properly construed. The Examiner explains that the “increase in [hydraulic brake] pressure (ramp up step 250) in response to brake request (step 240) is a controlled pressure modulation as the pressure is adjusted (in this case increased) to a certain degree.” Ans. 5. Even if assuming we were to agree with the Examiner that the increase in hydraulic brake pressure is a modulation, the Examiner fails to adequately explain how Svensson’s brake pedal is depressed at the same time its brake booster is in operation.

Thus, we do not sustain the Examiner’s rejection of independent claim 1, and dependent claims 2, 3, 5–7, and 13.

Independent claims 10 and 11 include the same recitation as claim 1. The Examiner’s rejection of claims 10 and 11 is the same as that of claim 1. Accordingly, we also do not sustain the Examiner’s rejection of independent claims 10 and 11, and claim 12, which depends directly from claim 11.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference/Basis	Affirmed	Reversed
1–3, 5–7, 10–13	102(a)(1)	Svensson		1–3, 5–7, 10–13

REVERSED