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BROOKS KUSHMAN P.C./FGTL 1000 TOWN CENTER 22ND FLOOR SOUTHFIELD, MI 48075-1238			GORDON, MATHEW FRANKLIN	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte UWE GUSSEN, CHRISTOPH ARNDT, and
FREDERIC STEFAN

Appeal 2019-004732
Application 15/406,176
Technology Center 3600

Before JOSEPH A. FISCHETTI, MICHAEL C. ASTORINO, and
PHILIP J. HOFFMANN, *Administrative Patent Judges*.

ASTORINO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–3, 5, and 7–19. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

SUBJECT MATTER ON APPEAL

The Appellant's invention concerns the remote-controlled operation of a motor vehicle tailgate. Spec. ¶ 2. More specifically, the invention relates to the “improved protection against the inadvertently triggered opening of a tailgate of a motor vehicle.” *Id.* ¶ 10.

Claims 1, 16, and 19 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A method for remote-controlled operation of a tailgate of a motor vehicle comprising:
 - detecting environmental data using a sensor arrangement of the motor vehicle;
 - opening the tailgate in response to receiving a wireless opening signal, via a control apparatus;
 - checking for a presence of at least one closure condition including a timeout of a timer for the tailgate during the opening, the at least one closure condition being independent of a wireless closing signal and based on the environmental data detected by the sensor arrangement;
 - inhibiting opening the tailgate if an inhibition condition exists indicating the timeout; and
 - closing the tailgate in response to the at least one closure condition being present.

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 Ford Global Technologies, LLC. Appeal Br. 1.

REFERENCES

Name	Reference	Date
Kim	US 9,830,754 B2	Nov. 28, 2017
Ablabutyán	US 2010/0213732 A1	Aug. 26, 2010
Lim et al. (“Lim”)	US 2014/0022052 A1	Jan. 23, 2014
Lee	US 2014/0156112 A1	June 5, 2014
Ihlenburg et al. (“Ihlenburg”)	US 2014/0207344 A1	July 24, 2014
Baumann et al. (“Baumann”)	US 2015/0361711 A1	Dec. 17, 2015

REJECTIONS

Claim 19 is rejected under 35 U.S.C. § 112(b) as indefinite.

Claims 1–3, 13, 14, 16, and 19 are rejected under 35 U.S.C. § 103 as unpatentable over Ihlenburg, Baumann, and Lim.

Claim 5 is rejected under 35 U.S.C. § 103 as unpatentable over Ihlenburg, Baumann, Lim, and Ablabutyán.

Claims 7–10 are rejected under 35 U.S.C. § 103 as unpatentable over Ihlenburg, Baumann, Lim, and Lee.

Claims 11, 12, 15, 17, and 18 are rejected under 35 U.S.C. § 103 as unpatentable over Ihlenburg, Baumann, Lim, and Kim.

ANALYSIS

Indefiniteness

Claim 19 recites, in-part, “a control apparatus configured to, in response to receiving a wireless opening signal, check for an inhibition condition indicating *a timer timeout a tailgate* and inhibit the opening of the tailgate if the inhibition condition exists,” Appeal Br., Claims App’x 3 (emphasis added). The Examiner determines that ““indicating a timer

timeout a tailgate’ renders the claim indefinite because it is unclear what the relationship is between the timer timeout and the tailgate.” Final Act. 3. The Appellant does not address this ground of rejection in the Appeal Brief.² We summarily sustain the Examiner’s rejection of claim 19 as indefinite under 35 U.S.C. § 112(b).

Obviousness

The Examiner relies on the combined teachings of Ihlenburg, Baumann, and Lim for the rejection of independent claim 1. Final Act. 3–4. The Examiner finds Ihlenburg teaches, among other things, the steps of “detecting environmental data using a sensor arrangement of the motor vehicle,” and “closing the tailgate in response to the at least one closure condition being present.” *Id.* (citing Ihlenburg ¶¶ 38–48). However, the Examiner also finds that “Ihlenburg is not explicit on a timeout of a timer.” *Id.* at 4. To remedy this deficiency the Examiner turns to Baumann and finds that it teaches “at least one closure condition is based on a timeout of a timer.” *Id.* (citing Baumann ¶¶ 42–50). The Examiner determines:

It would have been obvious . . . to a person having ordinary skill in the art to combine the teachings of B[a]umann with the system disclosed by Ihlenburg in order to assure a secure, yet convenient usage of an electric positioning device for automatically opening and closing a vehicle door that can be controlled by a plurality of command units.

Id. (citing Baumann ¶ 7).

²The Appellant filed an amendment to claim 19 attempting to overcome the rejection. Amendment 5–6 (filed Aug. 22, 2018). The Examiner did not enter the amendment. Advisory Act. (mailed Oct. 1, 2018).

The Appellant argues that one of ordinary skill in the art would not have combined the teachings of Ihlenburg and Baumann as proffered by the Examiner. Appeal Br. 4–5. The Appellant contends:

If a timeout of a timer for the tailgate was incorporated into the closure condition, the lift gate of Ihlenburg would continue to move towards the object or structure until the timeout was reached, and the likelihood of impact or collision with an object would be increased, and/or a desired gap would be unable to be maintained via a dynamic control as taught by Ihlenburg.

Id. (citing Ihlenburg ¶¶ 39–40).

In response, the Examiner effectively reiterates the teachings of Ihlenburg and Baumann particular to the tailgate’s closure conditions for the rejection of claim 1. *See* Ans. 3. Although the Examiner determines that the combined teachings of Ihlenburg and Baumann meet the claimed at least one closure condition, which includes “a timeout of a timer for the tailgate during the opening [of the tailgate,]” the Examiner fails to provide an explanation of how the teachings of the Ihlenburg and Baumann are relied upon to meet the claimed at least one closure condition. Stated differently, the Examiner fails to adequately explain on the record how Baumann’s use of a timeout of a timer would be used along with the features of Ihlenburg’s hatch collision avoidance system during the opening of the tailgate. Accordingly, the Examiner’s proffered modification of Ihlenburg in view of Baumann lacks sufficient explanation. Therefore, the Appellant’s argument persuades us that the Examiner’s rejection is inadequately supported.

Further, we note that the Examiner’s rejection of independent claim 1 also relies on Lim’s teachings. Final Act. 4. However, the Examiner’s reliance on Lim’s teachings fails to remedy the deficiency in the Examiner’s rejection as discussed above. Thus, we do not sustain the Examiner’s

rejection of independent claim 1 and dependent claims 2, 3, 13, and 14 as unpatentable over Ihlenburg, Baumann, and Lim.

The Examiner's rejection of independent claims 16 and 19 includes the same deficiency as the rejection of claim 1. *See* Final Act. 5–7. Thus, we do not sustain the Examiner's rejection of claims 16 and 19 as unpatentable over Ihlenburg, Baumann, and Lim.

Lastly, we note that the Examiner fails to rely on the teachings of Ablabutyán, Lee, and Kim in any manner that would remedy the deficiency in the Examiner's rejection of independent claims 1 and 16. Thus, we do not sustain the Examiner's rejections of dependent claims 5, 7–10, 11, 12, 15, 17, and 18.

CONCLUSION

We SUMMARILY AFFIRM the Examiner's decision rejecting claim 19 under 35 U.S.C. § 112(b) as indefinite.

We REVERSE the Examiner's decision rejecting claims 1–3, 5, and 7–19 under 35 U.S.C. § 103.

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
19	112	Indefinite	19	
1–3, 13, 14, 16, 19	103	Ihlenburg, Baumann, Lim		1–3, 13, 14, 16, 19
5	103	Ihlenburg, Baumann, Lim, Ablabutyán		5
7–10	103	Ihlenburg, Baumann, Lim, Lee		7–10
11, 12, 15, 17, 18	103	Ihlenburg, Baumann, Lim, Kim		11, 12, 15, 17, 18

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Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
Overall Outcome			19	1-3, 5, 7-18

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 IN PART