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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEPHAN AUGUSTIN

Appeal 2019-005057
Application 15/019,015
Technology Center 3600

Before EDWARD A. BROWN, CHARLES N. GREENHUT, and LEE L. STEPINA, *Administrative Patent Judges.*

GREENHUT, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1–17. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was conducted August 18, 2020.

We AFFIRM.

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[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 Bayerische Motoren Werke Aktiengesellshaft. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to a control grip for a vehicle. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A control grip configured to control acceleration and/or speed of a vehicle based on a torque applied to the control grip about a longitudinal axis of the control grip, the control grip comprising:
>
> a gripping region configured to be gripped by a hand of a user along the longitudinal axis of the control grip; and
>
> an attachment region configured to attach the gripping region in a non-rotatable manner to a component of the vehicle, wherein the gripping region and the attachment region are connected rigidly to one another, the control grip has at least one measuring element configured to determine the torque which is applied to the gripping region by the user about the longitudinal axis of the control grip, and the acceleration and/or the speed of the vehicle depend on the torque which is applied to the gripping region by the user.

REFERENCE

The prior art relied upon by the Examiner is:

Name	**Reference**	**Date**
Chippa	WO 2012/042528 A2	Apr. 5, 2012

REJECTION

Claims 1–17 are rejected under 35 U.S.C. § 102(a)(1) as being anticipated by Chippa. Final Act. 2.

OPINION

The claims are argued as a group for which claim 1 is representative under 37 C.F.R. § 41.37(c)(1)(iv).

Appellant's Specification discloses the use of measuring elements such as strain gauges 12, 14, 16 on a vehicle control grip to allow the driver

of the vehicle to adjust its speed or acceleration by applying torque to the control grip without the need for significant rotation of the grip, as is the convention, particularly in motorcycles. The Examiner correctly points out, that because the terms "connected rigidly" and "non-rotatable" are expressly defined in the Specification, the definition in the Specification must be used for claim construction purposes. *In re American Academy of Science Tech Center*, 367 F. 3d 1359, 1364 (Fed. Cir. 2004) ("[T]he PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification.") (*quoting In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)). Paragraph 36 of the Specification provides:

> The expression "connected rigidly", the expression "non-rotatable" and the expression "axially non-rotatable" are to be understood from the view of the driver. As a result of the torque which is applied to the gripping region 2, 4 by the driver, merely a torsion which cannot be perceived or can be perceived scarcely by the driver and is detected, for example, in the detection region 10 takes place.

This description is consistent with the principles of operation of strain gauges. Strain gauges are fairly common and well-known devices that can be used to detect very slight material deformations. However, the degree of deformation exhibited depends on the applied force or torque and the properties of the material itself. Appellant argues Chippa discloses no such arrangement. App. Br. 4–7.

We recognize that Chippa leaves something to be desired in terms of its clarity on the point of precisely what is meant by "throttle position sensor." One skilled in the art would recognize the subject matter of Chippa and that of the present application derive from different parts of the world

and may not share precisely the same lexicon. It is important to consider Chippa's terminology in the context of the Chippa disclosure as a whole.

The term "position" as used to modify the term "sensor," when read in isolation, might appear to imply there must be movement of the *throttle pipe* to different positions to be sensed. However, such an understanding would be plainly inconsistent with the cited portion of Chippa (p. 3, ll. 25–27 (cited at Ans. 5)) that states "[t]here is no requirement for the *throttle pipe* to be rotated . . . in order to *adjust the throttle position* as in conventional method" (emphasis added). At least two things can be deduced from this statement.

First, Chippa does not appear to regard "throttle position" to be synonymous with the position of the "*throttle pipe*." In the context of a typical internal combustion engine ("ICE") system, for example (as used in Chippa's first embodiment (p. 5 et seq.)), "throttle position" may often refer to the degree of openness of a valve controlling the amount of air and fuel delivered to the engine cylinders. We recognize Chippa also uses the term in the context of the electric motor driven embodiment (p. 7 et seq.). However, read in context, we think the term "throttle position sensor" most likely refers to a sensor used to determine the level of the *operator's demand for power*, not any physical "position" of the "throttle pipe." This understanding is consistent with other teachings of Chippa. For example, what is actually generated by the "throttle position sensor" is not a signal indicative of the throttle pipe location in space, but "a signal indicative of the magnitude and direction of the torque [applied on the throttle pipe]." Chippa p. 5, ll. 10–11. Generation of a signal measuring torque on the throttle pipe does not require or imply any positional changes with regard to the throttle pipe.

The second thing that can be deduced from the cited portion of Chippa reproduced above is the clear statement that "[t]here is no requirement for

the throttle pipe to be rotated."[2] Appellant relies heavily on Chippa's disclosure that "[t]he throttle pipe . . . rotate[s]/move[s] by a small angle/small distance during torque application." S*ee* App. Br. 4 (quoting Chippa p. 9, ll. 1–3)(emphasis omitted). We do not think the disclosure in Chippa of rotation or movement by a small angle or distance is inconsistent with Chippa's disclosure that "[t]here is no requirement for the throttle pipe to be rotated" for the same reasons Appellant's disclosure of "a torsion which cannot be perceived or can be perceived scarcely" is not inconsistent with the claim terms "connected rigidly" and "non-rotatable." The context must be considered. Immediately after Chippa's acknowledgement of the possibility of rotation by a small angle, Chippa attributes this to "the inherent material properties of the throttle position sensor." "[M]aterial properties" are what provide the slight torsion in Appellant's strain gauge arrangement as well. Appellant has not apprised us of any reason to believe one skilled in the art would understand Chippa's movement attributable to material properties differs in any significant way from the small deformation-type movement detected by Appellant's strain gauges. Appellant offers no alternate explanations regarding Chippa's description in this regard. If it is the material properties that allow for throttle pipe movement "less than a predetermined small angle" (App. Br. 4 (citing Chippa p. 5, ll. 6–7)) then such movement is fairly characterized as being within the amount of movement permitted by the express definition in

[2] Chippa states this more definitively in the context of the third embodiment which does not appear to contain any material differences in this respect: "there is no rotation of throttle pipe . . . in order to accelerate or decelerate the vehicle." Chippa p. 8, ll. 15–17.

paragraph 36 of Appellant's Specification (reproduced above) because both movements are attributable to the same phenomenon—deformation.

We recognize that Chippa primarily discusses the absence of rotation with regard to the *functioning* of the throttle pipe and that does not, without more, necessarily indicate the recited *structure* of a non-rotatable attachment and rigid connection. However, again, Chippa's disclosures must be read in context and considered as a whole. Immediately after the portion of Chippa reproduced and relied on by Appellant, Chippa goes on to say that "the wear and tear of moving parts like throttle pipe, throttle cable and accelerator pedal are significantly reduced and cases of rider wrist pain, ankle pain, fatigue and discomfort are alleviated." Chippa p. 9, ll. 6–8; *see also* p. 2, ll. 5–7 ([wear on the throttle cable and other moving parts] is reduced to nil in the present invention with no requirement of rotation of the throttle pipe). This disclosure strongly implies that in the course of measuring the magnitude and direction of the torque applied to the throttle pipe (p. 5, ll. 10–11), Chippa does not permit its rotation because that would nullify many of the advantages Chippa touts.

Chippa might not expressly state that Chippa's grip has "an attachment region configured to attach the gripping region in a non-rotatable manner to a component of the vehicle" and "the gripping region and the attachment region are connected rigidly to one another." However, anticipation is a question of fact, but is not an *ipsissimis verbis* test. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (citations omitted). The express, implicit, and inherent disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. § 102. The dispositive question is "whether one skilled in the art would reasonably understand or infer" that a reference teaches or discloses all of the elements of the claimed invention. *In*

re Baxter Travenol Labs 952 F.2d 388, 390 (Fed. Cir. 1991). "[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom." *In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (citing *In re Shepard*, 319 F.2d 194 (CCPA 1963)). We have carefully considered the totality of evidence before us, giving due consideration to Appellant's arguments, which do not apprise us of any plausible alternate ways to understand Chippa's disclosure when read in its entirety. For the reasons discussed above, we agree with the Examiner that the skilled artisan would reasonably infer the presence of "an attachment region configured to attach the gripping region in a non-rotatable manner to a component of the vehicle" and "the gripping region and the attachment region [] connected rigidly to one another" within Chippa's device. We therefore conclude that a preponderance of the evidence supports the Examiner's finding of anticipation. *See In re Caveney,* 761 F.2d 671, 674 (Fed. Cir. 1985) (A preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.)

CONCLUSION

The Examiner's rejection is AFFIRMED.

DECISION SUMMARY

Claim(s) Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–17	102(a)(1)	Chippa	1–17	

TIME PERIOD FOR RESPONSE

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