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34007	7590	06/18/2020	EXAMINER	
BROOKS KUSHMAN P.C. / LEAR CORPORATION 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075-1238			NGUYEN, CUONG H	
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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* GERALD PATRICK, SAMUEL HANLON,  
MICHELLE A. PERENY, and DAVID HAYNER

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Appeal 2019-006514  
Application 15/227,097  
Technology Center 3600

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Before BENJAMIN D. M. WOOD, MICHELLE R. OSINSKI, and  
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–6, 9, 11–18, and 20–23.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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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 Lear Corporation. Appeal Br. 1.

<sup>2</sup> “Claim 19 was canceled in the amendment of November 14, 2018.” Appeal Br. 5. That amendment was entered by the Examiner on December 4, 2018. Claims 7, 8, and 10 are also canceled.

We AFFIRM IN PART.

CLAIMED SUBJECT MATTER<sup>3</sup>

The claims are directed to a seat assembly. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A seat assembly comprising:

a seat bottom;

a seat back;

a plurality of sensors operably connected to at least one of the seat bottom and the seat back to detect a seating condition of a seated occupant; and

a controller in electrical communication with the plurality of sensors and the at least one actuator, the controller being programmed to:

receive input from the plurality of sensors indicative of a first seating condition of the seated occupant,

compare the first seating condition of the seated occupant to stored seating conditions of prior seat occupants,

determine that the seated occupant of the first seating condition is a prior seat occupant,

store the input for the first seating condition of the seated occupant,

receive input from the plurality of sensors indicative of a second seating condition of the seated occupant,

compare the second seating condition for the seated occupant to stored seating conditions of prior seat occupants, and

determine that the seated occupant of the second seating condition is a prior seat occupant.

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<sup>3</sup> There does not appear to be antecedent basis for “the at least one actuator” recited in claim 1.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Taira	US 2011/0172886 A1	July 14, 2011
Bennett	US 2014/0265479 A1	Sept. 18, 2014
Hui	US 2015/0045984 A1	Feb. 12, 2015

## REJECTIONS<sup>4</sup>

Claims 1–6, 9, 11–18, and 20–23 are rejected under 35 U.S.C. § 112(b) as indefinite.

Claims 1, 2, 6, 9, 11, 15–17, and 20–23 are rejected under 35 U.S.C. § 103 as being unpatentable over Hui and Bennett.<sup>5</sup>

Claims 3–5 and 12–14 are rejected under 35 U.S.C. § 103 as being unpatentable over Hui, Bennett, and Taira.

## OPINION

### *Indefiniteness*

Claims 1, 17, and 20 each require “determin[ing] that the seated occupant of the first seating condition is a prior seat occupant.” The Examiner explains that “determining that the seated occupant ‘of the first seating condition’ is a prior occupant” is “unclear and does not make sense in context” because “[t]he occupant is an occupant of the vehicle, not an occupant ‘of the first seating condition.’” Final Act. 3.

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<sup>4</sup> As noted above, claim 19 has been cancelled.

<sup>5</sup> Claim 18 is not included in any of the obviousness rejections, but appears to have limitations remarkably similar to those in claim 9, which is the subject of the rejection. *Compare* claim 9 (“wherein the controller is further programmed to store the input for the second seating condition of the seated occupant”), *with* claim 18 (“further comprising instructions for storing the input for the seating condition of the seated occupant”).

Appellant responds, disputing the rejection, and noting the amendment of November 14, 2018 entered by the Examiner, which changed “prior occupant” to “prior seat occupant” for consistency with prior recitations of the “seated occupant” in the claims. Appeal Br. 5.

The Examiner responds that “[t]he use of the preposition ‘of’ indicates that the ‘seated occupant’ is occupying ‘the first seating condition,’” making “it . . . unclear whether the ‘seated occupant’ is referring to physically occupying the seat or physically embodying some other concept, such as sitting in the seat in a particular manner or condition.” Ans. 10. The Examiner has not established that the claims are indefinite.

We read “determin[ing] that the seated occupant of the first seating condition is a prior seat occupant,” as recited in claims 1, 17, and 20, as requiring a determination that a seated occupant causing the sensors to “indicat[e the] first seating condition” is a “prior seat[ed] occupant.” We fail to see the ambiguity in the claims asserted by the Examiner.

Accordingly, we do not sustain the Examiner’s decision to reject claims 1–6, 9, 11–18, and 20–23 as indefinite.

### *Obviousness*

Appellant argues claims 1, 2, 6, 9, 11, 15–17, and 20–23 as a group. Appeal Br. 6–7. We select claim 1 as representative. Claims 2, 6, 9, 11, 15–17, and 20–23 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv). Appellant relies on the arguments presented with respect to claim 1 for the patentability of claims 3–5 and 12–14. Appeal Br. 7.

The Examiner finds that Hui teaches the features of claim 1, including “determin[ing] that the seated occupant of the first seating condition is a prior [seated] occupant.” Final Act. 4. Appellant does not dispute this

finding. The Examiner finds that although “Hui suggests a user may have multiple profiles,” Hui “does not provide extensive detail regarding use of a second seating condition.” *Id.* at 5.

The Examiner finds that “Bennett discloses a seat adjustment system including a controller programmed to receive input from a plurality of sensors . . . indicative of a second seating condition of the seated occupant.” *Id.* (citing Bennett ¶¶ 5, 20–23, 25, 25–38). The Examiner finds that “Bennett teaches that these features are useful for facilitating automatic adjustment of vehicle seats.” *Id.* (citing Bennett ¶ 7). Based on these findings, the Examiner reasons that “it would have been obvious . . . to use a second seating condition for comparison as disclosed by Bennett with the system disclosed by Hui in order to facilitate automatic adjustment of vehicle seats.” *Id.*

Appellant responds, “disagree[ing] with the assertion that the profiles of Bennett are synonymous with the claimed second seating condition” because “[a] composition of inputs from a plurality of sensors in a seat assembly for occupant identification is not synonymous to preferred seating settings.” Appeal Br. 6. Appellant contends that Bennett “identif[ies] . . . the occupant by use of a fob,” which “would remove the purpose of identifying the driver by the composition of inputs from the plurality of sensors in the seat assembly.” *Id.* at 7. Appellant does not address the Examiner’s rationale.

In the Answer, the Examiner clarifies the rejection, explaining that “Bennett was relied on merely for teaching that second seating conditions may be gathered and differentiated from first seating conditions.” Ans. 11. The Examiner explains that the rejection “merely requires that the system of

Hui process the second seating condition (disclosed by Bennett) in the same manner that it processed the first seating condition (given that the functionality of processing the data to determine a prior occupant is already disclosed in the Hui reference itself).” *Id.* Appellant does not address the clarification, which effectively renders the arguments presented in the Appeal Brief moot, leaving the Examiner’s rejection effectively un rebutted.<sup>6</sup>

For this reason, alone, we are not apprised of error in the Examiner’s decision to reject claims 1–6, 9, 11–17, and 20–23.

Moreover, the cited portions of Bennett support the Examiner’s rejection. Bennet explains, for example, that “if an occupant has two profiles, a first profile that provides for a more comfortable ride, and a second profile that better maintains driver alertness, control component 150 can recommend adopting the second profile based at least in part on indicators that the driver may be drowsy.” Bennett ¶ 23. This is one teaching, for example, to modify Hui’s system such that Hui’s sensors would be used for sensing such a “second seating condition.”

## CONCLUSION

The Examiner’s rejection under 35 U.S.C. § 112 is reversed. The Examiner’s rejections under 35 U.S.C. § 103 are affirmed.

## DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–6, 9, 11–18, 20–23	112(b)	Indefiniteness		1–6, 9, 11–18, 20–23

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<sup>6</sup> Appellant did not file a Reply Brief in response to the Examiner’s Answer.

1, 2, 6, 9, 11, 15-17, 20-23	103	Hui, Bennett	1, 2, 6, 9, 11, 15-17, 20-23	
3-5, 12-14	103	Hui, Bennett, Taira	3-5, 12-14	
<b>Overall Outcome</b>			1-6, 9, 11- 17, 20-23	18

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 IN PART