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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATS SABELSTRÖM and PETER LINGMAN

Appeal 2012-012232
Application 11/721,180
Technology Center 3600

Before JENNIFER D. BAHR, MICHAEL L. HOELTER, and
ANNETTE R. REIMERS, *Administrative Patent Judges*.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Mats Sabelström and Peter Lingman (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner's decision to reject under 35 U.S.C. § 102(b) claims 1, 4–11, and 13–21 as anticipated by Hoshido (JP 08091188 A; pub. Apr. 9, 1996).¹ Claims 2, 3, and 12 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We derive our understanding of this reference from a machine translation submitted by Appellants. *See* Appeal Br., Evidence App. 16–23 (filed Dec. 29, 2011). All references to Hoshido in the subject appeal are directed to this translation.

CLAIMED SUBJECT MATTER

The claimed subject matter “relates to a control system and a method of applying and controlling the retardation force between the braking devices.” Spec. 1, ll. 9–10, Fig. 1.² Claims 1, 10, and 14 are independent.

Claim 1 is illustrative of the claimed subject matter and recites:

1. A control system for applying retardation force to foundation brakes in a vehicle, comprising
 - a sensor for detecting an incident having influence on a braking effect provided by auxiliary brakes and providing an indication signal in response thereto,
 - means for receiving the indication signal and for applying retardation force to the foundation brakes in response thereto to compensate for a loss of braking effect of the auxiliary brake due to the incident, and
 - means for disengaging the auxiliary brakes when the incident is detected,wherein the foundation brakes act on all wheels of the vehicle, and the auxiliary brakes act only on driven wheels of the vehicle, and wherein the incident comprises at least one of
 - locking of one or more drive axles on the vehicle, and
 - the rotational speed of the engine falling below a predetermined minimum value.

ANALYSIS

Independent claim 1 calls for a control system for applying retardation force to foundation brakes in a vehicle, including detection of an incident, wherein the incident “comprises at least one of locking of one or more drive axles on the vehicle, and the rotational speed of the engine falling *below* a predetermined minimum value.” Appeal Br. 11, Claims App. (emphasis

² We refer to the Substitute Specification and the Replacement Drawings filed Aug. 7, 2009.

added). The Examiner finds that Hoshido discloses the system called for in claim 1 including an incident comprising “the rotational speed of the engine falling below a predetermined minimum value (engine rotation is beyond predetermined rotation (for example 900 RPM), Paragraph 21).” Ans. 5, 8–9.

Appellants contend that Hoshido “discloses applying a brake when engine speed is **above** a predetermined value.” Appeal Br. 6. Appellants contend that: “A normal meaning of [the term] beyond is ‘more than, in excess of, over and above’ . . . It is thus clear that the condition [Hoshido] tests [is] whether the engine speed is above a certain threshold value or not.” *Id.* at 7; *see also* Hoshido, para. 21.

Appellants’ argument is persuasive. Hoshido describes that: “Based on a signal from the engine rotation sensor 13 inputted via the electronic centrifugal-spark-advancer control unit 10, judge whether engine rotation is: *beyond* predetermined rotation (for example, 900RPM).” Hoshido, para. 21 (emphasis added); *see also* Ans. 5, 8–9; Appeal Br. 6–7. We agree with Appellants that a skilled artisan would understand that engine rotation “*beyond* predetermined rotation” constitutes that “engine speed is **above** a predetermined value, not below the value.” Appeal Br. 7.³

Claim 1 further recites “means . . . for applying retardation force to the foundation brakes . . . to compensate for a loss of braking effect of the auxiliary brake due to the incident.” Appeal Br. 11, Claims App. The Examiner cites to paragraph 25 of Hoshido for disclosure of this limitation. *See* Ans. 9. Paragraph 25 of Hoshido merely discusses improvement of

³ An ordinary and customary meaning of the term “beyond” is “**2 b** : in a degree or amount surpassing.” *See* <http://www.merriam-webster.com/dictionary/beyond> (last visited July 24, 2015).

operability of the auxiliary brake system due to a driver's demands, which improves "degree of comfort" and "running stability of the vehicle." *See* Appeal Br. 8–9. We agree with Appellants that paragraph 25 of Hoshido fails to disclose "compensating the loss of braking power from the auxiliary brakes with the foundation brake" and that the Examiner does not further explain how Hoshido paragraph 25 discloses this limitation. Appeal Br. 8–9; Ans. 9. Based on the foregoing reasons, the Examiner fails to establish by a preponderance of the evidence that Hoshido anticipates the system of independent claim 1.

Independent claims 10 and 14 include similar limitations directed to the rotational speed of the engine falling below a predetermined minimum value and applying a retardation force to the foundation brakes to compensate for a loss of braking effect of the auxiliary brake due to the incident, and thus the Examiner's findings with respect to Hoshido are deficient for those claims as well. *See* Appeal Br. 12–14, Claims App.; Ans. 6–8.

Accordingly, for the foregoing reasons, we do not sustain the Examiner's rejection of independent claims 1, 10, and 14 and their respective dependent claims 4–9, 11, 13, and 15–21 as anticipated by Hoshido.

DECISION

We REVERSE the decision of the Examiner to reject claims 1, 4–11, and 13–21.

REVERSED

Klh