

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCEDES-BENZ USA, LLC
and MERCEDES-BENZ U.S. INTERNATIONAL, INC.,
Petitioner,

v.

VELOCITY PATENT, LLC,
Patent Owner.

Case IPR No.: *To Be Assigned*
Patent 5,954,781

**PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 5,954,781
(AS AMENDED DURING REEXAMINATION NO. 90/013,252)
UNDER 35 U.S.C. §§ 311-319 AND 37 C.F.R. §42.100 *et seq.***

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	MANDATORY NOTICES	4
III.	NOTICE OF FEES PAID	5
IV.	CERTIFICATION OF GROUNDS FOR STANDING	5
V.	PRECISE RELIEF REQUESTED	5
VI.	RELEVANT INFORMATION CONCERNING THE '781 PATENT ...	6
VII.	CLAIM CONSTRUCTION.....	7
VIII.	DETAILED ANALYSIS OF GROUNDS FOR UNPATENTABILITY OF CLAIMS 31-32, 61-80, AND 82-84 AND UNDER 35 U.S.C. § 103....	9
A.	Ground 1: Tresse in View of Rashid and Hibino as to Claim 31, and Further in View of Tonkin as to Claim 32	9
1.	Claim 31	11
2.	Claim 32	21
B.	Ground 2: Davidian in View of Rashid and Hibino as to Claim 31, and Further in View of Tonkin and Kajiwata as to Claim 32.....	26
1.	Claim 31	27
2.	Claim 32	35
C.	Ground 3: Montague in View of Rashid and Hibino as to Claim 31, and Further in View of Tonkin and Kajiwata as to Claim 32.....	40
1.	Claim 31	40
2.	Claim 32	47
D.	Ground 4: Each Base Reference in View of Rashid and Hibino Renders Dependent Claims 61-80 and 82-84 Obvious.....	51
IX.	CONCLUSION	60
	APPENDIX A (TABLE OF EXHIBITS).....	A-1
	APPENDIX B (CERTIFICATE OF SERVICE)	B-1

I. INTRODUCTION

Mercedes-Benz USA, LLC and Mercedes-Benz U.S. International, Inc. (together, “**Petitioner**” or “**Mercedes**”) filed a petition for *inter partes* review on August 4, 2014, challenging independent claim 31 and dependent claim 32 in IPR2014-01247. IPR2014-01247 remains pending pre-institution. Since then, Patent Owner amended claim 31 and added claims 61-80 and 82-84 on November 10, 2014 in a co-pending reexamination (Control No. 90/013,252). Petitioner files the present Petition challenging claims 31-32, 61-80, and 82-84 of the ’781 Patent, as currently amended or added in the reexamination (Ex. 1013).

Claim 31 recites a simple apparatus directed to the use of a “speed/stopping distance lookup table” to determine whether to issue a warning to a vehicle driver. The table provides “the relationship between the speed at which a vehicle is traveling and the distance which the vehicle will require to come to a complete stop if travelling at that speed.” (Ex. 1001, 6:60-66). The apparatus determines the vehicle speed and the distance between the vehicle and another object, and then, using the lookup table, issues a “vehicle proximity alarm” if the object is too close.

During reexamination, claim 31 was amended to add that the claimed system can take automatic corrective actions, such as reduction of the throttle, if the vehicle is too close to another object. (*Id.*, 7:47-58). In addition, the claimed system can switch between “an ‘active’ mode where both automatic throttle

reduction and audio/visual alerts are generated and an ‘inactive’ mode where only audio/visual alerts are generated.” (*Id.*).

There is nothing new about the alleged invention recited in amended claim 31. (Ex. 1010, ¶¶ 12-15). Proximity warning systems, including those using lookup tables, were well known in the art before the alleged invention. (Exs. 1005-1009; Ex. 1010, ¶¶ 12-13). The inventors themselves conceded that a simple “lookup” table correlating vehicle speed and stopping distance was known. (Ex. 1010, ¶ 13). Further, automatic control of throttle systems based on sensed distances between vehicles—the primary elements added during reexamination—were well known before the alleged invention, *as early as the 1970s*. (Ex. 1010, ¶ 12).

This Petition uses three base references: (1) EP Publication No. 0 392 953 (“**Tresse**”) (Ex. 1005); (2) U.S. Patent No. 5,357,438 (“**Davidian**”) (Ex. 1006); and (3) PCT No. WO 91/07672 (“**Montague**”) (Ex. 1007). Tresse, Davidian, and Montague (the “**Base References**”) each disclose a vehicle proximity warning system that uses a “lookup” table in determining whether to issue a warning. (Ex. 1005, 3:30-32; Ex. 1006, 9:20-27; Ex. 1007, 17:23-18:4). U.S. Patent No. 5,905,457 (“**Rashid**”) (Ex. 1014) likewise discloses a vehicle proximity warning system. Rashid also discloses the primary elements added to claim 31 in the co-pending reexamination: (a) a throttle controller to slow the vehicle in the event of a warning and (b) an “active” mode (warning and automatic throttle control) and

“inactive” mode (warning-only). (Ex. 1010, ¶ 27). Each Base Reference, when viewed in light of Rashid and U.S. Patent No. 4,723,215 (Ex. 1015) (“**Hibino**”), renders claim 31 obvious.¹

Claim 32 depends from claim 31, but otherwise remains unchanged in the reexamination. Claim 32 adds that different speed/stopping distances can be used in the event of adverse weather. (Ex. 1010, ¶ 16). Each Base Reference uses different “safe” stopping distances in the event of adverse weather, such as rain. (Ex. 1005, 6:2-3, 7:26-30; Ex. 1006, 8:58-9:27; Ex. 1007, 14:20-15:4).

Dependent claims 61-80 and 82-84, all added during the reexamination, add nothing more than well-known vehicular or computer components to the system of claim 31. Examples of these components include a computer bus (claim 68), a register in a memory (claim 69), a tachometer (claim 70), a speedometer (claim 71), a truck (claim 72), and a power source (claim 73) . There is nothing new about these claims, alone or when added to the system of claim 31. (Ex. 1010, ¶ 17).

¹ Hibino is relied upon for its express disclosure of “an engine speed sensor.” This element was added to claim 31 during the reexamination. Every vehicle senses engine speed (e.g., has a tachometer). (*See, e.g.*, Ex. 1010, ¶ 33, 135). As such, this rudimentary element is inherent in or rendered obvious by each Base Reference or, at the very least, would have been obvious in view of Hibino.

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