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Paper 9
Entered: November 20, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

SIGNAL IP, INC.,
Patent Owner.

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Case IPR2015-00968
Patent 5,714,927 B1

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Before DONNA M. PRAISS, PETER P. CHEN, and JASON J. CHUNG, *Administrative Patent Judges.*

CHUNG, *Administrative Patent Judge.*

DECISION
Denying Petitioner's Request for Rehearing
*37 C.F.R. § 42.71*

## I. INTRODUCTION

Petitioner, Volkswagen Group of America, Inc., filed a Request for Rehearing of our Decision (Paper 6, "Dec.") denying *inter partes* review of claims 1, 2, and 6 of U.S. Patent No. 5,714,927 B1 (Ex. 1001, "the '927 patent"). Paper 7 ("Req.").

For the reasons set forth below, Petitioner's Request for Rehearing is *denied*.

## II. STANDARD OF REVIEW

Under 37 C.F.R. § 42.71(c), "[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion." An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Star Fruits S.N.C. v. U.S.*, 393 F.3d 1277, 1281 (Fed. Cir. 2005); *Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004); *In re Gartside*, 203 F.3d 1305, 1315–16 (Fed. Cir. 2000). The request must identify, with specificity, all matters that the moving party believes the Board misapprehended or overlooked. *See* 37 C.F.R. § 42.71(d).

## III. DISCUSSION

In its Request, Petitioner argues that: (1) the Examiner previously considered Bernhard as "prior art made of record and not relied upon," and stated that Bernhard disclosed "at the end of the alert command, determining whether the alert signal was active for a threshold time," as recited in claim 1 (Req. 3–4); (2) Pakett, Fujiki, and the Declaration of Dr. David M.

Bevly ("the Bevly Declaration," Ex. 1002) disclose "selecting a variable sustain time as a function of relative vehicle speed" and "if the alert signal was active for the threshold time" because the Board's Decision does not conclude that Pakett, Fujiki, and the Bevly Declaration do not disclose these claim limitations (Req. 5–6); (3) none of the claim terms were in controversy, and even if "alert signal" were in controversy, the Board misconstrued "alert signal" as "a signal that provides a visual or audio alert to a driver" because the Specification of the '927 patent discloses an "alert signal" output from a microprocessor in the format of an "information signal" (Req. 6–9); and (4) the references are combinable because it is not necessary for there to be a motivation to combine, and the Decision overlooked teachings in Bernhard, Pakett, and Fujiki and how these references relate to the claims of the '927 patent (Req. 9–12). We address Petitioner's arguments in turn.

Regarding Petitioner's first argument, we previously considered Petitioner's arguments concerning Bernhard. Dec. 8. Petitioner's argument that the Examiner found that Bernhard discloses "determining whether the alert signal was active for a threshold time" is not supported by the record. As Petitioner acknowledges, the Examiner did not rely on Bernhard to reject "at the end of the alert command, determining whether the alert signal was active for a threshold time," as recited in claim 1, because the Examiner considered Bernhard "prior art made of record and *not relied upon*" (emphasis added). *See* Req. 3 (quoting Pet. 5–6). At most, the Examiner described Bernhard as disclosing "a method for providing guiding assistance for a vehicle in changing lane." *See* Pet. 5–6. Moreover, Petitioner has not

proffered how Bernhard teaches or suggests "at the end of the alert command, determining whether the alert signal was active for a threshold time," as recited in claim 1. *See* Pet. 32–33. Accordingly, we did not abuse our discretion in declining to institute for reasons not argued in the Petition.

As for Petitioner's second argument, our Decision denying institution was not based on whether Pakett, Fujiki, and the Bevly Declaration disclose "selecting a variable sustain time as a function of relative vehicle speed" and "if the alert signal was active for the threshold time" as recited in claim 1. Accordingly, we did not misapprehend or overlook Pakett, Fujiki, and the Bevly Declaration.

Regarding Petitioner's third argument, we properly determined that "it is necessary to construe the distinction, if any, between 'alert command' and 'alert signal' recited in claim 1." Dec. 6. Moreover, we must apply the broadest reasonable meaning to the claim language, taking into account any *definitions presented in the specification*. *Id.* (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)). As a result, we turned to the Specification to construe "alert command" and "alert signal." *Id*. We construed "alert signal" as "a signal that provides a visual or audio alert to a driver" because of the Specification's disclosure corresponding to Figures 3c and 3d. *Id.* at 6–7. Although Petitioner contends the Specification discloses "[a]n output port of the microprocessor carries an alert signal to the alert signal devices" (Req. 7–8 (citing Ex. 1001, 3:26–27)), we consider the microprocessor's outputted alert signal as merely an "information signal" and the alert signal devices' outputted signals as "alert signals." Petitioner similarly considers

Fujiki's "information signal" to be the same as the output signal from the microprocessor to the alert signal devices. Req. 8.

In defining "alert signal," however, the Specification recites "[t]he algorithm for sustaining the *alert signal* is generally *represented by the flow chart of FIG. 5*" (emphasis added). Ex. 1001, 4:22–23. Figure 5 of the '927 patent is reproduced below.

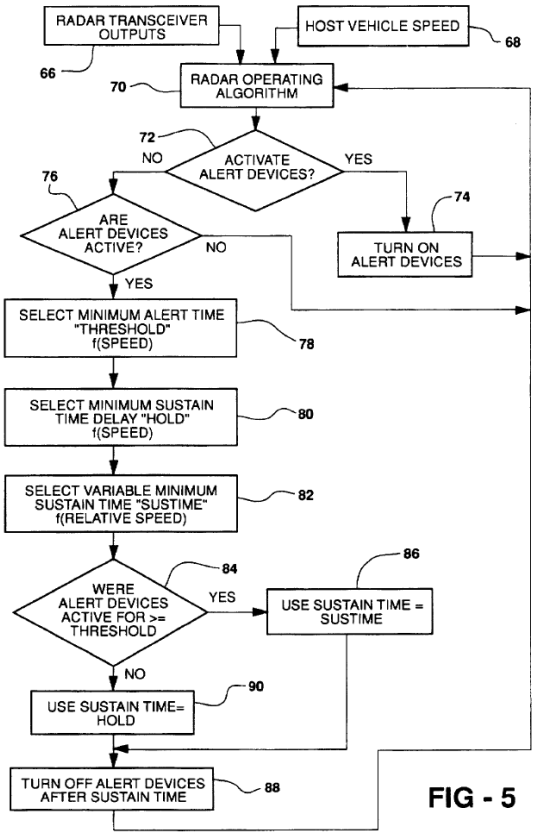

FIG - 5

Figure 5, above, "is a flow chart representing an algorithm *for carrying out the invention*," which means Figure 5 defines the invention's algorithm for sustaining the alert signal and is not merely an embodiment of the invention. Ex. 1001, 2:53–54 (emphasis added). Element 84 illustrates determining whether the "alert [signal] devices [were] active for [at least the] threshold time," which provides a definition for "determining whether the alert signal

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