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Paper 23
Filed: September 20, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

JOAO CONTROL & MONITORING SYSTEMS, LLC,
Patent Owner.

Case IPR2015-01611
Patent 6,549,130 B1

Before DAVID C. MCKONE, STACEY G. WHITE, and JASON J. CHUNG, *Administrative Patent Judges*.

Opinion for the Board filed by *Administrative Patent Judge* WHITE.

Opinion Dissenting filed by *Administrative Patent Judge*, CHUNG.

WHITE, *Administrative Patent Judge.*

DECISION
Denying Request for Rehearing
37 C.F.R. § 42.71

I. INTRODUCTION

Volkswagen Group of America, Inc., ("Petitioner") requests rehearing of our Final Written Decision (Paper 21, "Final Dec."), in which we held that Petitioner had shown by a preponderance of the evidence the unpatentability of claims 91[1] and 92 of U.S. Patent No. 6,549,130 B1 ("the '130 patent") and failed to show by a preponderance of the evidence the unpatentability of claims 26, 31, 38, 42, 43, 48, 60, 63, 64, 73, 74, 85, 138, 139, and 143 of the '130 patent. Final Dec. 21. Specifically, Petitioner seeks rehearing as to the claims that had not been shown to be unpatentable by arguing that it had provided sufficient evidence and argument to show that Kniffin[2] disclosed the claimed first control device which is responsive to a second signal. Reh'g Req. 1.

II. STANDARD OF REVIEW

A party dissatisfied with a decision of the Board may file a request for rehearing. 37 C.F.R. § 42.71(d). The party requesting rehearing has the burden of showing the decision should be modified, and "[t]he request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id*.

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[1] Petitioner states that we found that it "did not carry its burden to establish that . . . [Kniffin] anticipates independent claims 26, 42, 48, 91, and 138." Paper 22 ("Reh'g Req."), 2. In our Final Written Decision, however, we did find that claims 91 and 92 (claim 92 depends from claim 91) were unpatentable. *See* Final Dec. 21.

[2] U.S. Patent No. 6,072,402, filed Jan. 9, 1992 (Ex. 1006) ("Kniffin").

III. ANALYSIS

Petitioner asserts that we overlooked and misapprehended its evidence and arguments. Reh'g Req. 4. Petitioner contends that it had shown sufficiently "that Kniffin describes an in-vehicle device (access control device 64) that is responsive to the signal from an intermediate device (clearinghouse 66), to activate a vehicle component." *Id.* at 3 (citing Paper 2 ("Pet."), 14–17). For the reasons stated below, we are not persuaded by Petitioner's arguments.

Claim 26 recites "wherein the first control device is responsive to a second signal, wherein the second signal is at least one of generated by and transmitted from a second control device." Ex. 1001, 80:9–10; *see also id.* 83:25–26 (similar language in claim 42), 85:15–18 (claim 48), 99:13–14 (claim 138). Thus, in each of independent claims 26, 42, 48, and 138, the first control device[3] must respond to a signal from the second control device. Petitioner asserts that Kniffin discloses this limitation through its discussion of access control device 64 and clearinghouse 18 or 66. Pet. 13–14. We refer to claim 26 in this discussion, but the issues addressed here also apply to claims 42, 48, and 138. In our Final Written Decision, we held that Petitioner had not met its burden to show that Kniffin discloses this limitation and therefore, Petitioner had not met its burden to establish the

[3] As explained in the Final Written Decision, each of the independent claims recites three control devices and three signals. Final Dec. 11–12. The same three devices and related signals are recited in these claims, but the labels differ from claim to claim. *Id.* For example, the first control device of claim 26 is the same as the third control device of claim 91. *Id.* For ease of reference, unless otherwise stated we will use the nomenclature set out in claim 26 to refer to the three control devices and their respective signals.

unpatentability of independent claims 26, 42, 48, and 138 and their dependent claims 31, 38, 43, 60, 63, 64, 73, 74, 85, 139, and 143. Final Dec. 12–16.

First, Petitioner argues that we overlooked evidence sufficient to establish that Kniffin discloses "a causal link between the clearinghouse and the storing of data in the in-vehicle memory." Reh'g Req. 4. Petitioner then directs us to evidence cited in the Petition that describes the clearinghouse sending a verified schedule of deliveries to the access control device. *Id.* at 5 (citing Pet. 15–17). Petitioner emphasizes that the schedule is received by the access control device and stored in memory. *Id.* at 6. Based on this, Petitioner asserts "that the truck . . . access control device is responsive to the clearinghouse transmission by virtue of the transmitted signal from the clearinghouse to the access control device, causing the reprogramming of the access control device or storing data into memory." *Id.* at 7.

We do not agree. In the Final Written Decision, we explained that in Kniffin, decisions as to whether to allow access were made "*[i]n response to identification of the authorized user at the lock* within the prescribed time period." Final Dec. 14 (quoting Ex. 1006, 3:64–66). Thus, we found that Kniffin discloses an access control device responsive to a signal from identification device 70. *Id.* We were not persuaded that the access control device also was "responsive to" the signal from the clearinghouse. We acknowledged that Kniffin discloses a communication between the clearinghouse and the vehicle that is used by the in-vehicle component, but we were not persuaded that the proffered evidence was sufficient to establish the required responsiveness to that signal. This is discussed in our analysis of Petitioner's challenge to claim 91.

> We find that the schedule is stored in Kniffin's access control device and later used in the processing to determine whether the lock should unlock. Thus, we are persuaded that Kniffin's description of the clearinghouse sending a sequence of deliveries to the access control device discloses the claimed first signal "for . . . activating, de-activating, disabling, and re-enabling . . . a vehicle component." In the previously discussed independent claims we were not persuaded that Petitioner has established that the in-vehicle device was "responsive" to the signal from the clearinghouse. We, however, are persuaded that Petitioner has established that the in-vehicle device uses the information from the clearinghouse in deciding whether to unlock the access control device and as such the schedule is transmitted *for* activating or de-activating the lock.

Final Dec. 17.

As noted in the Final Written Decision, claim 91 does not require that the first control device[4] be "responsive to" the signal from the second control device. Final Dec. 11–12, 16. Claim 91 instead recites, in relevant part,

> a [second] signal for at least one of activating, deactivating, disabling, and re-enabling . . . a vehicle component . . . wherein the [second] signal is transmitted from the [second] control device to a [first] control device . . . [and] wherein the [second] control signal is automatically received by the [first] control device, wherein the [first] control device at least one of generates and transmits a [first] signal for at least one of

[4] As noted above, the claims recite the same three control devices in different orders. The third control device of claim 91 is the same as the second control device of claim 26. Final Dec. 11 (noting that claim 26's third control device is equivalent to claim 91's second control device; claim 26's second control device is equivalent to claim 91's first control device; and claim 26's first control device is equivalent to claim 91's third control device). For ease of reference, we maintain the nomenclature used in claim 26 when discussing the devices in claim 91.

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