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Paper No. 8
Entered: June 1, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VOLKSWAGEN GROUP OF AMERICA, INC.,
Petitioner,

v.

VELOCITY PATENT LLC,
Patent Owner.

Case IPR2015-00276
Patent 5,954,781

Before GLENN J. PERRY, RAMA G. ELLURU, and PETER P. CHEN, *Administrative Patent Judges*.

CHEN, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Volkswagen Group of America, Inc. ("Petitioner") filed a Petition requesting an *inter partes* review of claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 15, and 17–32 of U.S. Patent No. 5,954,781 (Ex. 1001, "the '781 patent"). Paper 2 ("Pet."). Velocity Patent LLC ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp."). We have statutory authority under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Upon consideration of the Petition, we are not persuaded Petitioner has demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of any of the challenged claims of the '781 patent. Accordingly, we do not institute an *inter partes* review of the '781 patent.

A. Related Proceedings

Patent Owner filed a Complaint against a subsidiary of Petitioner, and a company under whose name Petitioner does business, in the U.S. District Court for the Northern District of Illinois, alleging infringement of the '781 patent. *Velocity Patent LLC v. Audi of America, Inc.*, Case No. 1:13-cv-08418-JWD (N.D. Ill.). Pet. 1. Patent Owner has filed other lawsuits in the Northern District of Illinois alleging infringement of the '781 patent by other parties. Pet. 5–6; Paper 5, 1. On May 22, 2014, Petitioner filed a request for *ex parte* reexamination of the '781 patent, which is pending as Control No. 90/013,252 (the "Reexamination"). *Id*.

B. The '781 Patent

The '781 patent is titled, "Method and Apparatus for Optimizing Vehicle Operation." The subject matter of the challenged claims of the '781 patent relates generally to a system which notifies the driver of recommended corrections in vehicle operation and, under certain conditions, automatically initiates corrective action. Ex. 1001, 1:5–10. Figure 1 of the '781 patent is reproduced below.

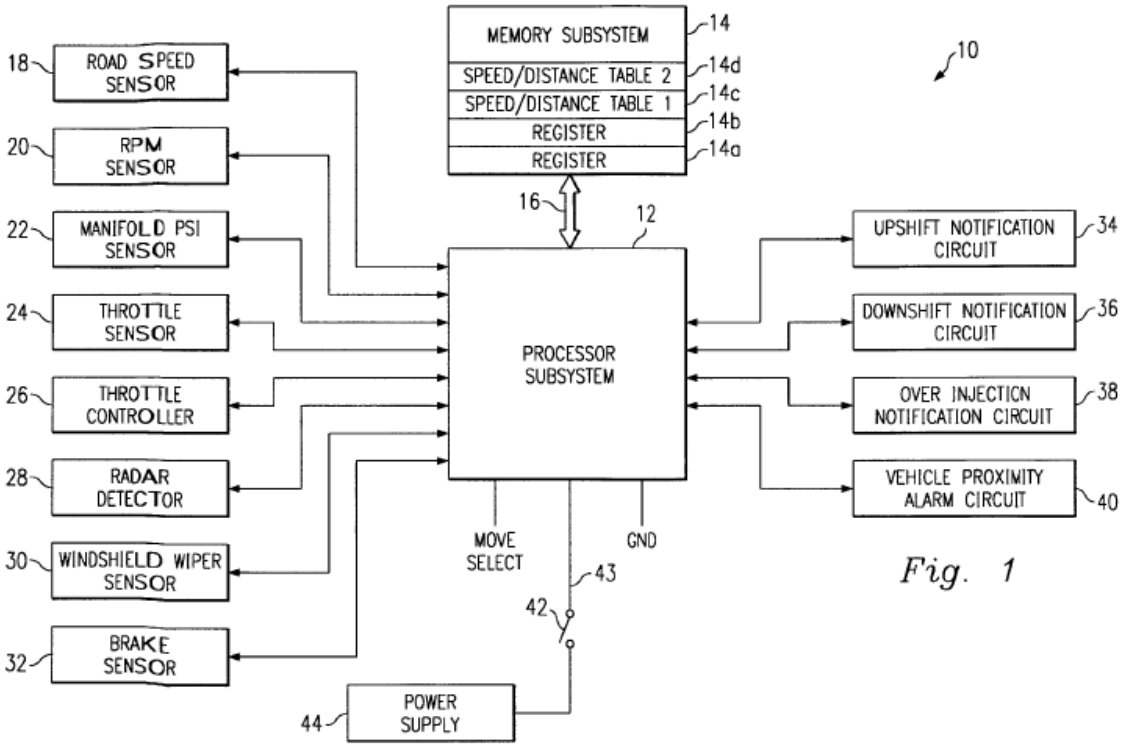

Fig. 1

Figure 1 is a block diagram of the '781 system. Ex. 1001, 5:42–44. System 10 includes processor subsystem 12 ("for example, a microprocessor"), and memory subsystem 14 connected by bus 16 to processor subsystem 12. *Id.* at 5:54–58. State sensors and level sensors, including road speed sensor 18, rpm sensor 20, manifold pressure sensor 22, throttle sensor 24, windshield wiper sensor 30, and brake sensor 32, collectively monitor the operation of

the vehicle and are coupled to processor subsystem 12. *Id*. at 2:12–16, 5:65–6:7. System 10 also includes upshift notification circuit 34, downshift notification circuit 36, overinjection notification circuit 38, and vehicle proximity alarm circuit 40, coupled to processor subsystem 12, all of which may be configured to provide visual or audible notifications to the driver of the vehicle. *Id*. at 7:9–25.

Processor subsystem 12 periodically polls and receives data from the series of sensors to determine when to activate the fuel overinjection notification circuit or other notification circuits, and issue notifications. *Id.* at Abstract, 2:17–20, 5:65–6:7, 6:42–46, 12:64–13:20. *See* Pet. 2–5; Prelim. Resp. 4–10. The '781 patent also describes automatic initiation of corrective action, for example throttle reduction by throttle controller 26, if the vehicle is operated unsafely. Ex. 1001, Abstract, 4:3–11, 7:5–6, 7:49–53, 10:15–29.

C. Illustrative Claim

Claims 1, 2, 4, 5, 7, 8, 10, 12, 13, 15, and 17–32 are the subject of the petition. Claims 1, 7, 13, 17, 23, 26, 28, and 31 are independent. Independent claim 1 is illustrative of the challenged claims and is reproduced as follows.

1. Apparatus for optimizing operation of a vehicle, comprising:

> a plurality of sensors coupled to a vehicle having an engine, said plurality of sensors, which collectively monitor operation of said vehicle, including a road speed sensor, an engine speed sensor, a manifold pressure sensor and a throttle position sensor;
>
> a processor subsystem, coupled to each one of said plurality of sensors, to receive data therefrom;

a memory subsystem, coupled to said processor subsystem, said memory subsystem storing therein a manifold pressure set point, an RPM set point, and present and prior levels for each one of said plurality of sensors;

a fuel overinjection notification circuit coupled to said processor subsystem, said fuel overinjection notification circuit issuing a notification that excessive fuel is being supplied to said engine of said vehicle;

an upshift notification circuit coupled to said processor subsystem, said upshift notification circuit issuing a notification that said engine of said vehicle is being operated at an excessive speed;

said processor subsystem determining, based upon data received from said plurality of sensors, when to activate said fuel overinjection circuit and when to activate said upshift notification circuit.

D. Prior Art Relied Upon

Petitioner relies upon the following five references.

Reference	**Title**	**Date**	**Ex. No.**
Jurgen	Automotive Electronics Handbook	1995	Ex. 1002
Smith	U.S. Patent No. 4,398,174	Issued Aug. 9, 1983	Ex. 1003
Habu	U.S. Patent No. 4,559,599	Issued Dec. 17, 1985	Ex. 1004
Davidian	U.S. Patent No. 5,357,438	Issued Oct. 18, 1994	Ex. 1005
Tonkin	PCT No. WO 96/02853	Published Feb. 1, 1996	Ex. 1006

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