UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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UNIFIED PATENTS, INC.,
Petitioner,

v.

VELOCITY PATENT LLC,
Patent Owner.

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Case IPR2017-01723
Patent 5,954,781

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Before JAMESON LEE, RAMA G. ELLURU, and
CHRISTOPHER C. KENNEDY, *Administrative Patent Judges*.

KENNEDY, *Administrative Patent Judge*.

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

I.   INTRODUCTION

Unified Patents, Inc. ("Petitioner") filed a Petition for *inter partes* review of claims 1, 7, 13, 17, and 60 of U.S. Patent No. 5,954,781 (Ex. 2003[1]). Paper 2 ("Pet."). Velocity Patent LLC ("Patent Owner") filed a Preliminary Response. Paper 7 ("Prelim. Resp.").

After the Preliminary Response was filed, Petitioner requested permission to file a reply to address allegations in the Preliminary Response (*see* Prelim. Resp. 9–15) that the Petition implicitly invoked 35 U.S.C. § 112, ¶ 6, with respect to the claim term "processor subsystem." The Board denied the request, determining that it could resolve the issue without additional briefing. Paper 8.

Pursuant to 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a), the Board has authority to determine whether to institute *inter partes* review. *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." 35 U.S.C. § 314(a). Upon consideration of the Petition and the Preliminary Response, and for reasons set forth below, we do not institute *inter partes* review.

A.   RELATED MATTERS

Petitioner identifies the following related district court litigation, located in the Northern District of Illinois:

(1) *Velocity Patent LLC v. Audi of Am., Inc.*, No. 1:13-cv-08418 (dismissed on March 15, 2017, *see* Dkt. No. 221);

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[1] In this decision, we refer to the exhibit filed by Patent Owner (Ex. 2003) rather than that filed by Petitioner because the exhibit filed by Petitioner (Ex. 1001) does not include the reexamination certificate.

(2) *Velocity Patent LLC v. Mercedes-Benz USA, LLC*, No. 1:13-cv-08413 (dismissed on November 3, 2017, *see* Dkt. No. 170);

(3) *Velocity Patent LLC v. BMW of N. Am., LLC*, No. 1:13-cv-08416 (dismissed on August 12, 2014, *see* Dkt. No. 40);

(4) *Velocity Patent LLC v. Chrysler Grp., LLC*, No. 1:13-cv-08419 (pending); and

(5) *Velocity Patent LLC v. Jaguar Land Rover N. Am., LLC*, No. 1:13-cv-08421 (dismissed on August 26, 2014, *see* Dkt. No. 44).

Pet. 1.

Petitioner also notes that claims of the '781 patent were previously challenged in the following Patent Office proceedings:

(1) Ex Parte Reexamination Control No. 90/013,252 (complete; reexamination certificate issued July 7, 2015);

(2) IPR2014-01247 (terminated on January 6, 2015, without issuance of a decision on institution, *see* Paper 20);

(3) IPR2015-00276 ("the '276 IPR") (institution denied on June 1, 2015, *see* Paper 8); and

(4) IPR2015-00290 (dismissed on February 4, 2015, without issuance of a decision on institution, *see* Paper 11).

Pet. 1; *see also* Prelim. Resp. 59–60.

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. 2003, 1:5–10.

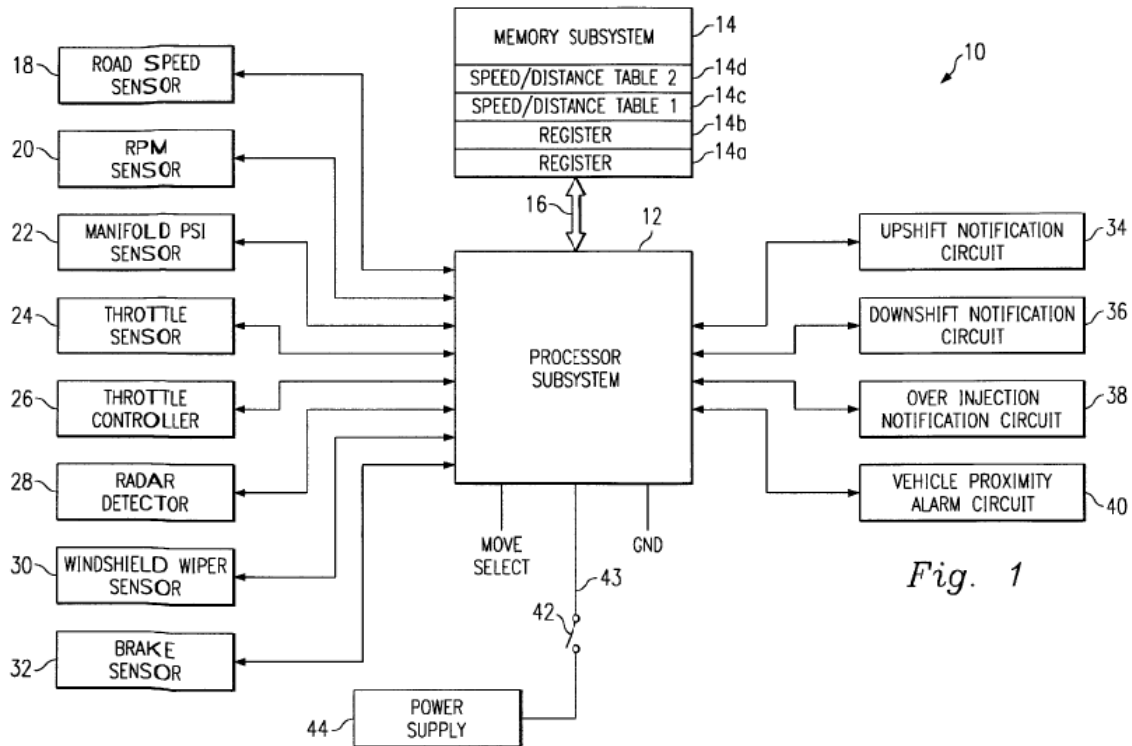Figure 1 of the '781 patent is reproduced below:

Fig. 1

Figure 1 depicts a block diagram of an apparatus disclosed by the '781 patent. *Id.* at 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 sensors to determine when to activate the fuel overinjection notification circuit or other notification circuits, and thereby issue notifications. *Id.* at Abstract, 2:17–20, 5:65–6:7, 6:42–46, 12:64–13:20. The '781 patent also describes automatic initiation of corrective action, for example throttle reduction by throttle controller 26, if the vehicle is operated unsafely. *Id.* at Abstract, 4:3–11, 7:5–6, 7:49–53, 10:15–29.

C. ILLUSTRATIVE CLAIM

Independent claims 1, 7, 13, 17, and 60 are the subject of the Petition. Claim 1, reproduced below with bracketed letters added to label paragraphs (consistent with the labeling in the Petition), is illustrative of the challenged claims.

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

[b] 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;

[c] a processor subsystem, coupled to each one of said plurality of sensors, to receive data therefrom;

[d] 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;

[e] 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;

[f] an upshift notification circuit coupled to said processor subsystem, said upshift notification circuit issuing a

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