DECISION OF THE COMMISSIONER

SECTION 43: Obviousness Is Not In Issue.

The question under S.43 is not one of obviousness, but whether the invention claimed is described in the citation. The applicant's mode of crab steering is not described in the citation describing a different mode as essential.

FINAL ACTION: Reversed

IN THE MATTER OF a request for a review by the Commissioner of Patents of the Examiner's Final Action under Section 46 of the Patent Rules.

AND

IN THE MATTER OF a patent application serial number 975,918 filed November 19, 1966 for an invention entitled:

FLUID STEERING SYSTEM

Agent for Applicant

George H. Riches, Q.C.
Toronto, Ontario.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated April 2, 1971 on application 975,918. This application was filed in the name of Marcus L. Conrad and refers to "Fluid Steering System".

The Patent Appeal Board conducted a hearing on September 16, 1971. Mr. R.E. McKenzie represented the applicant.

In the prosecution terminated by the Final Action the examiner refused the application on the grounds of obviousness in view of prior art. The prior art cited is as follows:

United States Patent
3,185,245 May 25, 1965 Cl. 180-79.21 Hoyt

In the Final Action the examiner stated:

The applicant has defined crab steering in the first paragraph of page 1 of his disclosure in the following terms. "By crab steering is meant oblique or lateral steering wherein all of the wheels of the vehicle are turned simultaneously in the same direction with the result that the vehicle moves sidewise without changing its heading". The applicant's steering system does not satisfy this definition for it does not turn all the four wheels simultaneously, but first steers one set, front or rear wheels, to one side using the 4-wheel drive mode, and then by switching to the 2-wheel drive mode, turns the other pair of wheels to the same side. During the subsequent crabwise movement of the vehicle, the wheels cannot be steered as one pair of wheels is locked.

Applicant's claim 1 referred to the Hoyt patent:

A steering system comprising first fluid actuator means (28 and 29) arranged for pivoting the two wheels at one end of the vehicle, second fluid actuator means (30 and 31), for pivoting two wheels at the other end of the vehicle, a source (pump 40) of pressurized fluid, an operator's steering device (58) connected for admitting pressurized fluid from the said source for operating the said fluid actuator means, first conduit means (52, 56) connected between said operator's steering device and said first fluid actuator means for transmitting fluid therebetween, a valve (34), connected in said first conduit means, second fluid conduit means (66, 72) connected between said valve and said second fluid actuator means for transmitting fluid therebetween, the said valve in <u>one</u> position (i.e. when valve 34 is slid up from the position in figure 1, of Hoyt) connecting the second fluid actuator means in circuit with the said first fluid actuator means, and in a <u>second</u> position, (the position shown in Fig. 1 in Hoyt) bypassing the fluid actuator means.

It is obvious that said <u>one</u> position in the preceding paragraph is the position for 4-wheel steering while the <u>said second</u> position is the position for 2-wheel steering. These two positions may be used for crabwise movement of the vehicle in the same manner as in applicant's arrangement which calls for location of one pair of wheels by the valve positioning for 4-wheel steering and the positioning of the second pair of wheels by the valve positioning for two-wheel steering. The third position of Hoyt's valve is only necessary if crab steering is desired. Applicant has eliminated the crab steering function and has no need for the third valve position.

Recapitulating what has been shown in the above paragraphs, the Hoyt patent teaches a device with a 3-position valve and associated electrical circuitry, with which three steering modes are accomplished, namely two wheel steering, conventional four wheel steering and crab steering. The applicant teaches a device with a 2-position valve and without the electrical circuitry, but that device will not achieve crab steering according to applicant's definition. It will permit crabwise movement of the vehicle by manipulation of the valve positions. Exactly the same function can be performed, as demonstrated above, by the use of Hoyt's device, using only two positions of his valve and eliminating the electrical circuitry. The applicant has therefore not retained all the essential functions of Hoyt's device. He has dropped the crab steering function, and eliminated the structure necessary to accomplish the function he has dropped.

In the response of June 30, 1971 the applicant stated:

> It is submitted that the Examiner, in order to apply claim 1 which was the subject of that action, to the Hoyt structure, had to modify Hoyt in order to eliminate certain specific elements which were essential to the operation of Hoyt. It is apparent from a reading of the disclosure and claims of Hoyt that the electrical power source and circuitry are essential elements.
>
> The Examiner in the Office Action under review, takes the position that the "applicant has eliminated the crab steering function and has no need for the third valve position". In taking this position, the Examiner relies entirely on the prior art definition of crab steering to which the Examiner refers on the first page of the Office Action. As a matter of fact, the definition of "crab steering" in the disclosure, page 1, lines 4 to 6, is not the applicant's definition of "crab steering", but the definition of the prior art. In brief, the first paragraph of the disclosure may be termed "background" and is certainly not intended nor is it possible to construe it as the applicant's definition. For example, Hoyt falls within the definition. It is submitted that the Examiner is in error when he couples this definition with the disclosure of applicant's structure. The Examiner's rejection of the application and the claims are based on this error. The second paragraph on page 1 of the disclosure makes it abundantly clear that applicant retains the three steering modes but does so in a simpler manner.

> The construction and operation of applicant's apparatus must be understood from a fair reading of the entire disclosure. It is clear from the disclosure that applicant has not eliminated the crab steering as suggested by the Examiner. Reference is made to applicant's disclosure, page 6, starting at line 12 which clearly describes the operation of applicant's invention "when crab steering is desired". Further reference to applicant's "crab steering" is found on page 8, starting at line 22. Consequently, the Examiner is in error when he says that applicant "has dropped the crab steering function, and eliminated the structure necessary to accomplish the function he has dropped."
>
> Applicant respectfully submits that applicant, while dropping all the electrical circuitry and the three-way valve, and providing a simpler apparatus, has retained all three steering modes, including "crab steering".

After reviewing the ground for rejection set forth by the examiner, as well as the arguments both oral and written set forth by the applicant, I am not satisfied that the rejection is well founded.

The application refers to a Fluid Steering System. Claim 1 reads as follows:

> A steering system for a four wheel vehicle comprising, first fluid actuator means arranged for pivoting the two wheels at one end of the vehicle, second fluid actuator means arranged for pivoting the two wheels at the other end of the vehicle, a source of pressurized fluid, an operator's steering device connected for admitting pressurized fluid from the said source for operating the said fluid actuator means, first conduit means connected between the said operator's steering device and the said first fluid actuator means for transmitting fluid therebetween, a two-position valve connected in the said first conduit means, secondfluid conduit means connected between the said valve and the said second fluid actuator means for transmitting fluid therebetween, the said two-position valve in one position connecting the said second fluid actuator means in circuit with the said first fluid actuator means and in the other position bypassing the said second fluid actuator means.

At the hearing the Patent Agent reviewed the stand of the applicant and discussed the highlights of the prosecution. He also presented argument and objected to the stand of the

examiner with respect to the rejection on obviousness.

First, I will comment on a statement made by the applicant in which he submits that the proper way to deal with the question of obviousness is to determine whether the claims of Hoyt when fairly construed in the light of the Hoyt disclosure read on applicants disclosed structure. I find that I cannot agree with this conclusion. The matter of obviousness is to be judged by reference to the "state of the art" in the light of all that was within the teachings of the prior art and previously known by persons versed in that art.

I will now consider the grounds of rejection which is based on obviousness in view of the prior art - U.S. Patent 3,185,245, May 25, 1965 to Hoyt. This application was filed November 19, 196 with a priority date of December 27, 1965. It is noted that the provisions of Section 43 of the Patent Act apply to the cited reference. As noted above the examiner refused the application on the grounds of obviousness in view of the patent to Hoyt. However, the question is not one of <u>obviousness</u>, but whether the invention claimed in the application is <u>described</u> in the patent to Hoyt. The examiner further stated that the reference when modified, could carry out the invention as claimed by applicant; this is not important, as mentioned previously this reference must describe the invention.

I note that in the disclosure to Hoyt, with reference to modes of steering, page 1 reads:

> In steering systems capable of two or more different modes of steering some kind of <u>means must</u> be provided for maintaining the wheels synchronized when shifting from one mode of steering to another.

In applicants type of crab steering or movement there is no simultaneous turning (synchronization) of the wheels of the vehicle. Applicants crab position of the wheels is achieved by first moving (simultaneously) the front wheels in one direction and the rear wheels in the opposite direction (as for four wheel steering) then, locking the rear wheels in that position and then moving the front wheels in the opposite direction so they are facing the same direction as the rear wheels. In this mode of crab steering or movement there is no synchronization of the wheels which is referred to as a <u>must</u> in the above reference to Hoyt and which is also indicated as prior art.

Therefore, I have concluded from the above that the reference to Hoyt does not describe the invention as claimed in this application; thus, the provisions of Section 43 do not apply and <u>this reference</u> does not, in itself, prevent applicant from obtaining a patent for the subject matter claimed.

R.E. Thomas,
Chairman, Patent Appeal Board.

I concur with the findings of the Patent Appeal Board and withdraw the Final Action. I am returning the application to the examiner for resumption of prosecution.

Decision accordingly,

A.M. Laidlaw,
Commissioner of Patents.

Dated at Ottawa, Ontario,
this 13th day of October, 1971.