

DECISION OF THE COMMISSIONER

ANTICIPATION: Improper Grounds of Rejection.

The prior art fails to give clear and unmistakable direction to use its structure to produce the new result which applicants structure produces; and is not an anticipation even though it may be proven that the prior art could be used to produce the new result.

FINAL ACTION: Overruled.

This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated July 19, 1972 on application 975,918. This application was filed in the name of Marcus L. Conrad and refers to "Fluid Steering System".

In the prosecution terminated by the Final Action the examiner refused the application for the following reasons:

The application is rejected on the grounds that the structure disclosed by the applicant is anticipated by the reference, and the applicant's method of use of that structure is obvious.

Reference Re-applied:
2,512,979 June 27, 1950 Cl. 180-79.2 Strother

In this action the examiner stated in part:

The reference teaches a vehicle steering system in which three steering modes are achieved, i.e. two wheel steering, four wheel steering and crab steering. The latter steering mode, in the words of the applicant is: "oblique or lateral steering wherein all of the wheels of the vehicle are positioned simultaneously in the same direction with the result that the vehicle moves sidewise without changing its heading". In order to achieve the three steering modes, the patentee makes use of a 3-position valve, which in each position of the valve allows the operator to select a different one of the three steering modes.

The structure is fully anticipated by the basic structure of the Strother reference, and the method of use is obvious, and gives no unexpected advantages. In fact the elimination of one position of the valve creates obvious disadvantages if the unit is seriously considered for use in crab steering. Elimination of one position of the valve has effectively eliminated the function that position provided.

The applicant in his response of August 31, 1972 stated in part:

The steering system claimed by the applicant does not require that the wheels be positioned in a predetermined position (preferably straight ahead) before changing steering modes, as does the Strother steering system. It is therefore apparent that Strother did not envisage the operator changing steering modes while the vehicle is stationary, while the applicant does. In addition to indicating a basic difference in concept of operation, this difference prevents the Strother steering system from being used to carry out the applicant's method of steering without reconstructing the Strother steering system. In this regard, the applicant points out that Strother states at lines 5 to 13 of column 8 that the engagement of blocking plunger 69 in radial opening 123¹

in the hub 108 prevents the selector valve 68 being turned out of the "park" position, unless the front wheels are positioned straight ahead. Therefore, the rear wheels will also be positioned straight ahead when the selector valve is turned out of the "park" position, and will be held in this position by stem 137 being engaged in notch 140 in the hub portion 141 when the selector valve is turned to the "drive" position. It is submitted that the fact that the Strother steering system can not be operated in the same manner as the applicant's system, clearly establishes that the concept of the applicant's system never occurred to Strother.

As previously noted the rejection is one of anticipation, and in the opinion of the Board the doctrine of anticipation, as set in Canadian law, must be followed. The court in, Canadian General Electric Co. Ltd. v. Fada Radio Limited, (1927) Ex. C.R. 134 at 141, held that: "Any information as to the alleged invention given by any publication must be for the purpose of practical utility equal to that given by the subsequent patent. The later invention must be described in the earlier publication that is held to anticipate it, in order to sustain the defence of anticipation. Where the question is solely one of prior publication, it is not enough to prove that an apparatus described in an earlier specification; could have been used to produce this or that result. It must also be shown that the specification contains clear and unmistakeable direction so to use it" (emphasis added)

In other words the alleged invention, i.e. a steering system for a four wheel vehicle which comprises means for steering the front wheels only, means for simultaneously steering the front wheels in one angular direction and the rear wheels in the opposite angular direction, and means for locking the rear wheels in an angular direction and then turning the front wheels in the same angular direction to achieve crab travel or fixed crab steering, is accomplished by means of a two position valve and a simplified hydraulic system.

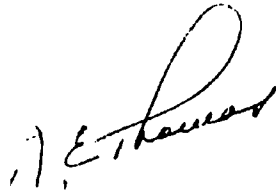
The reference patent discloses a vehicle steering system in which three steering modes, i.e. two wheel steering, four wheel steering and crab travel and steering, are achieved by means of a three-position valve and a extensive electrical and hydraulic system. Furthermore the only way taught to achieve crab steering as well as travel is by means of simultaneously turning the front and rear wheels in the same direction.

In the circumstances, therefore, the Board is satisfied that the alleged invention as disclosed in this application, particularly the manner in which the applicant achieves crab motion is not described in the reference, it then follows that there is no clear and unmistakeable direction so to use it.

It is perhaps unfortunate that the rejection, which the Board was asked to consider, was not based on obviousness since the Board would then have applied different criteria to the apparatus claims. In this decision therefore the Board may not rule on grounds of rejection which were not clearly used in the examiners Final Action since the applicant has had no opportunity of overcoming such rejection in the ordinary course of prosecution.

The question of obviousness of method claim 1 will not be considered at this time as the allowability of the method will depend on the same or similar considerations as the allowability of the apparatus.

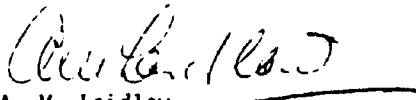
The Board recommends that the Final Action be withdrawn for the reasons set out herein.



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

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

Decision accordingly,



A. M. Laidlaw,
Commissioner of Patents.

Dated at Ottawa, Ontario,
this 6th day of November, 1972.

Agent for Applicant

George H. Riches, Q.C.