

COMMISSIONER'S DECISION

ANTICIPATION: Vehicle Wheel System

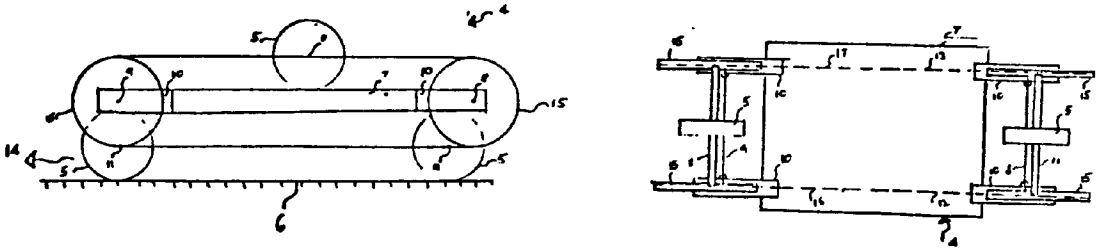
A pair of endless drive chains carrying a series of wheels thereon is shown in the prior art. The inventor prosecuted the application herself, and failed to comment on the applicability of Section 28(1)(b).

Final Action: Affirmed

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This decision deals with a request for review by the Commissioner of Patents of the Examiner's Final Action dated November 24, 1976, on application 193,816 (Class 280-70), and is entitled "An Improvement Relating To Vehicles."

The invention claimed relates to a vehicle wheel system using a pair of endless chains carried adjacent either side of a support frame member. The chains are used to drive and carry a series of wheels which move back along the ground under the vehicle and then circulate forward off the ground to the front of the vehicle. The chains are always in peripheral contact with the support frame as they pass from end to end above and below the support frame. Reproduced below is figure 1 of the application to show a side view of the applicant's arrangement, and Figure 2 which is the plan view.



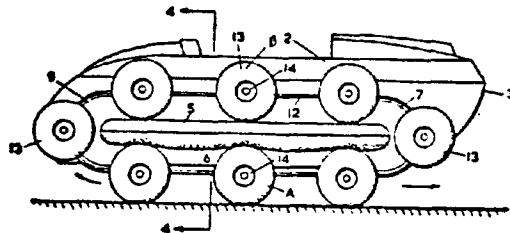
In the Final Action the examiner refused the application for failing to define patentable subject matter over the following reference:

Canadian Patent 710,092

May 25, 1965

Fisher

Fisher describes an amphibious vehicle supported by two sets of track wheels having their axis arranged for movement along the sides of the body or frame. The sets of track wheels travel in endless paths lengthwise of the vehicle to provide support and propulsion. Figure 1 of Fisher is shown below.



Claim 1 of Fisher reads:

Means for supporting a vehicle body upon a ground surface and for imparting movement to the body over the ground surface and comprising a pair of driven endless horizontal belts, each belt extending lengthwise of one side of the vehicle body and mounted upon a set of vertical pulleys carried upon the side of the vehicle body, one pulley of each set being actuated by a power unit in the vehicle, two sets of ground engaging track wheels, each set being carried by one of the said endless belts, said endless belts and their supported track wheels comprising top and bottom wheel lays, the wheels being carried for free rotation upon horizontal axles attached in spaced relationship to the faces of the belts and having portions protruding from the side edges of the belts and upon which portions the wheels are freely mounted, longitudinal outboard members protruding from and extending lengthwise of the sides of the vehicle body and having lower faces bearing in frictional contact upon the top portions of the bottom wheel lays and whereby the outboard members and the vehicle body are supported by the bottom wheel lays, rotation of the endless belts exerting a pulling force along the axles of the bottom wheel lays whereby frictional contact of the wheels of the bottom wheel lays with the ground surfaces and with said lower faces of the outboard members rotates the wheels to impart movement to the vehicle body.

The examiner refused the application for the following reasons:

Fisher describes a wheel system wherein an endless chain, driven by chain wheels, passes from end to end of a vehicle above and below a support frame. This chain carries ground wheels rotating on transverse axles carried by the chain. When the ground wheel passes below the support frame, from front to back, the ground wheel

is in rolling contact with the ground and the under surface of the support frame. When the ground wheel passes around the rear chain wheel the ground wheel returns to the forward end of the vehicle in rolling contact with the upper surface of the support frame. This system described and claimed by Fisher is the same system devised by the applicant and described and claimed in this application.

Section 28(1)(b) of the Canadian Patent Act states that an inventor may obtain a patent for an invention if the invention was not described in any patent or any publication printed in Canada or in any other country more than two years before presentation of the petition for patent on filing the application. This presentation date is the applicant's filing date of March 1, 1974. The Fisher patent does describe the applicant's system and also issued and was published on May 25, 1965. Therefore the Fisher patent described the applicant's system almost nine years before the applicant filed his application on March 1, 1974. This is almost seven years later than the two year period allowed by Section 28(1)(b). In view of the presence of the Fisher patent, and the nine year time interval, Section 28(1)(b) does not allow a patent to be issued to this applicant for the same invention as described by Fisher. Only one patent may be issued for one invention. Fisher invented and patented the wheel system before the applicant and therefore a patent may not be issued to the applicant on this application.

Applicant's attention is directed to the letter from Spruson and Ferguson patent attorneys to T.J. Purcell & Company dated June 25, 1976 which letter the applicant placed on the file of this application. This letter refers to the corresponding United States application No. 446,927 and British application No. 9020. During the examination of the United States and British applications references were found by the respective United States and British examiners which taught and showed applicant's wheeled support system. The presence of such references as well as the cited Canadian reference to Fisher show that the applicant's system is not new. To obtain and support a valid patent a device must be new as well as useful and inventive. Any second patent which mistakenly issued on the same device would not offer the applicant any supportable patent protection and would be of no benefit to the applicant. Section 28(1)(b) of the Canadian Patent Act prevents the issuing of such worthless patents on devices which are no longer new.

The applicant has responded with three hand written letters which were received on Jan. 17, 1977 and Sept. 30, 1977. These responses describe the history of prosecution of the corresponding applications in the United Kingdom, the United States and Australia, and indicate the applicant's desire to obtain a valid patent in Canada so that protection would be extended to the abovementioned convention countries. In these letters the applicant states that Fisher does not disclose the novelty of the application. There is no argument to indicate how the applicants device is patentable over the citation.

We wish first to point out to the applicant that a Canadian patent affords protection to a patentee in Canada only. In order to obtain protection in any other country the applicant must obtain a patent in each country where protection is desired. Perhaps the applicant is confused with the term "convention" country used in Section 29 of the Canadian Patent Act. That Section provides priority with respect to filing date of an application in a convention country. If an application is filed in a convention country, it can be filed within twelve months in another convention country and be entitled to the earlier filing date. A patent in one convention country does not, however, provide any patent protection in another country.

Looking at the description of the applicant's device, we find on page 2 of the disclosure at line 27 that "the invention in general form includes a support having a surface about which a plurality of rotatable bodies roll, means permitting a portion of rolling surface of at least one body being in contact with the support surface when another portion of said rolling surface is in contact with a base surface, roadway or track thereby allowing the support to move relative to the base surface." Further the applicant indicates that the system is adapted "for use as a watercraft or water transport means." Description of the power source for this vehicle is described as "effected by means of any mover system or energy means as jet engine."

Considering the Fisher patent for an amphibious vehicle, which was cited by the examiner, we find that it utilizes a wheel system wherein a set of chain tracks driven by chain wheels move in endless paths along the sides of a vehicle body, carrying ground wheels which rotate on transverse axles carried by the chain tracks. These ground wheels are in rolling contact with the ground when passing from front to back below the support frame, and are in rolling contact with the frame when moving from back to front.

Comparison of the applicants' arrangement with that of Fisher shows them to be nearly identical. The applicants have not discovered any new principle in their arrangement, nor have they described any novel method of application of this principle. We find that the applicants' system for facilitating motion of a vehicle is anticipated by the Fisher patent.

To obtain a patent in Canada an applicant must satisfy Section 28 1(a) of the Patent Act, which requires that the invention was not known or used by any other person before the applicant invented it.

As is clearly shown in the Fisher patent, the applicants' arrangement was known and used. The applicants are consequently not entitled to obtain a patent, as this would be contrary to the provisions of Section 28 of the Patent Act.

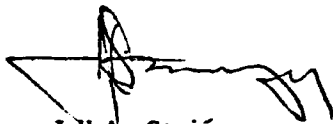
We note from the applicants' letters that the corresponding applications in the United States, Australia and Great Britain were also refused.

We recommend that the decision in the Final Action to refuse the application be affirmed.



Gordon A. Asher  
Chairman  
Patent Appeal Board, Canada

Having considered the prosecution of this application, and the recommendations of the Patent Appeal Board, I find that the alleged invention is not patentable. The application is refused as required by Section 42 of the Patent Act. Under Section 44 an appeal may be taken to the Federal Court of Canada provided such appeal is commenced within six months of the date of this decision.



J.H.A. Gariépy  
Commissioner of Patents

Dated at Hull, Québec  
this 25th. day of October, 1977

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