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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW L. HENDRICKSON and DONALD J. GILMORE¹

Appeal 2014-006251
Application 13/435,129
Technology Center 3600

Before WILLIAM A. CAPP, AMANDA F. WIEKER, and
ARTHUR M. PESLAK, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Matthew L. Hendrickson and Donald J. Gilmore (“Appellants”) appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–20. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

¹ According to Appellants, the Real Party in Interest is Caterpillar Inc. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The invention concerns “a display for providing a view of a trolley-driven machine position relative to a trolley line.” Spec. ¶ 1. Independent claims 1, 13, and 19 are illustrative of the subject matter on appeal, and recite:

1. A method for guiding an operator of an off-highway truck to facilitate use of a trolley line for providing electrical power to the truck, the method comprising:

determining a position of the off-highway truck relative to the trolley line; and

generating a display within an operator cab of the off-highway truck, the display including a graphical element showing alignment of the off-highway truck to the trolley line.

13. An off-highway truck having a self-contained power source for being selectively powered by a trolley line and by the self-contained power source, the off-highway truck comprising:

a pantograph adapted for selectively raising or lowering contacts to respectively make contact or break contact with an overhead trolley line;

one or more sensors located and configured to gather data indicative of a position of the off-highway truck relative to the trolley line;

a display generator for providing a display in a cab of the off-highway truck; and

a controller linked to the one or more sensors and the display generator, *the controller being configured to cause the display generator to provide a display providing steering guidance to an operator of the off-highway truck to engage the pantograph with the trolley line.*

19. A display for use in an off-highway truck, the display comprising:

a position element providing an indication to an operator of the off-highway truck to steer the off-highway truck to align the off-highway truck with an overhead trolley line; and

a pantograph element providing an indication to the operator to raise or lower a pantograph associated with the off-highway truck to respectively make or break contact with the overhead trolley line.

Appeal Br. 15, 17, 18 (Claims App.) (emphasis added).

REJECTIONS

The claims stand rejected as follows:²

- I. Claims 1, 3–5, 7, 9, 10, and 12 under 35 U.S.C. § 102(b) as anticipated by Kruckow (DE 10256705 A1, iss. July 22, 2004).
- II. Claims 2 and 6 under 35 U.S.C. § 103(a) as unpatentable over Kruckow and Eklund (US 2010/0198466 A1, pub. Aug. 5, 2010).
- III. Claim 8 under 35 U.S.C. § 103(a) as unpatentable over Kruckow and Takei (US 4,745,997, iss. May 24, 1988).
- IV. Claim 11 under 35 U.S.C. § 103(a) as unpatentable over Kruckow, Gong (US 2010/0270983 A1, pub. Oct. 28, 2010), and Stratton (US 5,293,947, iss. Mar. 15, 1994).
- V. Claims 13 and 15–17 under 35 U.S.C. § 103(a) as unpatentable over Kruckow and Stratton.
- VI. Claim 14 under 35 U.S.C. § 103(a) as unpatentable over Kruckow, Stratton, and Eklund.
- VII. Claim 18 under 35 U.S.C. § 103(a) as unpatentable over Kruckow, Stratton, and Gong.

² The Examiner indicates that Appellants' arguments in the Appeal Brief overcome the rejection of claims 1 and 17 under 35 U.S.C. § 112, first paragraph. *See* Ans. 2; *see also* Final Act. 3–4; Appeal Br. 6–7. We treat the rejection as withdrawn by the Examiner.

- VIII. Claim 19 under 35 U.S.C. § 103(a) as unpatentable over Kruckow, Gong, and Stratton.
- IX. Claim 20 under 35 U.S.C. § 103(a) as unpatentable over Kruckow, Gong, Stratton, and Eklund.

ANALYSIS

Rejection I— Claims 1, 3–5, 7, 9, 10, and 12 Anticipation by Kruckow

Appellants argue claims 1, 3–5, and 7 as a group and present separate argument for claims 9, 10, and 12. Appeal Br. 7–9, 11–13. We treat claim 1 as representative, and claims 3–5 and 7 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(iv). We treat claims 9, 10, and 12 separately.

Claim 1, 3–5, and 7

The Examiner finds that Kruckow discloses a method as claimed, including a step of generating a display including a graphical element showing alignment of the truck to the trolley line. Final Act. 5 (citing Kruckow ¶¶ 6, 7, 21). Specifically, the Examiner finds that “[Kruckow] inherently teaches alignment of the entire vehicle relative to the trolley line or overhead contact wire by displaying position or alignment of pantograph relative to trolley line.” Ans. 3; *see also id.* at 2–5.

First, Appellants contend that the cited portions of Kruckow do not disclose a display. Appeal Br. 8–9. Specifically, Appellants contend that Kruckow’s disclosure of automatic steering “indicates that a display is not even needed.” *Id.* at 9 (citing Kruckow ¶ 6). Appellants also contend that Kruckow’s disclosure of informing the driver about the position of the pantograph on the overhead line does not teach a display element. *Id.* (citing Kruckow ¶ 7).

We are unpersuaded by Appellants' argument. Kruckow explicitly discloses a driver-viewable "display unit." Kruckow ¶¶ 6, 21. Therefore, Appellants' argument that Kruckow's disclosure of automatic steering teaches away from a display is unpersuasive. Appeal Br. 9; *see Celeritas Tech., Ltd. v. Rockwell Int'l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998) ("A reference is no less anticipatory if, after disclosing the invention, the reference then disparages it."). Furthermore, that paragraph 7 of Kruckow does not discuss a display does not negate the express disclosure contained in paragraphs 6 and 21. Therefore, the Examiner's finding that Kruckow discloses a display is supported by a preponderance of evidence.

Second, Appellants contend that to the extent Kruckow discloses a display, Kruckow's display does not depict a graphical element showing alignment of the truck to the trolley line, as claimed. Appeal Br. 9. Specifically, Appellants contend that paragraph 21 of Kruckow does not specify what is shown on the display and, rather than showing "a graphical element," the display could depict "numbers including distance from the [trolley] line," a numerical representation of "signal strength," or "a written command." *Id.* Indeed, in the Reply Brief, Appellants contend that the claimed "graphical element" requires "pictorial content." Reply Br. 3.

We are unpersuaded by Appellants' argument. During examination, "claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990) (internal citation, alteration, quotation omitted). Therefore, the words of a

claim must be given their plain meaning unless that meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989).

An appropriate construction of “alignment,” consistent with its plain meaning and in the context of the Specification and claim language, is “arrangement in a straight line, or in correct or appropriate relative positions.”³ Appellants do not provide evidence or argument to support a different construction of this term, and Appellants’ Specification provides no guidance as to the meaning of this term in the context of the disclosed invention. *See* Spec. ¶¶ 8, 23, 24, 26 (utilizing the term in accordance with its plain meaning).

Paragraph 21 of Kruckow discloses a display unit that notifies the driver of the relative position of the vehicle 1 (including sensors 5 and pantographs 2a, 2b) to the trolley lines 4a, 4b (contact wires). Kruckow ¶¶ 6, 21, Fig. 2. Specifically, Kruckow states:

The information regarding the position of the sensor[s] 5 relative to the contact wire[s] 4a, 4b and thus 4a on the position of the pantograph 2a, 2b and thus of the entire vehicle 1 to the contact wire, 4b by means of a not-shown display unit to the driver to be notified so that can execute this immediately suitable steering movements.

Id. ¶ 21; *see also* Ans. 3–4. Therefore, a preponderance of evidence supports the Examiner’s finding that Kruckow’s display shows the relative position of the truck to the trolley line, which satisfies the claim requirement that the display show “alignment of the off-highway truck to the trolley line,” under the broadest reasonable construction of that term.

³ Oxford Dictionary (“alignment”), *available at* <https://en.oxforddictionaries.com/definition/us/alignment> (last visited Oct. 19, 2016).

An appropriate construction of “a graphical element,” consistent with its plain meaning and in the context of the Specification and claim language, is “a visual element, including pictorial content, letters, or numbers.”⁴ Appellants do not provide persuasive evidence or argument to support a different construction of this term. *See* Reply Br. 3 (arguing that the phrase “mean[s] pictorial content” but providing no evidence or reasoning to support that argument). Furthermore, Appellants’ Specification provides little guidance as to the meaning of this term in the context of the disclosed invention. Indeed, Appellants’ Specification utilizes this phrase only once, in reference to the “pantograph indicator 62” of Figure 5. *See* Spec. ¶ 46; Fig. 5. Although Figure 5 depicts a pictorial image, claim 1 utilizes broader language and Appellants’ Specification does not demonstrate any intention to limit the claim scope. *See Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004) (citation omitted) (“Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction’.”); *see also In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2012) (citation omitted) (“Construing claims broadly during prosecution is not unfair to the applicant . . . because the applicant has the opportunity to amend the claims to obtain more precise claim coverage.”).

⁴ Oxford Dictionary (“graphic”), *available at* <https://en.oxforddictionaries.com/definition/us/graphic> (last visited Oct. 19, 2016) (“Relating to visual art, especially involving drawing, engraving, or lettering”).

Therefore, it is immaterial whether the relative position information disclosed in paragraph 21 of Kruckow is shown on Kruckow's display as pictorial content, as "numbers including distance from the [trolley] line," as a numerical representation of "signal strength," or as "a written command" (*see* Appeal Br. 9; Reply Br. 3), because each of these representations of relative position information constitute "a graphical element" under the broadest reasonable construction of that term. Therefore, a preponderance of evidence supports the Examiner's finding that Kruckow's display includes "a graphical element" as claimed.

Accordingly, we affirm the rejection of claim 1 and claims 3–5 and 7, which were argued as a group with claim 1.

Claim 9

Claim 9 depends from claim 1 and further requires the display include "a first visual element representing the off-highway truck and a second visual element representing a lateral range of the trolley line." Appeal Br. 16 (Claims App).

The Examiner finds that Kruckow anticipates this claim, relying on paragraphs 6 and 7, which discuss informing the driver about the position of the pantograph on the trolley line. Final Act. 6. The Examiner interprets this disclosure to "equivalently teach visual representation (arrow heads, distances, numerical indications, or similar symbols or elements) of directions of pantograph offset or off-highway truck offset relative to trolley line." *Id.*; *see also* Ans. 10.

Appellants contend "a mere teaching to keep the operator informed does not amount to a teaching or even a suggestion to generate two very specific display elements." Appeal Br. 12.

We agree with Appellants. Kruckow’s disclosures of a display and informing an operator about relative positions does not disclose “first” and “second” visual elements included in the display. Indeed, as found by the Examiner, relative position information may be conveyed numerically, which may involve only one numerical element representing the distance between the truck and trolley lines. *See* Final Act. 6; *see also* Appeal Br. 9.

Accordingly, we reverse the rejection of claim 9.

Claim 10

Claim 10 depends from claim 1 and further requires the display to include “a visual element representing a steering direction to allow the off-highway truck to remain powered by the trolley line.” Appeal Br. 16 (Claims App).

The Examiner finds that Kruckow anticipates this claim, relying on paragraphs 6, 7, and 21, which discuss automatic steering and informing the operator of relative position information to allow the operator to coordinate steering movements. Final Act. 6; *see also* Ans. 10–11.

Appellants contend that Kruckow does not inherently disclose a visual element that shows a steering direction. Appeal Br. 12–13.

We agree with Appellants. Appellants’ Specification defines “steering direction” as “the direction of correction needed.” Spec. ¶ 39. The cited portions of Kruckow do not establish that Kruckow’s display includes an element indicating the direction of correction needed. Although providing relative position information conveys that correction *may be* needed, for example, when the relative distance between the truck’s position and the trolley lines’ positions is large, the mere provision of relative

position information does not convey the *direction* of the correction that is needed.

Accordingly, we reverse the rejection of claim 10.

Claim 12

Claim 12 depends from claim 1 and further requires the display include “an alarm indicator element.” Appeal Br. 16 (Claims App).

The Examiner finds that Kruckow anticipates this claim, relying on paragraph 21. Final Act. 7. In the Answer, the Examiner further finds that “notifying a driver so that the driver can execute suitable immediate steering movements is equivalent to alarming the driver so the driver can react to the alarm properly.” Ans. 12.

Appellants contend that the cited portion of Kruckow does not disclose “anything at all to do with an alarm condition.” Appeal Br. 13.

We agree with Appellants. Paragraph 21 of Kruckow does not discuss an alarm indicator element, or “alarming the driver,” at all. *See* Kruckow ¶ 21. The Examiner’s finding that notifying a driver “is equivalent to alarming the driver” is not supported by a preponderance of evidence. Merely providing relative position information, as disclosed in paragraph 21 of Kruckow, does not constitute “an alarm indicator element for indicating that an alarm condition exists.”

Accordingly, we reverse the rejection of claim 12.

*Rejections II and III– Claims 2, 6, and 8 – Obviousness
over Kruckow and Eklund or Takei*

Appellants do not present separate argument against the rejection of claims 2 and 6 as unpatentable over Kruckow and Eklund, or against the rejection of claim 8 as unpatentable over Kruckow and Takei. *See generally*

Appeal Br. Accordingly, Appellants have waived any additional argument as to those claims. 37 C.F.R. § 41.37(c)(iv); *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments . . . on a particular rejection[,] the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

Accordingly, we affirm the rejections of claims 2, 6, and 8.

Rejection IV – Claim 11
Obviousness over Kruckow, Gong, and Stratton

Claim 11 recites a display that includes “a pantograph indicator element indicating whether the operator is to raise or lower a pantograph.” Appeal Br. 16 (Claims App.).

The Examiner finds that Kruckow does not disclose this limitation, but finds that Gong discloses a pantograph that can be automatically raised or, alternatively, can be manually raised by a driver. Final Act. 9 (citing Gong ¶ 14). The Examiner finds that Gong also discloses camera 250, which monitors the pantograph and sends video signals to CAN instrument 240, and Gong also discloses display 440, which provides an interface to the driver. *Id.* (citing Gong ¶¶ 15, 24); *see also* Ans. 7–9 (regarding claim 19), 11–12 (incorporating the discussion of claim 19 for claim 11). The Examiner finds that “through the monitoring camera of the pantograph and meter display, the driver can monitor the pantograph current collector’s state to prevent errors and avoid damage caused by malfunction of the pantograph type current collector.” Final Act. 9 (citing Gong ¶ 24). In light of these teachings, the Examiner concludes it would have been obvious to a person of ordinary skill in the art at the time of the invention to “modify the teaching of Kruckow by adding and using the monitoring

camera of the pantograph and meter display as taught by Gong in order for [the] driver to monitor the pantograph current collector's state to prevent errors and avoid damage caused by malfunction of the pantograph type current collector." *Id.* In the Answer, the Examiner finds that Gong's teaching of a driver who monitors the pantograph current collector's state is "equivalent to teaching a driver who monitors pantograph of a vehicle, who is capable to raise or [lower] the pantograph in order to maintain a physical contact." Ans. 7.

The Examiner also finds that Stratton teaches a controller that controls transfer switch 16 in response to vehicle operating conditions or manual operator selections, such that when a pantograph and trolley line meet, the controller allows the operator to energize the vehicle's drive system. Final Act. 9. According to the Examiner, "this is equivalent to teaching step for providing an indication to the operator to raise or lower a pantograph associated with a vehicle to respectively make or break contact with the overhead trolley line, because a manually raised pantograph by the operator in response to vehicle operating conditions makes the proper connection between the trolley line and the pantograph." Ans. 8. The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify Kruckow "by utilizing programmable logic controller that automatically controls in response to vehicle operating conditions or manual operator selections as taught by Stratton in order to provide a vehicle as aforesaid that can be supplied with external electric power from a trolley line; and a vehicle as aforesaid that includes an on-board auxiliary power source." Final Act. 9–10 (emphasis omitted).

Appellants contend that Gong's disclosure of a pantograph that is manually raised by a driver "has no bearing on what is to be displayed to the operator." Appeal Br. 13. Appellants also contend that Gong's disclosure of a pantograph that is automatically raised "is directly at odds with giving instructions to the operator." *Id.*

We agree with Appellants that Gong does not disclose the claimed "pantograph indicator element indicating whether the operator is to raise or lower a pantograph." Because the Examiner's findings are not entirely clear, we summarize our understanding below. As best understood, the Examiner appears to rely on Gong's teachings of camera 250, which monitors a pantograph, and LCD display 440, which interfaces to a driver. Final Act. 9 (citing Gong ¶¶ 15, 24). In light of these teachings, the Examiner appears to conclude it would have been obvious to modify Kruckow "by adding and using the monitoring camera . . . as taught by Gong in order for [the] driver to monitor the pantograph." *Id.* This conclusion, however, is not supported by a preponderance of evidence. Specifically, Gong does *not* disclose that the position of the pantograph, as captured by the monitoring camera, is displayed to the driver on LCD display 440, as the Examiner's rejection suggests. In fact, Gong discloses that the camera's video is fed to CAN instrument 240, not displayed on display 440. Gong ¶ 15. Further, Gong specifies that LCD display 440 depicts "system operating status [and] inputting alarming threshold parameters," not a video feed of the pantograph from camera 250. *Id.* ¶ 24.

Further, a preponderance of evidence does not support the Examiner's finding, in the Answer, that Gong's teaching of a driver who monitors the pantograph current collector's state is "equivalent to teaching a driver who

monitors pantograph of a vehicle, who is capable to raise or low the pantograph in order to maintain a physical contact.” Ans. 7. Claim 11 requires *generating a display* that includes “a pantograph indicator element indicating whether the operator is to raise or lower a pantograph.” Whether a driver is capable of monitoring and manipulating a pantograph’s position appears to have no bearing on whether *a display* includes a pantograph indicator element.

Additionally, we do not find, in Stratton’s disclosure of a controller that allows an operator to energize the vehicle’s primary drive system when the pantograph and trolley line are in contact, support for the Examiner’s findings or conclusions. Ans. 8 (citing Stratton, 3:3–10). Whether a controller may energize a drive system appears to have no bearing on whether *a display* includes a pantograph indicator element.

Accordingly, we reverse the rejection of claim 11.

*Rejection V – Claims 13 and 15–17
Obviousness over Kruckow and Stratton*

Appellants argue claims 13 and 15–17 as a group. Appeal Br. 10. We treat claim 13 as representative, and claims 15–17 stand or fall with claim 13. 37 C.F.R. § 41.37(c)(iv).

The Examiner finds that Kruckow discloses an off-highway truck, including a controller configured to generate a display providing steering guidance to a truck operator to engage the pantograph with the trolley line. Final Act. 10 (citing Kruckow ¶¶ 6–7).

Appellants contend that “giving someone a location and giving someone steering directions to *reach* that location are two different things entirely. . . . [I]nforming the truck operator of the location of the trolley line

requires the operator to figure out how to get to the trolley line, whereas providing the operator with steering directions eliminates this requirement.”
Appeal Br. 10–11.

We are unpersuaded by Appellants’ argument, which is not commensurate with the scope of claim 13. Claim 13 requires that the display provide “steering guidance,” not “steering directions.” As discussed above, “steering direction[.]” is defined by the Specification as “the direction of correction needed.” Spec. ¶ 39. Importantly, however, the Specification does not define “steering guidance,” which is the actual language recited in claim 13. *See id.* ¶ 9 (utilizing the phrase but providing no definition). Accordingly, and in light of Appellants’ Specification, we conclude that the broadest reasonable interpretation of the claimed “steering guidance” requires simply some information provided to the operator to inform steering; directional information is not required. *See id.* In light of this interpretation, Kruckow’s disclosure of providing relative position information reasonably provides “steering guidance” as claimed because such information constitutes information provided to the operator to inform the operator’s steering. *See* Kruckow ¶ 7 (informing the driver about relative positions so the driver “can better coordinate its steering movements”), ¶ 21 (displaying relative position information so that the driver “can execute this immediately suitable steering movements reliably”). Unlike claim 10, claim 13 does not require that the display convey *directional* information.

Accordingly, we affirm the rejection of claim 13 and claims 15–17, which were argued as a group with claim 13.

Rejection VI– Claim 14
Obviousness over Kruckow, Stratton, and Eklund

Appellants do not present separate argument against the rejection of claim 14 as unpatentable over Kruckow, Stratton, and Eklund. *See generally* Appeal Br. Accordingly, Appellants have waived any additional argument as to this claim. 37 C.F.R. § 41.37(c)(iv); *Frye*, 94 USPQ2d at 1075.

Accordingly, we affirm the rejection of claim 14.

Rejection VII– Claim 18
Obviousness over Kruckow, Stratton, and Gong

Similar to claim 11, claim 18 also requires the display include “a pantograph indicator element indicating whether the operator is to raise or lower the pantograph.” Appeal Br. 17 (Claims App.).

The Examiner makes findings and conclusions substantially identical to those made with respect to claim 11. Final Act. 12; Ans. 7–9 (regarding claim 19), 11–12 (incorporating the discussion of claim 19 for claim 18).

As with claim 11, Appellants contend that Gong’s disclosure of a pantograph that is manually raised by a driver “has no bearing on what is to be displayed to the operator.” Appeal Br. 13. Appellants also contend that Gong’s disclosure of a pantograph that is automatically raised “is directly at odds with giving instructions to the operator.” *Id.*

For the reasons detailed with respect to claim 11, we agree with Appellants that the Examiner fails to establish the unpatentability of claim 18 over Kruckow, Stratton, and Gong.

Accordingly, we reverse the rejection of claim 18.

Rejection VIII – Claim 19
Obviousness over Kruckow, Gong, and Stratton

Similar to claims 11 and 18, claim 19 also requires a display that includes “a pantograph element providing an indication to the operator to raise or lower a pantograph.” Appeal Br. 18 (Claims App.).

The Examiner makes findings and conclusions substantially identical to those made with respect to claim 11. Final Act. 12–13; Ans. 7–9.

Appellants contend that Gong does not provide “actual instruction” to an operator regarding whether to raise or lower a pantograph, but relies on the operator to “figure out on his own whether to raise or lower the pantograph.” Appeal Br. 11.

For the reasons detailed with respect to claim 11, we agree with Appellants that the Examiner fails to establish the unpatentability of claim 19 over Kruckow, Gong, and Stratton.

Accordingly, we reverse the rejection of claim 19.

Rejection IX – Claim 20
Obviousness over Kruckow, Gong, Stratton, and Eklund

Appellants do not present separate argument against the rejection of claim 20 as unpatentable over Kruckow, Gong, Stratton, and Eklund. *See generally* Appeal Br. Accordingly, Appellants have waived any additional argument as to this claim. 37 C.F.R. § 41.37(c)(iv); *Frye*, 94 USPQ2d at 1075.

Accordingly, we affirm the rejection of claim 20.

DECISION

The Examiner’s decision rejecting claims 1–8, 13–17, 20 is *affirmed*;
and

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the Examiner's decision rejecting claims 9–12, 18, and 19 is *reversed*.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART