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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex Parte DEAN M. COLLINS and JOHN P. O’CONNOR

Appeal 2014-008118¹
Application 13/316,754²
Technology Center 3600

Before NINA L. MEDLOCK, TARA L. HUTCHINGS, and
AMEE A. SHAH, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–23. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Our decision references Appellants’ Appeal Brief (“App. Br.,” filed May 6, 2014) and Reply Brief (“Reply Br.,” filed July 17, 2014), and the Examiner’s Answer (“Ans.,” mailed June 6, 2014) and Final Office Action (“Final Act.,” mailed November 7, 2013).

² Appellants identify The Travelers Indemnity Company as the real party in interest. App. Br. 3.

CLAIMED INVENTION

Appellants' claimed invention "relates to systems, media, and methods for determining an insurance premium based on client-selected and/or client-customized data items relating to vehicular operations" (Spec. ¶ 6).

Claims 1, 21, and 22 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method, comprising:
 - receiving, by a specially-programmed computer device and from a user device, an indication of a request for a fleet insurance product for a fleet of vehicles;
 - determining, by the specially-programmed computer device, a base premium for the fleet insurance product;
 - receiving, by the specially-programmed computer device and from the user device, an indication that telematic monitoring will be permitted for at least a portion of the fleet of vehicles;
 - providing, by the specially-programmed computer device and to the user device and in response to the indication that the telematic monitoring will be permitted, a plurality of menu-selectable options, each option representing at least one rule representing at least one of how and when a data item relevant to the fleet insurance product is to be monitored by a telematics device;
 - receiving, by the specially-programmed computer device and from the user device, an indication of a user selection of at least one of the plurality of menu-selectable options;
 - determining, by the specially-programmed computer device and based on the user selection, an adjusted premium for the fleet insurance product;
 - providing, by the specially-programmed computer device and to the user device, an indication of the adjusted premium for the fleet insurance product; and
 - facilitating, by the specially-programmed computer device and based on the adjusted premium, a sale of the fleet insurance product to a client.

REJECTIONS³

Claims 1–6, 11–17, 20, and 21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Broodryk (US 2009/0164258 A1, pub. June 25, 2009) and Bauer ‘598 (US 8,090,598 B2, iss. Jan. 3, 2012).

Claims 7–10, 18, and 19 are rejected under 35 U.S.C. § 103(a) as unpatentable over Broodryk, Bauer ‘598, and Berg (US 2011/0112870 A1, pub. May 12, 2011).

Claims 22 and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over Broodryk, Bauer ‘488 (2007/0038488 A1, pub. Feb. 15, 2007), and Bauer ‘598.

ANALYSIS

Independent Claims 1 and 21 and Dependent Claims 2–6, 11–17, and 20

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claims 1 and 21 under 35 U.S.C. § 103(a) because Bauer ‘598, on which the Examiner relies, does not disclose or suggest

providing . . . to the user device . . . in response to the indication that the telematic monitoring will be permitted, a plurality of menu-selectable options, each option representing at least one rule representing at least one of how and when a data item relevant to the fleet insurance product is to be monitored by a telematics device,

as recited in claim 1, and similarly recited in claim 21 (App. Br. 15–18).

The Examiner takes the position that the broadest reasonable interpretation of “at least one of how and when” encompasses the steps performed when a user determines that he/she is willing to permit the

³ The provisional obviousness-type double patenting rejection of claims 1–23 has been withdrawn. Ans. 2–3.

monitoring and/or the transmission of a monitored data item, and selects a means for transferring the monitored data (e.g., via Bluetooth® or other wireless technology, via a removable storage element such as a memory chip, memory card or stick, floppy disk, recordable CD or DVD) (Ans. 9 (citing Final Act. 12; Bauer ‘598, col. 19, ll. 32–37, col. 20, ll. 15–35)). The Examiner, thus, asserts that “[i]t is implicit that the selection of the ‘how’ is made by the user since it is the user’s decision as to what device will be installed in the user’s vehicle” (*id.*). We disagree.

As Appellants correctly observe, the “how and when,” as recited in claim 1, relates to “how and when” data is to be monitored, not “how and when” a user decides to allow the data to be transmitted, e.g., to a central server (App. Br. 17). The user’s transmission decision does not affect the monitoring, collecting, or recording of the vehicle data by the telematics device; in other words, the vehicle data are monitored in the Bauer ‘598 system whether the user elects to transmit that data to the insurance company or not (*see* Reply Br. 3).

Even were that not so, we find nothing in the cited portions of Bauer ‘598 to support the Examiner’s assertion that the user decides what type of device is installed in his/her vehicle. Instead, we agree with Appellants that the cited portions of Bauer ‘598 only disclose that a user may make decisions regarding (1) whether to allow the device to be installed and (2) once data is recorded, whether to transmit that data to the insurance company (*id.*).

To the extent that the Examiner maintains that Bauer ‘598 inherently discloses allowing a user to decide what type of device is installed in his/her vehicle, more than speculation is required. In particular, the Examiner must

provide evidence and/or technical reasoning (which is not presented here) that makes “clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). “Inherency. . . may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient.” *Id.* at 1269 (quoting *In re Oelrich*, 666 F.2d 578, 581 (CCPA 1981)).

In view of the foregoing, we do not sustain the Examiner’s rejection of claims 1 and 21 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the rejection of claims 2–6, 11–17, and 20, which depend from independent claim 1. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

Dependent Claims 7–10, 18, and 19

Each of claims 7–10, 18, and 19 depends, directly or indirectly, from independent claim 1. The Examiner’s rejection of claims 7–10, 18, and 19 based on Berg, in combination with Broodryk and Bauer ‘598, does not cure the deficiency in the Examiner’s rejection of independent claim 1. Therefore, we do not sustain the Examiner’s rejection of claims 7–10, 18, and 19 for the same reasons set forth above with respect to claim 1.

Independent claim 22 and Dependent Claim 23

Independent claim 22 is directed to a non-transitory computer-readable memory storing instructions that when executed by a processing device cause the outputting of a GUI comprising, *inter alia*, “a second plurality of menu-selectable options, each second option representing at least

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one group of rules representing at least one of how and when a data item relevant to a fleet insurance product is to be monitored.”

In rejecting claim 22 under § 103(a), the Examiner relies on the same erroneous interpretation of Bauer ‘598 applied with respect to claim 1 (Final Act. 41–42). Therefore, we do not sustain the Examiner rejection under 35 U.S.C. § 103(a) of independent claim 22, and claim 23, which depends therefrom, for the same reasons set forth with respect to independent claim 1.

DECISION

The Examiner’s rejections of claims 1–23 under 35 U.S.C. § 103(a) are reversed.

REVERSED