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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHAN HJELM, MATTIAS LIDSTRÖM, and
MONA MATTI

Appeal 2014-009095
Application 13/090,554
Technology Center 3600

Before LINDA E. HORNER, ERIC C. JESCHKE, and
GORDON D. KINDER, *Administrative Patent Judges*.

KINDER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134 from a rejection of claims 1–
20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to a route recommendation system. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A route recommendation apparatus for recommending a route to a user, comprising:

a data storage system for storing for a first person, who is different than the user, location information associated with the first person, the location information comprising information identifying a route that the first person traversed in going from a first location to a second location;

a network interface for receiving route request messages;

and

a data processing system configured to perform a method in response to the network interface receiving a route request message that was transmitted by a communication device operated by a user, where the route request message requests a recommended route from the first location to the second location, the method comprising:

determining for the user a recommended route going from the first location to the second location, wherein the determining step comprises using the information identifying the route that the first person traversed in going from the first location to the second location in determining the recommended route; and

using the network interface to transmit to the communication device a route request response message comprising information identifying the determined recommended route.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kalaboukis

US 2009/0326800 A1

Dec. 31, 2009

REJECTIONS

The Examiner made the following rejections:

Claims 1–20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kalaboukis.

Claims 1–20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–20 of copending Application No. 13/227,751.

ANALYSIS

Claims 1 and 11 are the sole independent claims; claims 7 and 17 depend from claims 1 and 11, respectively. Appellants argue claims 1–20 as a group, with additional, identical arguments made in connection with claims 7 and 17. Appeal Br. 5–8. We select claim 1 as representative, and claims 2–6, 8–16, and 18–20 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv). We address the separate additional arguments presented for claims 7 and 17 separately, *infra*.

Claim 1 rejected as anticipated by Kalaboukis.

Claim 1 recites a route recommendation apparatus wherein the recommended route is determined “using the information identifying the route that [a] first person [who is different than the user] traversed in going from the first location to the second location.” Appeal Br. 10 (Claims App.). The Examiner finds the quoted limitation met by Kalaboukis, particularly citing ¶¶ 4, 5, and 29–31. Ans. 2–3. Kalaboukis determines what it terms a “personalized distance” between two locations “using spatial, temporal, topical, and social data relating to the requesting user and each real-world

entity and the route.” Kalaboukis ¶ 4. Kalaboukis defines a real-world entity, without limitation, as “a person, device, location, or other physical thing known to a W4 COMN [i.e., a W4 Communications Network].” *Id.* ¶ 32. A W-4 COMN is a “collection of users, devices and processes that foster both synchronous and asynchronous communication between users and their proxies providing an instrumented network of sensors providing data recognition and collection in real-world environments about any subject, location, user or combination thereof.” *Id.* ¶ 29. “Examples of [real-world entities] that may use proxies to interact with a W-4 COMN network include non-electronic entities including physical entities such as people, locations (e.g., states, cities, houses, buildings, airports, roads, etc.) and things” *Id.* ¶ 34.

In Kalaboukis, the determination of a personalized distance between two points begins with selecting one or more routes between the two points. *See, e.g.*, ¶¶ 97, 136, 139, 141. The routes may then be modified in light of various factors including temporal factors, social factors and topical factors. *Id.* ¶ 99. “Travel time on a route can be estimated based on average travel time historically associated with a route. . . . In one embodiment, data used to determine travel time on a route may be a combination of many sources of data from multiple sensor networks.” *Id.*

Appellants argue first that Kalaboukis is not concerned with determining a route for a requester, but rather with determining a “personal distance”. Appeal Br. 5–6. “In short, determining a ‘personalized distance’ for a given route is not the same [as] (or equivalent to) determining the route itself.” *Id.* at 6. We disagree because, however named, Kalaboukis’s result is a route or routes that has/have been adjusted to account for, among other

things, whether a portion of the route has “a reputation for being in poor physical condition” (Kalaboukis ¶ 98), the “average travel time historically associated with the route” (*Id.* ¶ 99) or on “a combination of many sources of data from multiple sensor networks.” *Id.* A route’s “reputation” and the historic average travel time along a route both reflect “using the information identifying the route that [a] first person [who is different than the user] traversed in going from the first location to the second location” as required by claim 1. Appeal Br. 10 (Claims App.).

To the extent Appellants are arguing that Kalaboukis’s route is selected before any historical information is brought into play (*see* Reply Br. 2), we noted above that Kalaboukis may present the user with one or more planned routes from which to choose. For example, Kalaboukis describes “an alternative embodiment [in which] the color coding of routes [is] based on [sic, on] rank of users’ likely preferences (e.g. the best route is colored green, the worst, brown.)” Kalaboukis ¶ 141. For this and Kalaboukis’s other plural-route embodiments, each route may be considered a “recommended route,” and each may be based on beginning and end points as well as on additional information relevant to the route, including historical information of previous travelers on that route.

In view of the foregoing and on the record presented, we are not persuaded the Examiner erred in rejecting claim 1. For the same reasons, we are not persuaded of error in the rejection of claims 2–6, 8–16, and 18–20.

Claims 7 and 17 rejected as anticipated by Kalaboukis.

Claim 7 adds to claim 1 that the determining step includes “determining the current time of day and comparing the determined current

time of day with the time information identifying the time of day at which said first person traversed the route.” Appeal Br. 12 (Claims App.).

Appellants argue that Kalaboukis does not suggest comparing the determined current time of day with information identifying the time of day at which the first person traversed and identified a route. The Examiner cited Kalaboukis paragraph 85, where Kalaboukis describes recording temporal data (e.g., time stamps) that relate to specific times and/or events associated with the user and/or with the electronic device. Ans. 3.

Kalaboukis continues by explaining the use of that data in calculating a desired route. Kalaboukis states:

Such travel time can be useful, but can be enhanced by combining it with historical travel time data accumulated over a period of time. For example, on Friday, people may historically leave the office earlier, and traffic predictably suffers a 15 to 20 minute slow down between 6:00 PM and 7:00 PM on major routes out of the city. Thus the speed of traffic at 5:45 PM may provide an overly optimistic estimate of travel time between 6:00 PM and 7:00 PM for a person whose commute would normally be 30 minutes.

Kalaboukis ¶ 100. Kalaboukis concludes, “[T]he time it takes to traverse a route, informed by real-time and historical data, and the impact of such travel time on contemporaneous events can be determined for a specific route or a group of routes.” *Id.* ¶ 104. In Kalaboukis, the use of historical data relating to time of day and its effect on the speed of traversing a route contemporaneously meets the limitation of claim 7, “determining the current time of day and comparing the determined current time of day with the time information identifying the time of day at which said first person traversed the route.” Accordingly, on the record presented, we are not persuaded the Examiner erred in rejecting claim 7.

Appellants make the same arguments against the rejection of claim 17 as for claim 7. Appeal Br. 7–8. For the same reasons stated above, we are not persuaded the Examiner erred in rejecting claim 17.

Claims 1–20 provisionally rejected for obviousness-type double patenting over claims 1–20 of co-pending Application No. 13/227,751

All the claims in the appealed application were provisionally rejected for obviousness-type double patenting in view of co-pending application number 13/227,751. The doctrine of obviousness-type double patenting is intended to prevent the extension of the term of a patent by prohibiting the issuance of the claims of a second patent that are not patentably distinct from the claims of the first patent. *GD Searle LLC v. Lupin Pharm., Inc.*, 790 F.3d 1349, 1351 (Fed. Cir. 2015). Since the briefing in the instant appeal was completed, application number 13/227,751 (filed September 8, 2011) has been issued as U.S. Patent 9,177,336 with a terminal disclaimer for any term that may extend beyond the term of any patent that may be issued on the appealed application. The terminal disclaimer also states that the '336 patent shall be enforceable only for and during such period that it and any patent that may be issued on the appealed application are commonly owned. Because the instant application was filed April 20, 2011, any patent that may eventually issue on the pending application will expire before the term of application number 13/227,751, absent the disclaimer. The disclaimer filed in application number 13/227,751, therefore, eliminates any possible double patenting. Accordingly, the provisional double patenting rejection is reversed.

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DECISION

For the above reasons, the provisional double patenting rejection is REVERSED, and the decision of the Examiner to reject claims 1–20 is AFFIRMED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED