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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN JOSEPH SZWABOWSKI,
PERRY ROBINSON MACNEILLE, CHRISTOPHER JOHN TESLAK,
OLEG YURIEVITCH GUSIKHIN, DIMITAR PETROV FILEV, and
ILYA VLADIMIR KOLMANOVSKY

Appeal 2015-001945
Application 12/684,533
Technology Center 3600

Before: JOHN C. KERINS, STEFAN STAICOVICI, and LEE L.
STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Steven Joseph Szwabowski et al. (“Appellants”) appeal under 35 U.S.C. § 134 from the Examiner’s decision to reject claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claims are directed to an emotive advisory system vehicle maintenance advisor. Spec. 1, ll. 6–9. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A vehicle maintenance advisor system for use by a driver of an automotive vehicle, the system comprising:
 - a computer on-board the vehicle configured to
 - receive input from one or more vehicle systems indicative of a vehicle history including how that particular vehicle is driven over time;
 - identify a need to advise the driver that the vehicle requires a maintenance service specific to the vehicle history of that particular vehicle; and
 - output an alert indicating the required maintenance service for the vehicle to the driver at a time based on the need and a workload of the driver.

Claims App. 1.

REFERENCES

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

Wohlfarth	US 4,525,782	June 25, 1985
Kubota	US 6,249,720 B1	June 19, 2001
Simonds	US 2004/0093155 A1	May 13, 2004
Geisler	US 2004/0122562 A1	June 24, 2004
Sandhu	US 2008/0132246 A1	June 5, 2008
Berkobin	US 2008/0255888 A1	Oct. 16, 2008
Palladino	US 2008/0269977 A1	Oct. 30, 2008
McClellan	US 2008/0319602 A1	Dec. 25, 2008
Lorber	US 2012/0109418 A1	May 3, 2012

REJECTIONS

(I) Claims 1–4, 7–9, 13, 15, and 17 are rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino and Geisler.

(II) Claims 5, 6, and 16 are rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, and Simonds.

(III) Claims 10 and 18 are rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, and Wohlfarth.

(IV) Claim 11 is rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, and Sandhu.

(V) Claim 12 is rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, and McClellan.

(VI) Claim 14 is rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, Berkobin, and Lorber.

(VII) Claim 19 is rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, and Kubota.

(VIII) Claim 20 is rejected under 35 U.S.C. § 103(a) as unpatentable over Palladino, Geisler, Kubota, and Simonds.

OPINION

Rejection (I)

Appellants argue claims 1–4, 7–9, 13, 15, and 17 as a group. *See* Appeal Br. 3–4. We select claim 1 as representative, and claims 2–4, 7–9, 13, 15, and 17 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner finds that Palladino discloses most of the limitations of claim 1, including a computer on-board a vehicle configured to “output an alert indicating the required maintenance service for the vehicle to the driver

based on the need.” Final Act. 7 (emphasis omitted) (citing Palladino, paras. 8, 10, 11, 26, 27, 31, 36; Figs. 2–6). The Examiner relies on Geisler for teaching that the alert is output based on a workload of the driver. *Id.* at 8 (citing Geisler, paras. 5, 6, 12, 13, and 18; Figs. 1–3). The Examiner concludes that it would have been obvious to adapt the vehicle maintenance system of Palladino to “display vehicle information based on driver preferences and workload as taught by Geisler because the display of various vehicle information data along with other information without accounting for driver workload can result in driver distractions and decreased driving performance.” *Id.* (citing Geisler, para. 4).

Appellants argue that Palladino does not output an alert and rather, “merely provides output summarizing a maintenance schedule—which is not an alert—for the coming months in response to a user request.” Appeal Br. 3. Appellants assert that “[b]y definition, alerts are not generated in response to user requests. . . . a cell phone rings to alert a user as to an incoming call. . . . search results provided by a search engine in response to a user search string are not considered alerts.” *Id.* n. 1.

The Examiner responds that, “Appellants’ argument is misleading because it implies that the display disclosed in the Palladino prior art reference is only generated in response to a user request[,] . . . there is no part of the disclosure in the Palladino reference that states or suggests that the results of the service algorithm are only displayed upon the request of the user.” Ans. 5. The Examiner states that because Palladino tracks vehicle operating parameters in real time and updates its output periodically each maintenance event will be displayed as an alert to the user when the update occurs. *See id.* at 10 (citing Palladino, paras. 33 and 45).

We are not persuaded by Appellants' arguments on this issue because Appellants do not point to any portion of Palladino that limits the results of the service algorithm to only be displayed upon the request of the user. *See* Ans. 5. Nor do Appellants argue persuasively that one of ordinary skill would understand this to be so. Palladino discloses that "the 'Service Interval Algorithm' 304 . . . calculates the service intervals and which items should be serviced at a particular interval" based on data calculated by the "Usage Rate Algorithm 302." Palladino, para. 38. The service algorithm 304 "processes data in real time and updates its output periodically as time progresses," typically once each day. *Id.* para. 45. The Examiner characterizes this output as an "alert." Specifically, the Examiner states that the term "'alert' is any output that indicates to the driver that maintenance service is required." Ans. 9. Appellants do not point to any portion of the Specification that would exclude this interpretation.

Moreover, even if the disclosure of Palladino were limited to generating a response based on a user request, because Palladino updates the output once each day, different results are provided each day. An output that indicates that maintenance is required (i.e., a change in the output from a state that does not indicate maintenance is required) would qualify as an alert as recited in claim 1. *See* Palladino, para. 67; Fig. 10; *see also* Ans. 6–7.

Appellants also argue that there would have been no reason to modify Palladino based on the teachings of Geisler, because "Palladino provides output summarizing its maintenance schedule in response to a user request." Appeal Br. 4. Appellants assert that "not providing output responsive to the

request (presumably based on workload) would cause confusion for the user, prompting them to submit further requests, which would be distracting.” *Id.*

The Examiner responds that because Palladino “does not require a user to request the service schedule in order for the schedule to be displayed,” the reason to combine the references is proper. Ans. 12.

Appellants reply that “[n]othing in Palladino (given that it appears to be a service scheduling program) suggests that driver distraction is an issue (even in view of Geisler),” and thus, the Examiner is addressing a problem that does not exist. Reply Br. 2.

We do not agree with Appellants’ arguments regarding the Examiner’s proposed combination of Palladino and Geisler. As discussed *supra*, Appellants have not argued persuasively that Palladino is limited to displaying results based on a user request. Moreover, the Examiner’s rationale for modifying the vehicle maintenance system of Palladino, to adapt it for use by the driver of the vehicle and display vehicle information based on driver preferences and workload (*see* Final Act. 8), does not require an explicit teaching that an unsolved problem exists in Palladino, such as, for example, that workload can result in driver distraction. Rather, the Examiner’s rationale provides an improvement to Palladino’s device. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”). Although Appellants assert that a service scheduling program that forecasts service dates in advance so that a user can track them would not be distracting (Reply Br. 2), Appellants provide no

persuasive technical argument or evidence that the Examiner's proposed modification would have been beyond the capabilities of a person of ordinary skill in the art.

We have considered all of Appellants' arguments for the patentability of claim 1, but find them to be unpersuasive. Accordingly, the Examiner's rejection of claims 1–4, 7–9, 13, 15, and 17 as unpatentable over Palladino and Geisler is sustained.

Rejections (II–VI)

Appellants rely on the above-noted arguments for the patentability of claims 5, 6, 10–12, 14, 16, and 18. *See* Appeal Br. 5. Accordingly, we sustain Rejections (II–VI) for the same reasons discussed above with respect to Rejection (I).

Rejection (VII)

Claim 19 depends from independent claim 3 and requires an avatar for data output.

The Examiner relies on Kubota for this feature and concludes that it would have been obvious to modify Palladino “to include an interactive personified agent as taught by Kubota because of the known benefit of a novel device that provides bi-directional communication with the user.” Final Act. 22 (citing Kubota, col. 1, ll. 1–7, 30–40, and 46–62, col. 2, ll. 23–30, and col. 12, ll. 44–63).

Appellants assert that the proposed combination of Palladino and Kubota is based on impermissible hindsight because a reference like Palladino would have already combined “the teachings of Kubota therewith

given that the teachings of Kubota had been around for at least a decade prior to the filing of Palladino.” Appeal Br. 5–6 (citing *Leo Pharmaceutical Products v. Rea*, 726 F.3d 1346 (Fed. Cir. 2013)).¹

The Examiner responds that Appellants do not accurately summarize the decision in *Leo Pharmaceuticals* and that several factors were combined to support the decision, none of which Appellants assert are applicable in the present case. *See* Ans. 18–19.

We are not persuaded by Appellants’ arguments. “The mere age of the references is not persuasive of the unobviousness of the combination of their teachings, absent evidence that, notwithstanding knowledge of the references, the art tried and failed to solve the problem.” *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977). Similarly, in *Leo Pharmaceuticals*, the court found that “the long felt but unsolved need for a combined treatment of vitamin D and corticosteroid” contributed to the patentability of the claim at issue. *Leo Pharmaceuticals*, 726 F.3d at 1359. Appellants do not persuasively argue that references such as Palladino tried to incorporate avatars but were unsuccessful. Moreover, Appellants’ argument does not address persuasively the Examiner’s rationale that including an interactive personified agent in the system disclosed by Palladino would provide bi-directional communication with the user. Thus, we do not agree that the Examiner relies on impermissible hindsight in combining Palladino and Kubota. Accordingly, we sustain the Examiner’s rejection of claim 19 as unpatentable over Palladino, Geisler, and Kubota.

¹ We understand Appellants’ citation to the year 1993 to be a typographical error.

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Rejection (VIII)

Appellants rely on the arguments made for claim 1 for the patentability of claim 20. *See* Appeal Br. 6. Accordingly, we sustain the Rejection (VIII) for the same reasons discussed above with respect to Rejection (I).

DECISION

The Examiner's decision to reject claims 1–20 under 35 U.S.C. § 103(a) 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