UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/256,962	10/23/2008	Charles L. Holland	018360/345253	6193

826 7590 11/08/2016

ALSTON & BIRD LLP
BANK OF AMERICA PLAZA
101 SOUTH TRYON STREET, SUITE 4000
CHARLOTTE, NC 28280-4000

EXAMINER	
BITAR, NANCY	

ART UNIT	PAPER NUMBER
2669	

NOTIFICATION DATE	DELIVERY MODE
11/08/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptomail@alston.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHARLES L. HOLLAND, JACK D. LEVIS, STANLEY A. ENGEL, VINCENT PAUL FIORAYANTE, STEVEN L. SMITH, KELLI M. FRANKLIN-JOYNER, JEFFREY L. WINTERS, JOHN A. OLSEN III, and MARK DAVIDSON

Appeal 2015-004963[1]
Application 12/256,962
Technology Center 2600

Before JEAN R. HOMERE, ADAM J. PYONIN, and AARON W. MOORE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's non-final rejection of claims 1–12 and 16–20. App. Br. 1. Claims 13–15 have been canceled. Claims App'x. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

---

[1] Appellants identify the real party in interest as United Parcel Service of America, Inc. App. Br. 2.

Appellants' Invention

Appellants' invention is directed to a method for determining a distance to be walked by a delivery vehicle driver. Spec. ¶ 5. In particular, upon acquiring a satellite image (100) including a drop off location (40), and a street (50) adjacent thereto, a user defines on the satellite image (100) a path (20) corresponding to the path the driver is to walk from the vehicle to the drop off location (50). *Id.* ¶ 27, Fig. 1. Subsequently, the defined path (20) is entered into a virtual globe program, which calculates the length (2) of the path (20) corresponding to the walking distance thereof. *Id.*

Representative Claim

Independent claim 1 is representative, and reads as follows:

> 1. A method of determining a distance to be walked by a delivery vehicle driver, said method comprising the steps of:
> providing a satellite image that comprises: (A) an image of a building to which an item is to be delivered; and (B) an image of a street adjacent said building;
> receiving input, via one or more processors, from a user defining a path, within said image, that corresponds to an anticipated path that said delivery vehicle driver will walk from a delivery vehicle to an item drop-off point when delivering said item to said building; and
> determining, via the one or more processors, a length of said path.

Rejections on Appeal

Claims 1–12 stand rejected under 35 U.S.C. § 101 as being directed to nonstatutory subject matter.

Claims 1–12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Matsumoto et al. (US 2005/0021227 A1; Jan. 27, 2005) and Yang (US 2007/0150375 A1; June 28, 2007).

Claims 16–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Matsumoto, Yang, and Gullo et al. (US 7,962,421 B2; June 14, 2011).

ANALYSIS

We consider Appellants' arguments *seriatim*, as they are presented in the Appeal Brief, pages 5–39, and the Reply Brief, pages 2–20.[2] We are unpersuaded by Appellants' contentions. Except as otherwise indicated hereinbelow, we adopt as our own the findings and reasons set forth in the Examiner's Answer in response to Appellants' Appeal Brief. Ans. 3–12. However, we highlight and address specific arguments and findings for emphasis as follows.

[2] Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed Oct. 3, 2014) ("App. Br."), the Reply Brief (filed Mar. 31, 2015) ("Reply Br."), the Non-Final Action (mailed July 28, 2014), and the Answer (mailed Feb. 3, 2015) ("Ans.") for the respective details. We have considered in this Decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

Non-Statutory Subject Matter Rejection

Appellants argue the Examiner erred in concluding that claims 1–12 are directed to the "abstract idea of receiving input from a user defining a path by using multiple steps wherein these steps may be performed by a person using a subjective mental activity." Reply Br. 2. According to Appellants, the Examiner has not provided any factual evidence to substantiate the conclusion that the claims are directed to an abstract idea, nor has the Examiner responded to the arguments provided in the Appeal Brief. *Id.* 2–3. These arguments are not persuasive.

The U.S. Supreme Court provides a two-step test for determining whether a claim is directed to patent-eligible subject matter under 35 U.S.C. § 101. *See Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). First, we determine whether the claims at issue are directed to one of the four statutory categories of invention (i.e., process, machine, article of manufacture, or composition of matter). Because claims 1–12 are directed to a method, they satisfy the first prong of the test. Second, we determine whether the claims are directed to one or more judicial exceptions (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)).

We do not agree with Appellants that the Examiner has not provided a "clear rationale supporting the determination that an abstract idea has been claimed" pursuant to MPEP 2106(II)(B)(2). App. Br. 5–6; Reply Br. 2. In the Answer, the Examiner expounds upon the initial conclusion that the claims are directed to an abstract idea because they relate to steps performed

by a person using subjective mental activity. Ans. 3–4, 10. In particular, the Examiner explains that:

> For example, the step of receiving can be implemented by a user using a mouse or a pen to mark the anticipated path to be walked by the driver on a displayed/printed map and the determining step can be implemented by the user measuring the length on the display using a scale.

Ans. 10.

Thus, the Examiner submits that the claims are directed to a method of organizing human activity, whereby a human manually draws a path on a printed map, and subsequently measures the length of the path with a scale. Accordingly, the Examiner has provided the requisite rationale in support of the abstract idea rejection. Although Appellants seek to distinguish generally the claimed method from the four examples of abstract ideas (namely methods of organizing human activities, abstract ideas per se, mathematical relationships, and mathematical formulas) referenced in *Alice*, Appellants have not directly addressed the cited rationale provided by the Examiner. App. Br. 7–21; Reply Br. 2–13. We note nonetheless that the notion of calculating the length of a path corresponding to a distance to be travelled by car or by foot is a commercial practice in our economic system that is well known and long prevalent. We further note that because such calculation of length of the path as recited in the claims encompasses any and all manners of achieving such end, the claim pre-empts the idea itself so that others cannot practice it. Additionally, we note that the mere use of a generic computer recited in the claim to calculate the length of the path does not transform the abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357. Accordingly, we sustain the Examiner's rejection of

claim 1, as well as claims 2–12 depending therefrom, as being directed to nonstatutory subject matter.

Obviousness Rejections

Appellants argue that the combination of Matsumoto and Yang does not render claims 1–12 unpatentable. App. Br. 22. In particular, Appellants argue that Matsumoto fails to teach or suggest receiving an input from a user defining a path within an image. *Id.* at 23. According to Appellants, Matsumoto teaches a user entering a final destination in a navigation system to determine the most suitable route to a parking lot closest to the final destination. *Id.* at 23–25 (citing Matsumoto 82). Appellants submit that although the navigation system may also determine the walking route from the parking lot to the destination, such a parking lot is more appropriate for visitors of a department store, as opposed to a drop off point for delivering items to the building. *Id.* at 25 (citing Matsumoto 123). Further, Appellants argue that Yang's disclosure of providing a route from a user's home to a food pick up location does not cure the noted deficiencies of Matsumoto. *Id.* at 25 (citing Yang 18, 66, 67). These arguments are not persuasive.

We agree with the Examiner that Matsumoto's disclosure of a user selecting a parking lot near a department store, as well as the walking distance from the parking lot to the store, teaches or suggests the user defining a path therebetween. Ans. 10 (citing Matsumoto 104, 105). We further agree with the Examiner that Yang's disclosure of a satellite map including the depiction of a user's point of origin, a food pick up location, and route (570) therebetween selected by the user, teaches the user defining the path on a satellite image. *Id.* at 27 (citing Yang 79). We therefore agree with the Examiner that the combination of Matsumoto and Yang would have

predictably resulted in a user defining a route between a point of origin (i.e. the parking lot) and a destination point (i.e. the delivery drop off point) on a satellite image, wherein the route represents the walking path therebetween, and the walking distance corresponds to the length thereof. Although the route between the parking lot and the department store is more suitable to visitors, nothing in the claim restricts the delivery drop off point to a particular building entry or parking lot. Accordingly, we are not persuaded of error in the Examiner's obviousness rejection of claim 1.

Regarding the rejection of claims 2–12 and 16–20, to the extent Appellants have either not presented separate patentability arguments or have reiterated substantially the same arguments as those previously discussed for patentability of claim 1 above, those claims fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(vii). Further, to the extent Appellants have raised additional arguments for patentability of these claims, we find that the Examiner has rebutted in the Answer each and every one of those arguments by a preponderance of the evidence. Answer 6–9, 11, and 12. We adopt the Examiner's findings and underlying reasoning, which we incorporate herein by reference. Because Appellants have failed to persuasively rebut the Examiner's findings regarding the rejections of claims 2–12 and 16–20, Appellants have failed to show error in the Examiner's rejection of these claims.

DECISION

We affirm the Examiner's nonstatutory subject matter rejection under 35 U.S.C. § 101 of claims 1–12. We also affirm the Examiner's rejections under 35 U.S.C. § 103(a) of claims 1–12 and 16–20.

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

AFFIRMED