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EXAMINER

HILGENDORF, DALE W

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN SKAFF,
DEREK HARTL,
PAUL ALDIGHIERE,
JEFFREY ALLEN GREENBERG,
DAVID L. WATSON,
DALE GILMAN,
CRAIG SANDVIG,
LESLIE BODNAR,
LEANN KRIDNER, and
ANGELA L. WATSON

Appeal 2016-002881
Application 12/985,470¹
Technology Center 3600

Before HUBERT C. LORIN, JAMES A. WORTH and
ROBERT J. SILVERMAN, Administrative Patent Judges.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Ryan Skaff, et al. (Appellants) seek our review under 35 U.S.C.
§ 134(a) of the Final Rejection of claims 1, 4–6, 9, 10, 13–19, 21, and 22.

¹ The Appellants identify Ford Global Technologies, LLC as the real party in interest. App. Br. 2.

Claims 14–19 and 21 were withdrawn from consideration. Final Rej. 2. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We REVERSE but enter a NEW GROUND OF REJECTION.

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A computer-implemented method comprising:
 - calculating a maximum remaining vehicle travel-range, by a vehicle-associated computer, based on remaining charge and gasoline;
 - calculating projected charge and gasoline usage for a predefined trip;
 - displaying a gauge including both charge and gasoline remaining-range, displayed as independent components of a single gauge; and
 - displaying an indicator on the single gauge, visually indicating the projected charge and gasoline usage as portions of displayed charge or gasoline remaining-range.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Yasuda	US 2005/0049779 A1	Mar. 3, 2005
Hershkovitz	US 2010/0094496 A1	Apr. 15, 2010
Mizutani	US 2010/0194553 A1	Aug. 5, 2010
Gutman	US 2012/0173134 A1	July 5, 2012

The following rejections are before us for review:

1. Claims 1, 4–6 and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizutani and Gutman.
2. Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Hershkovitz.
3. Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Yasuda

ISSUES

Did the Examiner err in rejecting claims 1, 4–6 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani and Gutman?

Did the Examiner err in rejecting claims 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Hershkovitz?

Did the Examiner err in rejecting claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Yasuda?

FINDINGS OF FACT

We rely on the Examiner’s factual findings stated in the Answer. Additional findings of fact may appear in the Analysis below.

ANALYSIS

The rejection of claims 1, 4–6 and 22 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani and Gutman.

The Examiner states that

Mizutani et al do not teach the claimed calculating projected charge and gasoline usage for a predefined trip and the claimed displaying an indicator on the single gauge to visually indicate the

projected charge and gasoline usage as portions of displayed charge or gasoline remaining range.

Final Rej. 5.

The Examiner argues that “Gutman [instead] teaches the claimed calculating *projected* charge and gasoline usage for a predefined trip.” Final Rej. 5 (emphasis added). The Examiner explains that Gutman discloses

"The navigation system 100 can calculate an estimated resource level 310. The estimated resource level 310 is defined as the estimation of the amount of resource remaining when the vehicle reaches one of the intermediate stops 210, the replenishment locations 218, the destination 206, or the combination thereof." P[0101] and "The navigation system 100 can calculate an estimated fuel level 312. The estimated fuel level 312 is defined as the estimation for the amount of fuel remaining when the vehicle reaches one of the intermediate stops 210, the replenishment locations 218, the destination 206, or the combination thereof." P[0103] See Figure 3 reference numbers 310 and 312. The example 75% fuel level remaining 312 and the 50% resource remaining 310 are equivalent to the claimed portion of remaining distance. In the examples, the portion of fuel that is used up is 25%, and the portion of resource that is used up is 50%, (calculated to reach the destination).

Final Rej. 5. According to the Examiner, the estimation for the amount of fuel remaining is “*equivalent* to the claimed portion of remaining distance.”

Final Rej. 5.

While we agree that an amount of remaining fuel could be translated into a remaining distance that can be travelled on the remaining fuel, that is not what is claimed. What is claimed is “*projected charge and gasoline usage*,” not the projected distance for an amount of fuel. We agree with the Appellants that “Gutman does not show the amount of projected charge or gasoline usage as claimed. What Gutman shows is the projected amount of fuel resources remaining.” App. Br. 5. We do not see how one of ordinary

skill in the art given Gutman's disclosure of an amount of remaining fuel would be led to "calculat[e] projected charge and gasoline usage for a predefined trip" as claimed.

Accordingly, the rejection is not sustained.

The rejection of claims 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Hershkovitz.

The rejection of claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Yasuda.

These rejections of dependent claims 9, 10, and 13 are not sustained for the reasons given above in not sustaining the rejection of the independent claims from which they depend. The Examiner relies on finding that Gutman discloses "projected charge and gasoline usage". Final Rej. 9-10. However, it has not been established in the first instance that Gutman in fact discloses "projected charge and gasoline usage" as claimed.

NEW GROUND OF REJECTION

Claims 1, 4-6, 9, 10, 13, and 22 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent-eligibility under 35 U.S.C. § 101.

According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, generally-speaking, the claims are directed to projections; more specifically, determining a vehicle’s projected charge and gasoline usage. We see little difference between what these claims are directed to and the subject – “a series of mathematical calculations based on selected information and the presentation of the results of those calculations (in the plot of a probability distribution function)” – of the claims at issue in *SAP America, Inc. v. InvestPic LLC*, 890 F.3d 1016, 1018 (Fed. Cir. 2018). As in *SAP*, “[t]he claims in this case are directed to abstract ideas. The focus of the claims, as is plain from their terms, quoted above, is on selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis. That is all abstract.” *SAP*, 890 F.3d at 1021.

Step two is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (*quoting Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 US 66, 73 (2012)).

In that regard, the claims do not add an element or combination of elements sufficient to ensure that the subject matter claimed in practice amounts to significantly more than to be upon the projection abstract idea itself. This is so because aside from the “selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis” (*SAP*, 890 F.3d at 1021), the claims encompass adding (a) a conventional “vehicle-associated computer” (claim 1) and (b) a drawing of “gauge”.

Regarding the vehicle associated computer, claim 4 further limits it to be “included with a vehicle navigation display installed in the vehicle” and claim 5 limits it to “a remote personal computer.” But the “vehicle-associated computer” of the claims, even as limited by claims 4 and 5, covers that which was already widely available at the time of filing. *See* Spec., paras. 32 (“any other suitable display”) and 33 (“PC”). *Cf. SAP*, 890 F.3d at 1023:

Some of the claims require various databases and processors, which are in the physical realm of things. But it is clear, from the claims themselves and the specification, that these limitations require no improved computer resources InvestPic claims to have invented, just already available computers, with their already available basic functions, to use as tools in executing the claimed process.

The claims also include limitations to “displaying a gauge.” However, the gauge is not further limited in any structural way and therefore reasonably broadly covers any technique for accomplishing that end (“displaying a gauge”). Claims 1 and 22 cover displaying a gauge containing two values and indicating portions of those values. *Cf. In re Bilski*, 545 F.3d 943, 965 (Fed. Cir. 2008) (“[A]pplication of [only] human intelligence to the solution of practical problems is no more than a claim to a fundamental principle.”)

The other dependent claims describe various information processing schemes which do little to patentably transform the abstract idea. Where such claims are directed to the same abstract idea, “addressing each claim of the asserted patents ... [is] unnecessary.” *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1348 (Fed. Cir. 2014).

CONCLUSIONS

The rejection of claims 1, 4–6, and 22 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani and Gutman is reversed.

The rejection of claims 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Hershkovitz is reversed.

The rejection of claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Mizutani, Gutman, and Yasuda is reversed.

Claims 1, 4–6, 9, 10, 13, and 22 are newly rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter.

DECISION

The decision of the Examiner to reject claims 1, 4–6, 9, 10, 13, and 22 is reversed.

Claims 1, 4–6, 9, 10, 13, and 22 are newly rejected.

NEW GROUND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
- (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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).

REVERSED; 37 C.F.R. § 41.50(b)