



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.
13/475,899	05/18/2012	James Solomon	8605.P038	1079

130093 7590 12/13/2016
Nicholson De Vos Webster & Elliott LLP
217 High Street
Palo Alto, CA 94301

EXAMINER

CHOUDHURY, AZIZUL Q

ART UNIT	PAPER NUMBER
----------	--------------

2456

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

12/13/2016

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):

patent@nicholsondevos.com
ndwe_docketing@cardinal-ip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES SOLOMON, MILTON T. TORMEY, and
JOHN EDUARD TAYLOR

Appeal 2016-002969
Application 13/475,899
Technology Center 2400

Before ST. JOHN COURTENAY III, KRISTEN DROESCH, and
CATHERINE SHIANG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–28. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Invention

The disclosed and claimed invention on appeal “relate[s] to the field of electric vehicle charging; and more specifically, to a flexible administrative model in an electric vehicle charging service network.” (Spec. ¶ 1).

Representative Claim

1. A method for creating one or more groups of electric vehicle charging objects, comprising:

[L1] *receiving input from an organization to group a selected set of electric vehicle charging objects;*

[L2] *creating the group in response to the received input, wherein the created group includes as its members the selected set of electric vehicle charging objects; and*

performing a set of one or more acts for the members of the group.

(Contested limitations L1 and L2 are emphasized).

Rejection

Claims 1–28 are rejected under 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Prosser et al. (US 2012/0280653 A1) in view of Turner (US Patent No: 8,493,025 B2), hereinafter referred to as Prosser and Turner, respectively. (Final Act. 2).

Grouping of Claims

Based on Appellants' arguments in the principal Brief, we decide the appeal on the basis of representative claims 1, 7, and 9. *See* 37 C.F.R. § 41.37(c)(1)(iv). To the extent Appellants have not advanced separate, substantive arguments for the remaining claims on appeal, such arguments are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. We disagree with Appellants' arguments, and we adopt as our

own: (1) the findings and legal conclusions set forth by the Examiner in the action from which this appeal is taken, and (2) the findings, legal conclusions, and explanations set forth in the Answer in response to Appellants' arguments. (Ans. 2–5). However, we highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection of Independent Claim 1 under 35 U.S.C. § 103(a)

Regarding contested limitation L1, Appellants contend “the proposed combination of Prosser and Turner does not teach or suggest ‘*receiving input from an organization to group a selected set of electric vehicle charging objects*’ as required by claims 1 and 15.” In support, Appellants urge, inter alia, that “transmission of vehicle data of paragraph 53 (including the fleet unit number of the vehicle) is not ‘*input ... to group a selected set of electric vehicle charging objects*’ as required by claims 1 and 15.” (App. Br. 5–6).

However, we agree with the Examiner’s responsive explanation. (Ans. 3). We find a preponderance of the evidence supports the Examiner’s finding that Prosser teaches “a rental car agency (organization) [that] can implement (*create/input*) an EV fleet (to group a set of Electric Vehicles (EV)).” (Ans. 3) (Emphasis added). We find a preponderance of the evidence also supports the Examiner’s finding that Prosser’s invention (§ 24) allows for EV fleet *management*. (Ans. 3).

As pointed out by the Examiner (*id.*), Prosser (§ 24) teaches charging and tracking a large number of vehicles, such as would be performed by “a rental car agency implementing an EV fleet.”¹ Regarding the secondary

¹ See Prosser (§ 24) (“Embodiments of the invention make it possible to

Turner reference, the Examiner explains: “Turner also discusses fleets of electric vehicles. In particular, Turner teaches how the back office and fleet operator can develop and deploy (also *create/input*) content specifically for groups of vehicles in the fleet or to even groups of drivers using fleet vehicles (groups of EVs); see column 12, lines 34– 44, Turner.” (Ans. 3) (Emphasis added).

Regarding contested limitation L2, Appellants urge, inter alia:

column 12, lines 33-44 of Turner do not describe creating the fleet, let alone creating the fleet in response to the received input (“*input from an organization to group a selected set of electric vehicle charging objects*”). To say it another way, developing and deploying content to a charging station such as maintenance or other notices that are specific to a vehicle or group of vehicles in a fleet does not describe “*creating the group*” let alone “*creating the group in response to the received input*” as required by claims 1 and 15.

(App. Br. 7).

However, we find no definition of “group” in Appellants’ claims or Specification that would preclude the Examiner’s broader reading, nor have Appellants argued a definition.² Turning to Appellants’ Specification for

charge and track a large number of vehicles” Prosser (*id.*) expressly describes “a rental car agency implementing an EV fleet”

² We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). *See Spec.* (¶ 164) (“While the invention has been described in terms of several embodiments, those skilled in the art will recognize that the invention is not limited to the embodiments described, can be practiced with modification and alteration within the spirit and scope of the appended claims. The description is thus to be regarded as illustrative instead of limiting.”). *Accord Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1346-47 (Fed. Cir. 2015) (“This court has repeatedly ‘cautioned

context, we merely find a “group” described in terms of exemplary, non-limiting embodiments:

For example, the organization (in particular an administrator at the organization) may *create a group*. *Creation of the group may include providing a name for the group and selecting the members of the group* (the electric vehicle charging objects). **For example**, *if creating a group of charging stations*, the administrator of the organization **may provide** *a name for the group* and indicate which charging station objects and/or other *existing groups of charging stations* are to be members of the group.

(Spec. ¶ 112) (Emphasis added). *See also* Spec. (¶ 164) and n.2, *supra*.

We find “a rental car agency implementing an EV fleet” (Prosser, ¶ 24) would have named or labeled, i.e., “grouped” (and thus selected) its customers in some manner, at least for billing purposes (e.g., by charging station location and/or duration of charging time at particular rates, state and/or local sale tax rates applied, billing address, customer city, state, postal code, etc.).³ Moreover, given the evidence cited by the Examiner (Final

against limiting the claimed invention to preferred embodiments or specific examples in the specification.”) (quoting *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1328 (Fed. Cir. 2002)). *See also* n.3, *infra*.

³ Our reviewing court guides that the question of obviousness is “based on underlying factual determinations including . . . the level of ordinary skill in the prior art” *In re Zurko*, 258 F.3d 1379, 1383–84 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966); *In re Dembiczak*, 175 F.3d 994, 998 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613 (Fed. Cir. 1995)). Moreover, “[e]very patent application and reference relies to some extent upon knowledge of persons skilled in the art to complement that [which is] disclosed. . . .” *In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (quoting *In re Wiggins*, 488 F.2d 538, 543 (CCPA 1973)). Those persons “must be presumed to know something” about the art “apart from what the references disclose.” *In re Jacoby*, 309 F.2d 513, 516 (CCPA

Act. 2–3; Ans. 2–3), we find combining the respective teachings of Prosser and Turner in the manner proffered by the Examiner would have merely realized a predictable result. *See KSR*, 550 U.S. 398, 416 (2007).

“Invention or discovery is the requirement which constitutes the foundation of the right to obtain a patent . . . unless more ingenuity and skill were required in making or applying the said improvement than are possessed by an ordinary mechanic acquainted with the business, there is an absence of that degree of skill and ingenuity which constitute the essential elements of every invention.” *Dunbar v. Myers*, 94 U.S. 187, 197 (1876) (citing *Hotchkiss v. Greenwood*, 52 U.S. 248, 267 (1850)). We note that *Hotchkiss* was cited with approval by the Supreme Court in *KSR*, 550 U.S. at 407, 415, 427. The Supreme Court further guides:

Section 103(a) forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR, 550 U.S. at 406.

This reasoning is applicable here. Nor have Appellants pointed to any evidence of record that shows combining the references in the manner proffered by the Examiner would have been “uniquely challenging or difficult for one of ordinary skill in the art” or would have “represented an

1962). The prior art must be evaluated for what the references would have fairly suggested to one of ordinary skill in the art at the time of the invention. *See Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989).

unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

Following the guidance of our reviewing courts, on this record, we find a preponderance of the evidence supports the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness regarding representative claim 1. Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner’s rejection of independent claim 1 and grouped independent claim 15, which falls with claim 1. *See Grouping of Claims, supra.*

Rejection of Dependent Claim 7 under 35 U.S.C. § 103(a)

Regarding claim 7, Appellants contend that “Prosser and Turner, alone or in combination, fail to teach or suggest ‘*receiving input from the organization to grant a set of one or more rights over the group to a different organization; and granting the set of rights to the different organization.*’ (emphasis added).” (App. Br. 8). In support, Appellants urge:

Table 1 of column 22 of Turner describes customizable access which “gives municipalities and/or system operator multiple options for end users to access the charging station; this includes allowing for one-time transactions or using loyalty cards and/or stored value cards”. However providing multiple options for end users to access the charging station does not describe “*receiving input from the organization to grant a set of one or more rights over the group to a different organization; and granting the set of rights to the different organization*” as required by claims 7 and 21 (emphasis added).

(App. Br. 9).

The Examiner disagrees:

Within Table 1 of Turner, it is taught how municipalities and/or system operator(s) have the option to provide end users access; see columns 21-22, Table 1, Turner. Turner goes on to explain how end users can be granted access to one-time transactions or loyalty cards; see column 22, Table 1, Turner. Since the claims do not explicitly cite what "rights" are granted to a different organization, the granting of access by a municipality (one organization) to an end user (granting access to a different organization) of a municipalities' loyalty card (set of rights) is deemed equivalent; again see column 22, Table 1, Turner.

(Ans. 4).

Because we find no definition in the claim or Specification that limits the types of "rights" (e.g., loyalty or stored value card rights, Turner, TABLE 1, col. 22), which may be granted to a "different organization" (e.g., covering Turner's group of end users (i.e., an organization) versus a (different) municipality organization — (*id.*), on this record we are not persuaded the Examiner erred.⁴ Therefore, we sustain the Examiner's rejection of representative claim 7, and grouped claim 21, which falls with claim 7. *See* Grouping of Claims, *supra*.

Rejection of Independent Claim 9 under 35 U.S.C. § 103(a)

Regarding claim 9, Appellants aver:

even if the fleets and municipalities can be considered as the claimed organizations, the proposed combination of Prosser and Turner does not teach or suggest "receiving input from a first organization to grant a set of one or more rights over a set of one

⁴ Because "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted).

or more groups of a plurality of electric vehicle charging objects to a second organization, wherein the first and second organizations are each entities that are associated with the electric vehicle charging service network” as required by claims 9 and 23 (emphasis added).

(App. Br. 10).

The Examiner disagrees and finds (Ans. 5): “Table 1 within column 22 of Turner teaches access being granted by a municipality (a first organization) to an end user (a second organization) of a municipalities’ loyalty card (set of rights),” which the Examiner finds is “equivalent” to the subject matter of claim 9. (*Id.*).

For essentially the same reasons articulated by the Examiner in the Answer (5), and for the reasons discussed above regarding claims 1 and 7, Appellants have not persuaded us the Examiner erred. Therefore, we sustain the Examiner’s rejection of representative claim 9, and grouped claim 23, which falls with claim 9. *See Grouping of Claims, supra.*

Remaining Claims 2–6, 8, 10–14, 16–20, 22, and 24–28

Appellants advance no separate, substantive arguments regarding the remaining claims on appeal. (App. Br. 11–12). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Therefore, we sustain the Examiner’s rejection of the remaining claims on appeal.

Reply Brief

To the extent Appellants advance new arguments in the Reply Brief not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or

Appeal 2016-002969
Application 13/475,899

are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause. *See* 37 C.F.R. § 41.41(b)(2).

DECISION

We affirm the Examiner's rejection of claims 1–28 under 35 U.S.C. § 103(a).

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 41.50(f).

AFFIRMED