UNITED STATES PATENT AND TRADEMARK OFFICE

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HENRY M FEIEREISEN, LLC
HENRY M FEIEREISEN
708 THIRD AVENUE
SUITE 1501
NEW YORK, NY 10017

EXAMINER
NGUYEN, NGA X

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte SEBASTIAN ENGEL[1]

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Appeal 2017-004563
Application 14/095,282
Technology Center 3600

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Before JOHN C. KERINS, EDWARD A. BROWN, and
ARTHUR M. PESLAK, *Administrative Patent Judges.*

KERINS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Sebastian Engel (Appellant) appeals under 35 U.S.C. § 134(a) from
the Examiner's decision to reject claims 1–5 and 7–15. We have jurisdiction
over this appeal under 35 U.S.C. § 6(b). An oral hearing was conducted on
January 8, 2019, with Alexandra K. Pechhold, Esq., appearing on behalf of
Appellant.

We AFFIRM.

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[1] Audi AG is the applicant, and is identified as the real party-in-interest in
the Appeal Brief. Br. 2.

THE INVENTION

Appellant's invention relates to a method and device for providing a vehicle driver assistance system. Independent claim 1 is illustrative of the claimed invention and reads as follows:

> 1. A method of providing to at least one driver assistance system of a vehicle a course of a road ahead in relation to a geographical position and a direction of travel of the vehicle using the road, the method comprising the steps of:
>
> a) with a position detection device of the vehicle, determining the geographical position of the vehicle and detecting the direction of travel of the vehicle on the road;
>
> b) with a control device of the vehicle, which communicates with a data server spaced from the vehicle and remotely communicating with the control device, and which is coupled with at least one driver's assistance system, retrieving from the spaced from the vehicle data server in remote communication with the control device aerial image data of a predetermined area around the position of the vehicle;
>
> c) with the control device of the vehicle, evaluating the aerial image data retrieved from the spaced from the vehicle data server remotely communicating with the control device, for extracting road data at least of the used road by way of edge detection in the aerial image;
>
> d) with the control device of the vehicle, determining the position of the vehicle relative to the road by combining the road data with the position of the vehicle;
>
> e) with the control device of the vehicle, determining the course of the road from the road data in relation to the direction of travel, and

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f) with the control device of the vehicle, which communicated with the spaced from the vehicle data server remotely communicating with the control device, controlling the at least one driver assistance system which intervenes in a vehicle dynamics depending on the course of the road and the position of the vehicle determined at steps d) and e) ;

wherein at step e) the course of the road is determined only from road sections that are to be driven by the vehicle according to a predetermined route within the next few seconds or minutes.

THE REJECTION

The Examiner has rejected claims 1–5 and 7–15 under 35 U.S.C. § 103(a) as being unpatentable over Cooprider (US 2012/0296539 A1, published Nov. 22, 2012) in view of Dorfman (US 2005/0216186 A1, published Sept. 29, 2005).

ANALYSIS

Appellant argues claims 1–5 and 7–15 as a group, providing no separate arguments for patentability of any particular claims. *See* Br. 5–7.[2] No Reply Brief was filed in connection with this appeal. We take claim 1 as representative of the group, and claims 2–5 and 7–15 stand or fall with claim 1.

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[2] Unless otherwise indicated, reference herein to the Appeal Brief is to the Appeal Brief dated July 5, 2016. A supplemental submission, filed October 3, 2016, titled "**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF,**" provides a compliant "**SUMMARY OF THE CLAIMED SUBJECT MATTER**" section required in an Appeal Brief.

The Examiner cites to Cooprider as disclosing most of the limitations set forth in claim 1, and finds that Dorfman discloses the limitations not found in Cooprider. Non-Final Act. 3–5. The Examiner concludes that it would have been obvious to modify Cooprider to employ a server remotely communicating with a vehicle-based processor to evaluate retrieved aerial image data and extracting the road data from the aerial image data, and to associate the vehicle with the road, in the manner disclosed in Dorfman, in order to improve control of the driver assistance system of Cooprider. *Id.* at 5.

Appellant's arguments begin with essentially a restatement of the grounds of rejection propounded by the Examiner. Br. 5–6. Appellant next acknowledges certain teachings present in the Dorfman reference, and follows that with a statement that Dorfman does not disclose

> that a control device of the vehicle, which controls the driver's assistance system, remotely retrieves from a data server, which is spaced from the vehicle and is in communication with the control device of the vehicle, aerial image data of a predetermined area around the position of the vehicle, and the control device of the vehicle, which controls the driver's assistance system, then evaluates the aerial image data received from the data server, which is spaced from the vehicle and is in communication with the control device of the vehicle, for extracting road data at least of the used road by way of edge detection in the aerial image, and eventually at the end of the processing of all data, it also controls the driver's assistance system. These novel features of the present invention are simply not disclosed in any of the references and not suggested by them.

Id. at 6–7.

Not only does the Examiner not rely on Dorfman for aspects related specifically to a driver assistance system, the entire assertion is essentially "a

mere recitation of [certain] . . . claim elements and a naked assertion that the corresponding elements were not found in the prior art," and is not a substantive argument sufficient to identify potential error in the rejection. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art."). *See also, In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1162 (Fed. Cir. 2018).

Appellant additionally argues that Dorfman is directed to only obtaining and representing data with a vehicle control device, but does not involve receiving and processing data to control a driver assistance system with the vehicle control device. Br. 7. As foretold above, the Examiner's rejection does not rely on Dorfman as teaching a driver assistance system, but rather relies on Cooprider for such aspects, and the argument is not commensurate with or responsive to the rejection as articulated.

Appellant's arguments do not apprise us of error in the Examiner's ground of rejection of claim 1. The rejection of claim 1 is sustained. Claims 2–5 and 7–15 fall with claim 1.

DECISION

The rejection of claims 1–5 and 7–15 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)(1)(iv).

AFFIRMED