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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JENNIFER HEALEY, ALEXANDRA ZAFIROGLU, and
BARBARA ROSARIO

Appeal 2017-007552
Application 13/977,584
Technology Center 3600

Before MURRIEL E. CRAWFORD, CYNTHIAL. MURPHY, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants¹ appeal under 35 U.S.C. § 134 from the Examiner's rejections of claims 31–40. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

¹ “The real party in interest is Intel Corporation.” (Appeal Br. 3.)

STATEMENT OF THE CASE

According to the Appellants, this case relates “generally to vehicle navigation systems, and more particularly, to navigation systems that promote or enhance additional driver awareness.” (Spec., page 1, lines 4–5.)

Illustrative Claim

31. A method comprising:
- determining information associated with a location of a vehicle;
 - collecting based at least in part upon the determined location, awareness information associated with the vehicle’s location, the awareness information comprising a road use restriction;
 - generating by the navigation system at least in part upon the collected awareness information, output information for presentation; and
 - outputting the generated output information.

Rejections

- I. The Examiner rejects claims 31–40 under 35 U.S.C. § 101 as failing to recite statutory subject matter. (Final Action 2–5.)
- II. The Examiner rejects claims 31, 34, and 36 under 35 U.S.C. § 102(b) as anticipated by Eckstein.² (Final Action 6.)
- III. The Examiner rejects claims 32, 33, and 37–39 under 35 U.S.C. § 103(a) as unpatentable over Eckstein in view of Abe.³ (Final Action 9.)
- IV. The Examiner rejects claim 35 under 35 U.S.C. § 103(a) as unpatentable over Eckstein in view of Stehle.⁴ (Final Action 8.)

² Eckstein et al., US 2006/0114123 A1, published June 1, 2006.

³ Abe, US 2011/0137518 A1, published June 9, 2011.

⁴ Stehle et al., US 2007/0293958 A1, published December 20, 2007.

V. The Examiner rejects claim 40 under 35 U.S.C. § 103(a) as unpatentable over Eckstein in view of Abe and Stehle. (Final Action 11.)

VI. The Examiner rejects claims 31–40 under 35 U.S.C. § 112, second paragraph, as indefinite. (Final Action 5–6.)

ANALYSIS⁵

Claims 31 and 36 are the independent claims on appeal, with the rest of the claims on appeal (i.e., claims 32–35 and 37–40) depending therefrom. (*See* Appeal Br., Claims App.) Independent claims 31 and 36 recite steps or instructions for determining “information associated with a location of a vehicle,” collecting “awareness information,” generating “output information for presentation,” and outputting “the generated output information.” (*Id.*) With particular reference to the collected “awareness information,” independent claims 31 and 36 require it to “compris[e] a road use restriction.” (*Id.*)

According to the Appellants, “[b]ased on the record before us, there is no basis to believe that anyone has ever in the history thought to warn people of a road use limitation.” (Reply Br. 2.)

Rejection I

As indicated above, independent claims 31 and 36 recite the determination, the collection, the generation, and the output of information

⁵ An Appeal Brief was filed on July 6, 2016 with a non-compliant Claims Appendix, and a Corrected Appeal Brief was filed on November 9, 2016. In our analysis below, and our footnote above, a citation to the Appeal Brief (“Appeal Br.”) refers to the Corrected Appeal Brief filed on November 9, 2016. We also cite to the Appellants’ Reply Brief (“Reply Br.”) filed on April 20, 2017, the Final Action (“Final Action”) mailed on May 12, 2016, and the Examiner’s Answer (“Answer”) mailed on February 23, 2017.

relating to vehicle location and navigational-relevant road conditions. (Appeal Br., Claims App.) The Appellants stress (*see* Reply Br. 1–3), and so we repeat, that the claims require the collected awareness information to “compris[e] a road use restriction.” (Appeal Br., Claims App.)

The Examiner determines that the claims on appeal are directed an “abstract idea,” and that the claims on appeal do not recite “significantly more” than the abstract idea. (*See, e.g.*, Answer 3–4.) More succinctly, the Examiner concludes that the claims on appeal do not survive the two-part *Alice* test.⁶ We have carefully reviewed the Appellants’ arguments regarding the wrongness of this conclusion (*see* Appeal Br. 7–8; Reply Br. 1–3), but are not swayed thereby. We are not swayed because, when we apply the two-step *Alice* test to the claims on appeal, we reach the same conclusion as the Examiner, namely that they do not pass muster under 35 U.S.C. § 101.

As for the first step of the *Alice* test, we agree with the Examiner that the claims on appeal are directed to “data gathering, filtering the collected data (possibly using conventional math) and outputting the data.”

(Answer 3.) As such, and as noted by the Examiner (*see id.*), *Electric Power*

⁶ The *Alice* test entails two steps for distinguishing between an “abstract idea[]” and a “patent-eligible application[]” of an abstract idea. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). The first step of the *Alice* test is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Id.* (citation omitted). If so, the inquiry proceeds to the second step of the *Alice* test where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1298, 1297 (2012)).

Group, LLC v. Alstom S.A., 830 F.3d 1350 (Fed. Cir. 2016) provides apropos precedent for us to follow. In *Electric Power*, the claims were likewise directed to “gathering and analyzing information of a specified content, then displaying the result,” and the Federal Circuit decided that these similar claims fell under the information-based umbrella of abstract ideas. (*Id.* at 1353.) We agree, therefore, with the Examiner’s determination that the claims on appeal are directed to an information-based abstract idea (Answer 3); and we note that this determination aligns with controlling case law.⁷

As for the second step of the *Alice* test, we agree with the Examiner that the additional elements recited in the claims consist of the navigation system used to generate the output information for presentation. (*See* Answer 4.) According to the Specification, “[t]he use of vehicle navigation systems is now ubiquitous,” “the information output by conventional navigations system typically allows a user to determine a location of a vehicle,” and “navigation systems typically output visual and audio directions.” (Spec., page 1, lines 7–12.) Thus, the use of the navigation system to generate output presentation data, individually, does not transform the above-identified abstract idea into patent-eligible subject matter. As for the “ordered combination” prong of the second step of the *Alice* test, the Appellants do not point to, and we do not see, any claim language requiring

⁷ *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (When considering whether a claim is directed an abstract idea, a decisional mechanism that can be applied “is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”)

a special arrangement or order of the navigation system relative to other elements or any technical improvement to the navigational system itself resulting from its use in combination with the recited functions.

The Appellants advance arguments premised upon the claims reciting “a road use restriction.” (*See* Reply Br. 1–3.) We are not persuaded by these arguments because this recital only goes to the content of the information being collected. And “merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas.” *Electric Power*, 830 F. 3d. at 1353–54. Assuming *arguendo*, that nobody else “has ever in the history thought to warn people of a road use limitation” (Reply Br. 2), this claimed feature still constitutes nothing but intangible “information.” *See, e.g., Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a *new* abstract idea is still an abstract idea.”).

The Appellants also advance arguments premised upon the claims reciting a “navigation system.” For example, the Appellants assert their claims “require[] the analysis be done by a navigation system” and thus do “not cover an abstract idea.” (Appeal Br. 7.) However, this is just another way of saying that a computer is being used as tool to implement the abstract idea. The Appellants also contend that their claimed concept “uses electronics, and navigational system capabilities to provide an improvement to what the user could do on his or her own simply by looking at logs of known road use restrictions.” (*Id.* at 8.) Be this as it may, relying on computer-related components to perform routine tasks more quickly or more

accurately is insufficient to render a claim patent eligible. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

The Appellants further contend that that their claimed concept “does not keep people from producing printed logs that indicate where all the road use restrictions might be.” (Appeal Br. 8.) Insofar as the Appellants are pointing to preemption, or a lack thereof, to support their position, we are unpersuaded. Where, as here, the claims are deemed only to recite patent ineligible subject matter under the two-step *Alice* test, “preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Thus, we sustain the Examiner’s rejection of independent claims 31 and 36, and claims 32–35 and 37–40 depending therefrom,⁸ under 35 U.S.C. § 101.

Rejection II

As indicated above, independent claims 31 and 36 require the collected awareness information to “compris[e] a road use restriction.” (Appeal Br., Claims App.) The Examiner determines that Eckstein discloses the collection of awareness information which comprises a road use restriction. (*See* Final Action 7.) Eckstein discloses collecting information about an “accident” and a “traffic jam that forms before the location of the accident.” (Eckstein ¶ 60.)

⁸ Although the Appellants do not argue the dependent claims separately (*see* Appeal Br. 7–8); we nonetheless note that they recite only details regarding the source or content of the information being collected (e.g., dependent claims 32–34), the collected information being stored (e.g., dependent claims 37–39) and/or the output information being generated (e.g., dependent claims 35 and 40).

The Appellants argue that “[s]ome accidents may be pulled off to the side of the road,” and apparently would therefore not restrict the use of the road. (Reply Br. 1; *see also* Appeal Br. 8.) We are not persuaded by this argument because, as indicated above, Eckstein also collects awareness information regarding the traffic jam that forms before the location of the accident, and such a traffic jam would restrict the use of the road.⁹

The Appellants also argue that a “road use limitation” must “tell the driver that additional piece of information that there is also a limitation on the use of the road.” (Reply Br. 2.) We are not persuaded by this argument because it is not commensurate with the scope of the claims. Independent claims 31 and 36 do not require the generated output information to specify that there is a road use restriction; independent claims 31 and 36 only require the generated output information to be based at least in part on the collected awareness information. Thus, for example, a map-like output detouring a driver around the traffic jam would be based upon the collected awareness information, even if it did not mention the traffic jam. In any event, an output informing the driver of a traffic jam would indeed tell the driver that additional piece of information that there is a road restriction.

The Appellants further argue that that prior art “fail[s] to appreciate the value of warning, not for every accident or road construction, but more particularly to warn about road use limitations.” (Reply Br. 2.) We are not persuaded by this argument because, again, it is not commensurate with the scope of the claims. Independent claims 31 and 36 do not preclude the

⁹ A dictionary definition for “restriction” is “a limitation on the use or enjoyment of property or a facility.” <https://www.merriam-webster.com/dictionary/restriction> (last visited March 25, 2018).

collection of other awareness information and/or do not preclude the generation of other outputs (e.g., warnings) based thereupon.

Thus, we sustain the Examiner's rejection of independent claims 31 and 36, and claim 34 depending from independent claim 31,¹⁰ under 35 U.S.C. § 102(b) as anticipated by Eckstein.

Rejections III–V

The Examiner's obviousness rejections of dependent claims 32, 33, 35, and 37–40 likewise rely on Eckstein to disclose the collection of awareness information “comprising a road use restriction.” (*See* Final Action 8–12.) Insofar as the Appellants argue that the additional references relied upon by the Examiner (i.e., Abe and/or Stehle) do not show or suggest awareness information comprising a road use restriction (*see* Appeal Br. 8–9; *see also* Reply Br. 1–3), we are unpersuaded by these arguments. As discussed above, we agree with the Examiner that the claimed collection of awareness information, and the claimed generation of output information, is taught by Eckstein.

Moreover, the Examiner “need not seek out precise teachings directed to the specific subject matter of the challenged claim” as “the inferences and creative steps that a person of ordinary skill in the art would employ” can be taken into account. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). We agree with the Examiner's position (*see e.g.*, Final Action 10–12), that, based on the teachings of the prior art references of record, one of ordinary skill in the art would have thought to warn people of a road use restriction,

¹⁰ The Appellants do not argue dependent claim 34 separately from independent claim 31. (*See* Appeal Br. 7–8.)

as well as implement the detecting, proposing, and storing steps recited in the dependent claims on appeal. We disagree, therefore, with the Appellants' contention that "[o]ne skilled in the art might not have appreciated that it was not enough to let someone know that there was construction or there was an accident but that it would be better to let people know there was in particular, a limitation on the use of the road." (Reply Br. 2.)

Thus, we sustain the Examiner's rejection of dependent claims 32, 33, 35 and 37–40 under 35 U.S.C. § 103(a) as unpatentable over Eckstein in view of Abe and/or Stehle.

Rejection VII

The Examiner rejects independent claims 31 and 36, and the claims depending thereupon, as being indefinite (*see* Final Action 5–6), and the record indicates that rejection has not been withdrawn (*see* Answer 8–9). As the Appellants present no arguments regarding this rejection (*see* Appeal Br. 7–8; *see also* Reply Br. 1–3), we summarily sustain the Examiner's rejection of claims 31–40 under 35 U.S.C. § 112, second paragraph.

DECISION

We AFFIRM the Examiner's rejection of claims 31–40 under 35 U.S.C. § 101.

We AFFIRM the Examiner's rejection of claims 31, 34, and 36 under 35 U.S.C. § 102(b).

We AFFIRM the Examiner's rejections of claims 32, 33, 35, and 37–40 under 35 U.S.C. § 103(a).

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We AFFIRM the Examiner's rejection of claims 31–40 under 35 U.S.C. § 112, second paragraph.

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