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EXAMINER
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MALHOTRA, SANJEEV

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* LIANG WANG

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Appeal 2017-007579  
Application 14/711,366  
Technology Center 3600

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Before HUBERT C. LORIN, CYNTHIA L. MURPHY, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellant<sup>1</sup> appeals under 35 U.S.C. § 134 from the Examiner's rejections of claims 1–20. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> “The real party in interest is Telenav, Inc.” (Appeal Br. 3.)

## STATEMENT OF THE CASE

According to the Appellant, “[a]n embodiment of the present invention relates generally to a navigation system, and more particularly to a system with an output control.” (Spec. ¶ 1.)

### *Representative Claim*

1. A method of operation of a navigation system comprising:  
calculating a location for representing the location of a device;  
and  
generating with a control unit an output characteristic based on the location, the output characteristic for controlling one or more characteristic or trait of a sound or an image utilized in communicating a content communication to a user through the device with the output characteristic tailored to be different from or to exceed noise at the location.

### *References*

Gutman	US 2012/0173135 A1	July 5, 2012
Nakadai	US 2014/0200887 A1	July 17, 2014
Gunther	US 2014/0278059 A1	Sept. 18, 2014

### *Rejections*

The Examiner rejects claims 1–20 under 35 U.S.C. § 101 as reciting a judicial exception without significantly more. (Non-Final Action 3.)

The Examiner rejects claims 1–20 under 35 U.S.C. § 103(a) as unpatentable over Gunther, Gutman, and Nakadai. (Non-Final Action 6–11.)

## ANALYSIS

Claims 1, 11, and 16 are the independent claims on appeal, with the rest of the claims on appeal (i.e., claims 2–10, 12–15, and 17–20) depending directly or indirectly therefrom. (*See* Appeal Br., Claims App.) We select

independent claim 1 as the representative claim on which to decide the issues being reviewed on appeal.<sup>2</sup>

Independent claim 1 is a method claim reciting only two steps, namely a “calculating” step and a “generating” step. (Appeal Br., Claims App.)

As for the “calculating” step, independent claim 1 requires the calculation of “a location for representing the location of a device.” (Appeal Br., Claims App.) Thus, the performance and completion of this calculating step yields nothing more than a datum representing a location.

Although a “device” is recited in the calculation step, it plays no role in the actual enactment of this calculation step. Rather, the word “device” subsists in the claim language only to describe the content of the datum calculated. Independent claim 1 does not require the “device” to contribute to, participate in, or even be aware of the calculation of location-representing information. For example, claim 1 does not require the device to somehow apprise, whatever or whoever is doing the calculation, of its whereabouts.

As for the “generating” step, independent claim 1 requires the generation, “with a control unit,” of “an output characteristic based on the location.” (Appeal Br., Claims App.) Thus, the performance and completion of this step yields nothing more than a datum corresponding to an output characteristic.

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<sup>2</sup> Independent claims 1, 11, and 16 are argued as a group for both grounds of rejection on review. (See Appeal Br. 10, 20.) “When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone.” 37 C.F.R. § 41.37(c)(1)(iv). Accordingly, independent claims 1, 11, and 16 “fall together.” *Id.*

As indicated above, independent claim 1 does require the generation of the output-characteristic datum to be done “with a control unit” and “based on the location.” (Appeal Br., Claims App.) However, claim 1 does not specify how, or even if, the control unit obtains location-related information on which to “base” this generation. Moreover, claim 1 does not require the control unit to do anything further with the output-characteristic datum once it is generated.

Independent claim 1 does also specify that the output-characteristic datum is “for controlling one or more characteristic or trait of a sound or an image utilized in communicating a content communication to a user through the device,” and is “tailored to be different from or to exceed noise at the location.” (Appeal Br., Claims App.) But claim 1 does not require the recited “device,” “sound,” “image,” “content communication,” and “noise,” to contribute to, participate in, or otherwise influence the generation of the output-characteristic datum. These words subsist in the claim language only to describe the content of the output-characteristic datum being generated.

The Appellant implies during briefing that independent claim 1 encompasses the “aspect of receiving and outputting information and interfacing/interacting with a user.” (Appeal Br. 11.) Along this same line, the Appellant appears to say that the steps recited in independent claim 1 result in “providing communication” and/or “outbound communications.” (*Id.* at 13, 17.) However, claim 1 does not require the receipt of information, does not require the outputting of information, does not require interfacing or interacting with a user, and does not require the creation and/or transmission of a communication. Claim 1 only requires the calculation of

information (i.e., the location-representing datum) and the generation of information (i.e., the output-characteristic datum).

The Appellant also implies during briefing that independent claim 1 requires “controlling,” “adjusting,” or otherwise influencing sound/image traits of an outbound communication. (Appeal Br. 14, 17.) Put another way, the Appellant contends that claim 1 requires an “implementation” of the output-characteristic datum “to control how a device utilizes sound to communicate the content communication.” (Reply Br. 6.) But claim 1 does not recite any such “controlling,” “adjusting,” or “implementing” steps. As indicated above, independent claim 1 does not require anything further from the output-characteristic datum once it is generated.

The Appellant additionally implies that independent claim 1 requires a “tailoring” of the output characteristic in order to make it “specifically distinguishable for the user for specific location.” (Appeal Br. 13.) In kind, the Appellant asserts that, in the claimed invention, there is an accustoming of the output characteristic “according to particular locations” and/or “specifically for a location.” (*Id.* at 17, 22.) However, claim 1 does not require an assessment of noise at the calculated location, and/or a tailoring of the output characteristic according to this noise assessment. Independent claim 1 only requires that the output characteristic be generated “based on the location” and be “different from or to exceed noise at the location.” (*Id.*, Claims App.) In the method recited in claim 1, the generated datum could be the same for all calculated locations, as long as its generation is “based on” the location, and the so-generated datum corresponds to an output characteristic that exceeds noise (albeit perhaps non-assessed) at the based-on location.

Thus, at the end of the day, independent claim 1 requires only the calculation of a datum (by something or someone) representing a location; and, based on this location, the generation of a datum (by a control unit) having a value (i.e., content) corresponding to a sound/image trait that would be recognizable at this location.

*35 U.S.C. § 101 Rejection*

The Examiner determines that the independent claims on appeal do not survive the two-step *Alice* test<sup>3</sup> for patent eligibility. (Non-Final Action 4.) We have carefully considered the Appellant’s arguments regarding the incorrectness of the Examiner’s determination (*see* Appeal Br. 10–19; *see also* Reply Br. 3–6); but we disagree with the Appellant’s position. We disagree because, when we apply the two-step *Alice* test to independent claim 1, we reach the same conclusion as the Examiner, namely that it does not pass muster under 35 U.S.C. § 101.

As for the first step of the *Alice* test, we agree with the Examiner that independent claim 1 is directed to a concept that falls within the information-handling category of abstract ideas. (*See* Answer 3.) As discussed above, claim 1 recites only two steps, one requiring the calculation of information and the other requiring the generation of information. A

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<sup>3</sup> 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” an abstract idea. *Id.* 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.*

determination that such an information-focused concept is an abstract idea is aligned with controlling case law.<sup>4</sup>

As for the second step of the *Alice* test, independent claim 1 does require the “control unit” to generate the output-characteristic datum. However, the Specification conveys that the claimed control unit can be a “processor” that “can execute” software. (Spec. ¶¶ 69–70, 91–93). Thus, we agree with the Examiner that this additional element does only the generic computer function of generating (e.g., calculating, determining, identifying, etc.) the output-characteristic datum. (See Answer 5.) As for the “ordered combination” of the claimed control unit, as indicated above, independent claim 1 does not require the control unit to communicate or coordinate with any other elements.

The Appellant argues that independent claim 1 is directed “to an improvement in the functioning of a computer” with respect to “communicating the content to [a] user.” (Appeal Br. 14.) This argument might have merit if independent claim 1 required the output-characteristic datum to partake in the communication of content to user. But, as discussed above, independent claim 1 does not require anything further of the output-characteristic datum once it is generated. None of the alleged advantages, improvements, or solutions listed by the Appellant (*see id.* at 10–15) transpire by the mere generation of the output-characteristic datum.

For similar reasons, the Appellant’s comparison to cases such as *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016); and *Bascom Glob.*

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<sup>4</sup> See *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016).

*Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) miss the mark. (See Appeal Br. 13–16; Reply Br. 5–6.) None of these cases dealt with a claimed concept in which data was merely generated, without any special software or innovative programming, and then not further implemented to achieve an envisioned outcome. We note that, in contrast, the claim at issue in *Electric Power* required the step of “deriving a composite indicator of reliability that is an indicator of power grid vulnerability,” (830 F.3d at 1352.) but did not require anything further of this composite indicator once derived.

Accordingly, we agree with the Examiner that independent claim 1 is directed to an abstract idea and that any additional elements recited in independent claim 1 do not amount to significantly more than the abstract idea itself. Thus, we sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 101, and claims 2–20 fall therewith.<sup>5</sup>

#### *35 U.S.C. § 103 Rejection*

The Examiner determines that the method recited in independent claim 1 would have been obvious over the collective teachings of Gutman, Gunther, and Nakadai. (See Non-Final Action 6–8.) We have carefully considered the Appellant’s arguments regarding error in the Examiner’s determination (see Appeal Br. 20–28; see also Reply Br. 6–11), but are not persuaded thereby. We are unpersuaded because the Appellant’s arguments

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<sup>5</sup> Independent claims 1, 11, and 16 fall together. 37 C.F.R. § 41.37(c)(1)(iv). As for the dependent claims, the Appellant argues only that they “are believed to be patent eligible since they include all [of] the limitations set forth in the independent claim from which they depend and claim additional patent eligible combinations thereof.” (Appeal Br. 19.)

overlook teachings by Gunther and/or misread the limitations recited in independent claim 1.

The Appellant does not dispute that the prior art teaches the creation and transmission of a communication based on a calculated location. Rather, the Appellant acknowledges that Gunther teaches “communicating ‘warning or notification of a possible collision.’” (Appeal Br. 23, emphasis omitted.)<sup>6</sup> However, the Appellant argues that Gunther does not teach “controlling any characteristic or trait of sounds or images used to communicate the ‘warning or notification.’” (Appeal Br. 23.) We are not persuaded by this argument because Gunther specifically teaches that its communication can constitute, for example, “flashing lights.” (See Gunther ¶ 56.) One of ordinary skill in the art would infer that the output characteristic corresponding to Gunther’s flashing lights would include a control parameter for a “physical” image trait, such as the “tempo” or “timing” of the flashing lights.<sup>7</sup>

The Appellant also argues that Gunther does not “tailor” physical characteristics “according to the location.” (Appeal Br. 24.) We are not persuaded by this argument because, as discussed above, independent claim 1 does not require the output characteristic to be “tailored” on a location-by-location basis, independent claim 1 only requires the output characteristic to be “tailored” to be “different from or to exceed noise at the

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<sup>6</sup> In Gunther, this warning is precipitated by the location of a vehicle relative to potentially collision-causing obstacles. (See Gunther ¶¶ 28–32.)

<sup>7</sup> The Specification indicates that “[t]he output characteristic 208 can include a magnitude, a sharpness or a contrast, a tempo or a timing, or a combination thereof.” (Spec. ¶ 41.)

location.” (Appeal Br., Claims App.) And one of ordinary skill in the art would infer that the physical traits of Gunther’s flashing lights would be tailored to be different from or exceed expected noise at a collision-vulnerable location,<sup>8</sup> so as to be noticeable and effectively serve as a warning.

Accordingly, the Appellant does not establish adequately that the Examiner errs in determining that the method recited in independent claim 1 would have been obvious over the prior art. Thus, we sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103 as unpatentable over Gutman, Gunther, and Nakadai; and claims 2–20 fall therewith.<sup>9</sup>

#### DECISION

We AFFIRM the Examiner’s rejections of claims 1–20.

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

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<sup>8</sup> The Specification indicates that noise can be “sound, light, factors influencing communication medium, or a combination thereof. (Spec. ¶ 39.)

<sup>9</sup> Independent claims 1, 11, and 16 fall together. 37 C.F.R. § 41.37(c)(1)(iv). As for the dependent claims, the Appellant states that they “fall with the independent claims from which they depend.” (Appeal Br. 27.)