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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KARL DOUGLAS VANDIVIER, ROBERT BRUCE KLEVE, PAUL ALDIGHIERI, JON ROBERT VAN WIEMEERSCH, and STEVEN YELLIN SCHONDORF

Appeal 2017-009070
Application 12/776,632[1]
Technology Center 2400

Before JEFFREY S. SMITH, NABEEL U. KHAN, and MICHAEL M. BARRY, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1–7, 12, 15, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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

BACKGROUND

THE INVENTION

According to Appellants, the invention relates to a method for querying a vehicle system using a remote wireless device, such as a cell phone. *See* Abstract, Spec. 4:3–12. The inquiry is sent from the remote wireless device to a remote server which then sends the inquiry to a cellular transceiver in the vehicle. Vehicle systems are queried for information in accordance with the inquiry. The requested information is then transmitted back to the remote wireless device via the remote server. *See* Abstract.

Exemplary independent claim 1 is reproduced below.

1. A method comprising:

receiving an inquiry, initiated at a smart phone, at a vehicle-installed transceiver;

querying a system in accordance with the inquiry;

receiving system-related information indicating a malfunctioning part responsive to the query;

transmitting the received information to a smart phone, responsive to the inquiry, including transmitting identifying information for a recommended replacement part for the malfunctioning part.

REFERENCES AND REJECTIONS

1. Claims 1–3, 5, 7, 12, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schuyler (US 6,429,773 B1; issued Aug. 6, 2002), Hong (US 2008/0140265 A1; published June 12, 2008), and Nagy (US 2008/0082221 A1; published Apr. 3, 2008). Final Act. 3–7.

2. Claims 1–3, 5, 7, 12, 15, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schuyler, Hong, Nagy, and Pillar (US 2003/0158640 A1; published Aug. 21, 2003). Final Act. 7–8.

3. Claim 15 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Schuyler, Hong, Nagy, and Boss (US 2010/0087983 A1; published Apr. 8, 2010). Final Act. 8.

4. Claims 4 and 6 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Schuyler, Hong, Nagy, and Chesnutt (US 2009/0167524 A1; published July 2, 2009). Final Act. 8–9.

DISCUSSION

The Examiner presents two rejections of claims 1–3, 5, 7, 12, and 20 under 35 U.S.C. § 103(a). *See* Final Act. 3–8. In the first rejection, the Examiner finds Schuyler teaches or suggests each of the limitations of claim 1, except that it does not expressly teach that information is received *from one or more systems* and that it does not expressly teach that the remote device is a *smartphone*. Final Act. 3. To address these deficiencies, the Examiner relies on Hong as teaching that *system-related information* is received from various vehicle sensors, and on Nagy as teaching that "diagnostic, malfunction, fault and other information" is sent to a *smartphone*. Final Act. 4. In the second rejection, the Examiner applies the same prior art in the same way as in the first rejection, except that additionally, the Examiner relies on Pillar as explicitly teaching a diagnostic system identifying a replacement part number for a failed part. Final Act. 7 (Citing Pillar ¶¶ 99, 388, 393, 394). The Examiner combines this teaching with Schuyler, Nagy, and Hong, and finds that it would have been obvious

to transmit a replacement part number to a user's smartphone for a replacement part. Final Act. 7.

A.

Appellants argue "[a]t no point, in Nagy or the other art, is 'replacement part information' ever transmitted to a user smart phone, cellular device, or any other device." App. Br. 5.

Appellants' argument is unpersuasive because it attacks the references individually and fails to address the Examiner's rejection as a whole. The Examiner relies on Schuyler, not Nagy, as teaching or suggesting that replacement part information is transmitted to a remote device. Final Act. 3. Nagy is relied upon as teaching, amongst other things, that the remote device may be a smartphone. Final Act. 4 (citing Nagy ¶¶ 3, 4, 27–30, 32, and 48).

B.

Appellants argue "[t]he information provided by Schuyler, ***for the sake of argument only***, relates to notification that an oil change or maintenance event is needed. Schuyler does not teach or suggest identification of a replacement part, let alone transmitting this part information to the customer." App. Br. 7. In particular, Appellants argue "Oil is not a 'part,'" and that "[n]o one skilled in the art of car maintenance would consider oil to be a 'car part.'" App. Br. 7. As support, Appellants emphasize that the claims have been amended to specify that the replacement part is "*for the malfunctioning part*" and that there is "literally *no* evidence that oil would be considered a '***malfunctioning*** part.'" App. Br. 8.

Appellants' argument is unpersuasive. The broadest reasonable interpretation of the claimed "a recommended replacement part for the malfunctioning part," when read in light of the Specification, encompasses an oil change for oil that needs to be replaced. Appellants' Specification describes:

> For example, if the status of a replaceable vehicle system were checked (*oil level, headlights*, etc.), the light bulbs might be compared against an "operational" state and the oil might be compared against a "sufficient level state."
>
> If a deficiency is detected 603, the microprocessor may access information stored in a vehicle memory 605 (or broadcast by a vehicle system) that includes a replacement type (bulb type, oil weight, etc.). . . .
>
> Accessed information could also include, but is not limited to, paint color, spark plug type, washer fluid level/type, etc. *Essentially, any replaceable/repairable portion of the vehicle could be accessed.*
>
> When the user receives the information indicating a deficiency, the user will then also receive information advising the best replacement for the deficient *part/fluid/system*, etc.

Spec. 15:31–16:19 (emphases added).

As demonstrated by Appellants' Specification, in the context of the claimed invention, oil and other fluids are treated the same as other parts, such as headlights or spark plugs. Specifically, the method used to inform the user of replacement of headlights is the same as that used to inform the user of an oil change. Thus, we agree with the Examiner that Appellants' Specification supports the conclusion that oil is a replaceable part just as a headlight is.

Appellants' statement that "[n]o one skilled in the art of car maintenance would consider oil to be a 'car part'" (App. Br. 7) is

unsupported by any evidence, either intrinsic or extrinsic. It is well settled that mere lawyer's arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can it take the place of evidence lacking in the record. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977).

Moreover, even if oil is not typically referred to as a "malfunctioning part," we find Schuyler's teaching that oil needs to be replaced, at the very least, renders obvious that a car part needs to be replaced. In light of the prior art teaching transmission of information regarding an oil change, Appellants have not presented evidence sufficient to show that transmitting information regarding a malfunctioning part was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). The teaching in the prior art reference need not be *ipsissimis verbis*. *Structural Rubber Products Com. v. Park Rubber Com.,* 749 F.2d 707, 716 (Fed. Cir. 1984). Therefore, we agree with the Examiner that Schuyler teaches or suggests "receiving system-related information indicating a malfunctioning part responsive to the query . . . transmitting identifying information for a recommended replacement part for the malfunctioning part [to a smartphone]."

Appellants further argue that even if, *arguendo*, oil is considered a malfunctioning part, the Examiner "points out that the notification regarding

oil 'should be transmitted *before* a vehicle system fails'" and thus, Schuyler's oil is not yet a malfunctioning part. App. Br. 9.

This too is unpersuasive. Even if Schuyler notifies that user of an oil change before a vehicle system fails (such as an engine), the Examiner is not relying on the failed vehicle system as the malfunctioning part. Rather, the Examiner is relying on the *oil* as the malfunctioning part. *See* Final Act. 5 ("malfunctioning part (such as oil)"). Schuyler clearly teaches that notification of an oil change is sent when the oil has degraded below a predetermined threshold. Schuyler 5:54–57. Thus, the oil itself is deemed deficient to function as a lubricant for the engine, which suggests it is "a malfunctioning part" within the meaning of claim 1.

C.

With respect to the Examiner's reliance on Pillar as transmitting a replacement part number, Appellants argue that in Pillar the replacement part information is sent to a maintenance center computer system, not to a cell phone. According to Appellants, "[s]ince both pieces of art [Nagy and Pillar] include a perfectly acceptable methodology for handling part replacement, it is unclear why this particular information would be re-routed to a cell-phone, other than for the sake of meeting the claim limitations as presented." App. Br. 9.

This argument is unpersuasive because it misunderstands the Examiner's rejection and attacks the references individually. The Examiner is not relying on Pillar as teaching transmitting (or "re-routing" as Appellants contend) information to the user's cell-phone rather than a maintenance computer system. The Examiner relies on Schuyler as teaching the transmission of replacement part information to a user's device. Final

Act. 3. The Examiner relies on Pillar only to suggest that the information being transmitted in Schuyler to a user's remote device may be modified to include a replacement part number rather than just information regarding an oil change. Final Act. 7; *see also* Ans. 13.

DECISION

The Examiner's rejection of claims 1–7, 12, 15, and 20 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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED