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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELIZABETH PROFITT BROWN,
KELLY LEE ZECHEL, JOSEPH PAUL RORK,
BRIAN PETERSEN, and EDWARD ANDREW PLEET

Appeal 2017-009551
Application 14/036,322
Technology Center 3600

Before BRETT C. MARTIN, LYNNE H. BROWNE, and
JEFFREY A. STEPHENS, *Administrative Patent Judges*.

BROWNE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the rejection of claims 1, 4–7, 10–13, and 16–18. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

CLAIMED SUBJECT MATTER

Claims 1, 7, and 13 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implemented method, comprising:
 - determining, via a computer, when a vehicle-charging state is detected, if a charging point within a predetermined proximity to a vehicle location exists in a charging-point database;
 - asking a user to identify whether the charging point is commercial; and
 - conditional on a non-existence of the charging point and a user identification of the charging point as commercial, adding the vehicle location to the database as a new charging point.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Uyeki	US 2012/0123670 A1	May 17, 2012
Oizumi ¹	WO 2010/150665 A1	Dec. 29, 2010

REJECTIONS

- I. Claims 1, 4–7, 10–13, and 16–18 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.
- II. Claims 1, 4–7, 10–13, and 16–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Uyeki and Oizumi.

¹ Although the first named inventor is named Kuroda, both the Examiner and Appellants refer to this reference as “Oizumi.” *See e.g.*, Final Act. 4; Appeal Br. 9. To avoid confusion, we do so as well.

DISCUSSION

Rejection I: Eligibility of Claims 1, 4–7, 10–13, and 16–18

The Examiner determines that claims 1, 7, and 13 are not directed to patent-eligible subject matter. Final Act. 3–4. Specifically, the Examiner finds that these claims are “directed to [the abstract idea of] a computer implemented method for adding new charging point/station into a database.” *Id.* The Examiner further determines that “[t]he claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the recited steps are merely directed to generic computer functions of data gathering and data processing.” *Id.* at 4. The Examiner explains that “the claims are [direct to a] generalized formulation for a program to implement the idea on a computer, and/or recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry.” *Id.* In support, the Examiner finds that the claimed “data gathering and transfer can be carried out in existing computers long in use or can be performed without a computer.” *Id.* Based on this finding, the Examiner concludes that “[t]he present claims have no substantial practical application except in connection with a digital computer, and thus the claim is ineligible as it would in effect be a patent on the algorithm itself.” *Id.*

Appellants contend that claims 1, 7, and 13 “are directed to more than the alleged abstract idea, the claims represent an improvement in charging point identification technology and, under the streamlined eligibility analysis, the claims do not tie up the idea of ‘adding new charging point into a database’ such that others cannot practice it.” *See* Appeal Br. 6. Noting that “the claims include at least the step of determining if a charging point

within a predetermined proximity of the vehicle already exists in the database,” Appellants argue that “the claims not only require a *specific* determination with regards to whether an existing charging point not only exists, but is also within a predetermined proximity to a vehicle location, the claims also *utilize* this information in eventually deciding whether or not to add the location to the database.” *Id.*

In support of these contentions Appellants further argue that

The claims also represent an improvement in the field of charging point identification, by allowing a user to identify commercial charging points, and then by checking to see if a current existing entry exists within some distance from the vehicle (since the vehicle may be parked near, but not exactly at, a charging point) before adding the charging point.

Id. at 6–7.

Although Appellants’ invention may be directed to an algorithm that improves charging point identification technology, Appellants provide no evidence or persuasive argument that such an improvement constitutes an improvement in computer technology. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (“[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route”). Further, the limitations directed to the collection of user input and the use of such input in the algorithm claimed, as well as the limitations directed to determining a vehicle location, pertain to the method of collecting data for entry into a database, and thus do not render the subject matter of the instant claims non-abstract.

Based on Patent Office guidance issued in 2015, and consequentially admitting that the claims are directed to a judicial exception, Appellants

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argue that “[i]f the claim does not tie up the identified judicial exception so that others cannot practice it, then the claim is patent eligible. This result reveals the self-evident eligibility of a claim.” *See id.* at 7.

We do not understand the Patent Office guidance relied upon by Appellants to support the proposition that a claim that does not tie up the identified judicial exception so that others cannot practice it is patent eligible. Rather, the Supreme Court has set forth “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S. Ct. 1289, 1294 (2012)). In determining whether a claim is directed to patent-eligible subject matter, we apply the framework set forth in *Alice*. We are not aware of any binding precedent that equates failure to tie up the identified judicial exception with patent-eligibility.

For these reasons, we sustain the Examiner’s decision rejecting claims 1, 7, and 13 under 35 U.S.C. § 101. Appellants do not demonstrate that dependent claims 2–6, 10–12, and 16–18 include limitations that transform the subject matter of their respective independent claims into patent-eligible subject matter. Accordingly, we sustain the Examiner’s decision rejecting these claims as well.

Rejection II: Obviousness of Claims 1, 4–7, 10–13, and 16–18

Based on Uyeki and Oizumi

The Examiner finds that Uyeki and Oizumi disclose or suggest all of the limitations of claims 1, 7, and 13. *See* Final Act. 4–5. In particular, the Examiner finds that “Oizumi teaches identify[ing] whether the charging-

point is commercial; and conditional on a non-existence of the charging point and a user identification of the charging point as commercial [sic].” *Id.* at 5 (citing Oizumi Fig. 6 as “exemplify[ing] a user interface that allows user to identify specific detail of a charging station such as ‘public’ or ‘private’.” (emphasis omitted)).

Appellants contend that the Examiner’s finding quoted *supra* is incomplete and that the Examiner does not explain why action is to take place if the conditions outlined in the finding take place. *See* Appeal Br. 10. Appellants point out that “there is no actual action taught to be taken in Oizumi based on the identification of a charging point as ‘public.’” *Id.* (emphasis omitted). Given this lack of action, Appellants argue that Oizumi does not suggest “making a decision to add a charging point based on a user identification of the charging point as commercial.” *Id.* at 11.

Responding to these arguments, the Examiner simply repeats the finding quoted *supra* and concludes that “Oizumi illustrate[s] a user interface that allows user to identify specific detail of a charging station such as ‘public’ or ‘private’. . . Ozimui’s implicit disclosure of a ‘commercial’ charging point locations as corresponding to ‘public or private’.” Ans. 4. The Examiner’s response is no more complete than the initial finding. Moreover, the Examiner’s reasoning that “it would have been obvious . . . to modify Uyek’s with the teaching of Oizumi’s to allow the user to add new charging point with specific information to a charging point database to improve the navigation system data integrity” does not explain why one skilled in the art would have made such a modification or what improvement would have been achieved by such modification. Thus, the Examiner’s reasoning lacks rational underpinning.

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For this reason, we do not sustain the Examiner's decision rejecting claims 1, 7, and 13, and their respective dependent claims 4–6, 10–12, and 16–18, under 35 U.S.C. § 103.

DECISION

The Examiner's rejection of claims 1, 4–7, 10–13, and 16–18 under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejection of claims 1, 4–7, 10–13, and 16–18 under 35 U.S.C. § 103(a) is REVERSED.

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. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART