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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* SUBIL M. ABRAHAM, VINOD A. BIJLANI,  
MATHEWS THOMAS, and SUYESH R. TIWARI

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Appeal 2018-001427<sup>1</sup>  
Application 14/492,704<sup>2</sup>  
Technology Center 3600

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Before BIBHU R. MOHANTY, KENNETH G. SCHOPFER, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims  
1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references the Appeal Brief (“Appeal Br.,” filed June 8, 2017), the Reply Brief (“Reply Br.,” filed Nov. 24, 2017), the Examiner’s Answer (“Ans.,” mailed Sept. 26, 2017), and the Final Office Action (“Final Act.,” mailed Jan. 10, 2017).

<sup>2</sup> According to Appellants, the real party in interest is IBM Corporation.  
Appeal Br. 1.

## BACKGROUND

The Specification describes “[a]rrangements [for] providing personalized speed limit information to a current driver of a vehicle.” Spec. ¶ 1.

## CLAIMS

Claims 1, 9, and 16 are the independent claims on appeal. Claim 1 is illustrative of the appealed claims and recites:

1. A method of determining personalized speed limit information, comprising:

receiving a plurality of inputs related to vehicle safe speed data for a first vehicle, the plurality of inputs including vehicle data received from one or more other vehicles proximate the first vehicle and communicatively linked to the first vehicle;

determining, using a processor, a recommended safe speed limit for a current driver of the first vehicle based on the plurality of inputs; and

presenting the determined recommended safe speed limit to the current driver of the first vehicle, wherein

the recommended safe speed limit is a calculated maximum speed, in real time, that the current driver should be driving, and

the recommended safe speed limit is based upon reaction time of the current driver, driving characteristics of the driver, and vehicle condition.

Appeal Br. 22.

## REJECTIONS

1. The Examiner rejects claims 1–20 under 35 U.S.C. § 112(b) as indefinite.

2. The Examiner rejects claims 1–20 under 35 U.S.C. § 103 as unpatentable over T'Siobbel<sup>3</sup> in view of Morita.<sup>4</sup>

## DISCUSSION

### *Indefiniteness*

With respect to the independent claims, the Examiner determines that “[t]he term/phrases ‘safe’ and ‘speed .... should be driving’ render the claims indefinite. The terms are subjective in nature, and one of ordinary skill in the art would not be able to determine the metes and bounds of the claims, thus rendering the claimed invention vague and indefinite.” Final Act. 6. The Examiner also determines that “[a]lthough there is a general sense of what is meant by ‘safe speed limit’ and ‘speed . . . driver should be driving,’ both phrases have no fixed, clear, definite, meaning in the art.” Ans. 3. The Examiner concludes that the scope of the claim is unclear to the reader because the safe speed is dependent on variable conditions and that “those of ordinary skill in the art, or potential infringers, would not have a reasonable determination of the phrases.” *Id.* at 3–4.

“[A] claim is indefinite when it contains words or phrases whose meaning is unclear.” *In re Packard*, 751 F.3d 1307, 1332 (Fed. Cir. 2014); *Ex Parte McAward*, No. 2015-006416, 11 (PTAB Aug. 25, 2017) (precedential) (quoting *In re Packard*, 751 F.3d at 1314). The USPTO “determines the scope of claims . . . not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in

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<sup>3</sup> T'Siobbel et al., US 2012/0283942 A1, pub. Nov. 8, 2012.

<sup>4</sup> Morita et al., US 2013/0245945 A1, pub. Sept. 19, 2013.

the art.” *Phillips v. A WH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (quoting *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)). We agree with Appellants that the relevant issue here is “whether one skilled in the art would recognize whether someone was determining a safe speed limit versus determining some other type of speed limit.” Reply Br. 4. We also agree that the claim terms are not indefinite simply because the safe speed limit may vary depending on different parameters. *Id.* at 5. Thus, given the “general sense of what is meant by” the claim terms at issue and the specific variable parameters required by the claim, we conclude that one of ordinary skill would be reasonably be apprised of the scope of the claim such that the claims are not indefinite. Accordingly, we do not sustain this rejection.

*Obviousness*

Appellants acknowledge that claims 2–20 will stand or fall with claim 1. Appeal Br. 11.

With respect to claim 1, the Examiner finds that T’Siobbel teaches a method as claimed except that T’Siobbel does not teach providing a recommended safe speed limit based on driver reaction time, driving characteristics of the driver, and vehicle condition. Final Act. 7–8. However, the Examiner finds that the use of these parameters would have been obvious in view of the teachings of Morita. *Id.* at 8–9.

We agree with and adopt the Examiner’s findings and conclusions regarding claim 1 as they pertain to this rejection. *See* Final Act. 7–9; *see also* Ans. 5–8. As discussed below, we are not persuaded of error by Appellants’ arguments.

First, Appellants argue that T'Siobbel does not disclose a determination of a safe speed and only discloses the determination of an average speed, which is not inherently equal to the safe speed limit. Appeal Br. 12. Appellants assert that the average speed disclosed in T'Siobbel is not a speed limit as required by the claim because a limit provides the bound of a particular range and an average speed is not a bound. *Id.* We disagree.

T'Siobbel teaches the “need for a navigation system and method that is capable of providing a driver with a merging speed behavior recommendation, allowing the driver to focus on safely merging with another traffic flow at the safest possible speed or acceleration.” T'Siobbel ¶ 8. T'Siobbel meets this need by providing methods for determining the average speed of traffic and conveying “a recommended merging speed.” *See id.* at 9, 37, 38, 48. Thus, when considering T'Siobbel as a whole, one of ordinary skill in the art would recognize that the average speed calculated is determined to be a speed at which it is safe to merge, i.e. a safe speed. Further, T'Siobbel teaches that the system and methods can recommend a change in speed if the monitored speed of the vehicle is not equal to the average speed of vehicles on a second road segment, and thus, T'Siobbel teaches that the average speed is intended to be the safe speed limit for the vehicle as it approaches a merging point with the second roadway. This speed limit may either be a maximum or minimum safe speed limit depending upon whether the vehicle is travelling above or below the average speed on the second road segment. Therefore, we agree with the Examiner that T'Siobbel does disclose the determination and presentation of a safe speed limit. *See, e.g.,* Ans. 5–6.

Second, Appellants argue that Morita does not teach determining a safe speed limit based on the “driving characteristics of the driver,” as required by claim 1. *See* Appeal Br. 16. We are not persuaded for the reasons provided by the Examiner. *See* Ans. 6–7. Specifically, Morita discloses that the safe, recommended speed may be derived from a variety of parameters including “[t]he driver’s reaction time, the reaction time of the vehicle . . . , etc.” Morita ¶ 89. We agree with the Examiner that because the driver’s reaction time is a driving characteristic of the driver and because Morita contemplates using other parameters, Morita would have at least suggested the use of other driving characteristics to one of ordinary skill in the art such that the claimed limitation requiring the use of reaction time, vehicle condition, and other driving characteristics of the driver would have been obvious.

Third, Appellants argue that the proposed combination would change the principle of operation of T’Siobbel because T’Siobbel involves only determining and presenting the average speed of merging traffic. Appeal Br. 18–19. We disagree for the reasons provided by the Examiner. *See* Ans. 7–8. Specifically, we agree with the Examiner that using additional parameters to calculate a safe merging speed would enhance, rather than destroy, T’Siobbel’s principle of operation, as T’Siobbel is primarily concerned with providing a safe merging speed for the driver.

Based on the foregoing, we are not persuaded of reversible error in the rejection of claim 1. Accordingly, we sustain the rejection of claim 1, and we also sustain the rejection of claims 2–20, which fall with claim 1.

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CONCLUSION

We REVERSE the rejection of claims 1–20 under 35 U.S.C. § 112(b).  
We AFFIRM the rejection of claims 1–20 under 35 U.S.C. § 103.

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