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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOSEPH CAMILLERI, JOEL S. GIBSON, and KENNETH SCHOFIELD

Appeal 2018-001601
Application 14/641,814
Technology Center 2600

Before MAHSHID D. SAADAT, ELENI MANTIS MERCADER, and ERIC S. FRAHM, *Administrative Patent Judges.*

FRAHM, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to finally reject claims 1–5 and 8–20, which constitute all the claims pending in this application. Claims 6 and 7 have been canceled (*see* Appeal Br. 50, Claims App.). We have jurisdiction under 35 U.S.C. § 6(b).

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. "The word 'applicant' when used in this title refers to the inventor or all of the joint inventors, or to the person applying for a patent as provided in §§ 1.43, 1.45, or 1.46." Appellant identifies the real party in interest as Magna Electronics Incorporated (Appeal Br. 2).

We reverse.

STATEMENT OF THE CASE

Appellant's disclosed and claimed invention concerns a driver assistance system for a vehicle (Title; claims 1, 15, 18; Abstr.; Figs. 1, 9). More specifically, Appellant's invention "relates to imaging systems for vehicles and, more particularly, to reverse aid imaging systems with a rearward facing imaging device or camera and a display" (Spec. ¶ 2). Claims 1, 15, and 18 are independent. System claim 1 is illustrative,[2] and is reproduced below with emphases added to the key disputed limitations:

> 1. A driver assistance system for a vehicle, said driver assistance system comprising:
>
> an imager disposed at a vehicle equipped with said driver assistance system and viewing one of (i) forward of the equipped vehicle and (ii) rearward of the equipped vehicle;
>
> said imager having a field of view exterior the equipped vehicle and operable to capture image data;
>
> said imager comprising (i) a lens, (ii) a spectral filter and (iii) an image sensor comprising a CMOS photosensor array of photosensor elements;
>
> a control comprising an image processor;
>
> *wherein said control is operable to process captured image data for at least a first application and a second application, and* <u>*wherein said first application comprises lane departure warning and said second application comprises headlamp control*</u>;
>
> *wherein said control is operable to adjust said image sensor to at least two settings including at least a first setting and a second setting*;

[2] Remaining independent claims 15 and 18 recite commensurate, disputed limitations as claim 1 (*see* claims 15, 18).

wherein said control is operable to process captured image data via at least two processing techniques;

[A] *wherein said control is operable to synchronize said at least two settings of said image sensor and said at least two processing techniques to extract information from said captured image data for said first and second application*;

wherein said control adjusts a setting of said image sensor to said first setting to capture image data suitable for said first application;

wherein said control adjusts a setting of said image sensor to said second setting to capture image data suitable for said second application;

wherein said image processor processes captured image data captured by said image sensor at said first setting via a processing technique suitable for said first application;

wherein said image processor processes captured image data captured by said image sensor at said second setting via a processing technique suitable for said second application;

wherein said driver assistance system comprises an auxiliary sensor; wherein said auxiliary sensor is selected from the group consisting of (i) an ultrasonic sensor, (ii) a radar sensor and (iii) a lidar sensor;

wherein said auxiliary sensor is operable to detect an object exterior the equipped vehicle; and

wherein, responsive at least in part to detection of the object by said auxiliary sensor, at least one of (i) a setting of said image sensor is adjusted and (ii) processing of image data that corresponds to a region at which the object is detected is enhanced.

Claims App. (Appeal Br. 48–49) (emphases added).

The Examiner's Rejections

(1) The Examiner rejected claims 1–5, 8, 9, and 12–20 under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Schofield et al. (US

5,796,094; issued Aug. 18, 1998) (hereinafter, "Schofield 1"), Schofield et al. (US 2002/0003571 A1; published Jan. 10, 2002) (hereinafter, "Schofield 2"), and Otsuka et al. (US 2005/0036660 A1; published Feb. 17, 2005 and filed Aug. 11, 2004) (hereinafter, "Otsuka"). Final Act. 6–21.

(2) The Examiner rejected claim 11 under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over S1, Otsuka, S2, and Breed et al. (US 2001/0003168 A1; published June 7, 2001) (hereinafter, "Breed"). Final Act. 21–22.

(3) The Examiner rejected claim 10 under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over S1, Otsuka, S2, and Muelhoff et al. (US 2002/0180936 A1; published Dec. 5, 2002) (hereinafter, "Muelhoff"). Final Act. 22.

ANALYSIS

We have reviewed Appellant's arguments in the Briefs (Appeal Br. 9–47; Reply Br. 2–19), the Examiner's Final rejection (Final Act. 6–22), and the Examiner's response (Ans. 3–17) to Appellant's arguments in the Appeal Br..

The USPTO "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citation omitted); *see Synopsys, Inc. v. Mentor Graphics Corp.*, 814 F.3d 1309, 1322 (Fed. Cir. 2016) (stating that, as an administrative agency, the PTAB "must articulate logical and rational reasons for [its] decisions" (internal quotation marks and citation omitted)). We will not resort to speculation or assumptions to cure the deficiencies in

the Examiner's fact finding. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

In this light, the Examiner has not articulated a satisfactory explanation as to how/why the combination of Schofield 1, Schofield 2, and Otsuka teaches or suggests limitation [A] in claim 1, and the commensurate limitations recited in claims 15 and 18. Specifically, we agree with Appellant (Appeal Br. 10, 12, 17, 23–25, 28–30; Reply Br. 9–10) that the Examiner has not adequately shown that Schofield 1, Schofield 2, and Otsuka, taken individually or in combination, teach or suggest a control "operable to synchronize said at least two settings of said image sensor and said at least two processing techniques to extract information from said captured image data for said first and second applications," where "said first application comprises lane departure warning and said second application comprises headlamp control" (*see e.g.*, claim 1, limitation [A]).

At best, the Examiner's proposed combination leaves us to speculate as to how or why one of ordinary skill in the art would modify the combination of Schofield 1, Schofield 2, and Otsuka to meet the disputed "control" limitation recited in claim 1, and commensurately recited in claims 15 and 18. We will not resort to speculation or assumptions to cure the deficiencies in the Examiner's fact finding and reasoning. *See In re Warner*, 379 F.2d at 1017; *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999) (unpublished) ("The review authorized by 35 U.S.C. [§] 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance."). As such, based on the record before us, we find that the Examiner (i) improperly relies upon the

combination of Schofield 1, Schofield 2, and Otsuka to teach or suggest limitation [A] in claim 1, and the commensurate limitations recited in claims 15 and 18; and thus, (ii) has not properly established factual determinations and articulated reasoning with a rational underpinning to support the legal conclusion of obviousness for claims 1, 15, and 18, resulting in a failure to establish a prima facie of obviousness.

In view of the foregoing, Appellant has shown the Examiner erred in rejecting claims 1, 15, and 18, as well as claims 2–5, 8, 9, 12–14, 16, 17, 19, and 20 depending respectively therefrom as being unpatentable under 35 U.S.C. § 103(a) over the base combination of Schofield 1, Schofield 2, and Otsuka.

Based on the record before us, we cannot sustain the Examiner's obviousness rejection of independent claims 1, 15, and 18, as well as claims 2–5, 8, 9, 12–14, 16, 17, 19, and 20 depending respectively therefrom, over the combination of Schofield 1, Schofield 2, and Otsuka. For similar reasons as provided for claim 1 from which claims 10 and 11 depend, we also cannot sustain the Examiner's obviousness rejections of claims 10 and 11, which are also rejected over the same base combination of Schofield 1, Schofield 2, and Otsuka.

CONCLUSION

For all of the reasons above, we hold as follows:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 8, 9, 12–20	103(a)	Schofield 1, Schofield 2, Otsuka		1–5, 8, 9, 12–20
11	103(a)	Schofield 1, Otsuka, Schofield 2, Breed		11
10	103(a)	Schofield 1, Otsuka, Schofield 2, Muelhoff		10
Overall Outcome				1–5, 8–20

REVERSED