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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID P. BOLL, NELLO JOSEPH SANTORI,
THOMAS RICHARD ALEXANDER, and JOSEPH N. ROSS

Appeal 2018-002086
Application 12/891,993
Technology Center 2400

Before BRUCE R. WINSOR, JON M. JURGOVAN, and
AARON W. MOORE, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–3, 6, and 10, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b). Claims 4, 5, 7–9, and 11–20 are cancelled. App. Br. (Claims App'x 2).

We reverse and institute a new ground of rejection within the provisions of 37 C.F.R. § 41.50(b) (2016).

¹ The real party in interest identified by Appellants is Ford Global Technologies, LLC. (App. Br. 1.)

RELATED PROCEEDINGS

Appellants state that there are no related appeals. App. Br. 2. Appellants filed a previous appeal, Appeal 2014-007492, decided May 10, 2016, related to the present application. *See* Manual of Patent Examining Procedure (MPEP) § 706.07(h) XI. A. (9th ed. Rev. 08.2017, Jan. 2018) (“[A] Board decision in an application is the ‘law of the case,’ and is thus controlling in that application and any subsequent, related application.”). Accordingly, Appeal 2014-007492 is related to the present appeal.

STATEMENT OF THE CASE

Appellants’ disclosed invention relates to “vehicle based operation of mobile applications stored on a remote server . . . [which] enable[s] the ‘remoting’ of the services of the human machine interface (HMI) of a vehicle computing system to the mobile application to enable application operation.” Spec. 1:8–13. Claims 1 and 10, which are illustrative, read as follows:

1. A system comprising:
 - a vehicle-installed computer including a human machine interface (HMI) and HMI gateway application;
 - a remote application server, storing application profiles for each of a plurality of vehicles defining applications accessible to each of a plurality of vehicles, in communication with the vehicle-installed computer, and configured to execute the applications;
 - an HMI application executing on the computer, wherein the vehicle installed computer is configured to:
 - receive, at the HMI gateway application, input requests from the mobile applications executing remotely;
 - receive input to the HMI; and

transfer the input to the HMI gateway application;
and
via the HMI gateway application, enable operation of the mobile applications based on the received input.

10. A computer-implemented method comprising:
receiving an input request, via a human machine interface (HMI) gateway application executing on a vehicle computer, from a mobile application executing on a remote application server;
receiving input at a vehicle computer HMI;
relaying the input to the HMI gateway application;
providing the input from the HMI gateway application to the mobile application responsive to the request, to enable vehicle computer HMI control of the mobile application.

Claims 1–3, 6, and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ablay et al. (hereinafter “Ablay”) (US 2003/0147534 A1; Aug. 7, 2003) and Wang et al. (hereinafter “Wang”) (US 2005/0256615 A1; Nov. 17, 2005). *See* Final Act. 3–7.

Rather than repeat the arguments here, we refer to the Briefs (“App. Br.” filed June 29, 2017; “Reply Br.” filed Dec. 18, 2017) for Appellants’ positions; the Final Office Action (“Final Act.” mailed Feb. 10, 2017) and Examiner’s Answer (“Ans.” mailed Oct. 18, 2017) for the Examiner’s reasoning, findings, and conclusions; the Specification (“Spec.” filed Sept. 28, 2010); and the Decision in Appeal 2014-007492 (“’492 Dec’n”). Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016).

ISSUES

The pivotal issues presented by Appellants' contentions are as follows:

Does the Examiner err in finding the combination of Ablay and Wang teaches or suggests “a remote application server, storing application profiles for each of a plurality of vehicles defining applications accessible to each of a plurality of vehicles” (the “profile limitation”), as recited in claim 1?

Does the Examiner err in finding the combination of Ablay and Wang teaches or suggests “receiving an input request, via a human machine interface (HMI) gateway application executing on a vehicle computer” (the “gateway limitation”), as recited in claim 10?

ANALYSIS

Claim 1

The Examiner finds Ablay combined with Wang teaches the profile limitation. Final Act 3 (citing Ablay ¶¶ 26–27, 57; Fig. 1), 5 (citing Wang ¶¶ 13, 16, 27, 29, Figs. 1, 2); *see also* Ans. 7–12 (additionally citing Ablay ¶¶ 25, 72, Figs. 2, 5; Wang ¶ 2). The Examiner explains as follows:

Ablay discloses application layer 291 executes infrastructure portions (application profiles) of applications running in vehicle 102 (define applications that are accessible to each of a plurality of vehicles), which infrastructure portions of the applications are stored in memory 150 and executed by processor 148 of server 146.

Regarding the applications that are accessible, Ablay discloses a user system 118 (vehicle) that can request/access services/applications from infrastructure 140 (applications that are accessible to each of the vehicles).

Regarding the plurality of vehicles, Ablay discloses the vehicle manufacturer that remotely communicates with a plurality of vehicles for software updates in a mass, single effort rather than on a vehicle-by-vehicle basis (applications that are accessible to each of a plurality of vehicles).

Ans. 12.

In other words, Wang discloses for each of a plurality of vehicles storing data/profiles/preferences for services/applications accessible to the vehicle.

Therefore, given that Ablay discloses infrastructure portions (application profiles) stored at a server of applications accessible by each of the plurality of vehicles and Wang discloses defining applications/services accessible to each of a plurality of vehicles, then the combination of Ablay and Wang would naturally lead to limitations as claimed by the Appellant.

Ans. 14.

Appellants contend that Ablay merely teaches the infrastructure portions of applications running on a central server and does not teach a profile that defines applications accessible to each vehicle (App. Br. 4–5), whereas Wang teaches that a server can store user preference data for setting a vehicle’s on-board systems (App. Br. 5). We agree with Appellants.

It is true that Ablay teaches “a remote application server, storing application[s] . . . for . . . a plurality of vehicles . . . accessible to . . . [the] plurality of vehicles,” and Wang teaches “a remote application server, storing . . . profiles for each of a plurality of vehicles.” However, contrary to the Examiner’s findings, the fact that the infrastructure portion of an application program may run (and be stored) on a central server does not teach that the infrastructure portions of the application programs constitute a profile of application programs accessible by each vehicle of the plurality of vehicles. For example, all vehicles may have access to all application

programs, or accessibility may be defined at each vehicle rather than at the application server. Further, at most Wang teaches user preference profiles stored at the application server, but does not teach or suggest that those profiles include a profile of the applications accessible by each vehicle of the plurality of vehicles.

For the foregoing reasons we do not sustain the rejection of claim 1 and claims 2, 3, and 6, which depend from claim 1 (*see In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988) (“Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious.”)).

Claim 10

The Examiner finds Ablay, when combined with Wang, teaches the gateway limitation. Final Act. 6 (citing Ablay ¶¶ 24–25, 58, Fig. 5).

Appellants contend that the Examiner errs by implicitly mapping the recited “human machine interface (HMI) gateway application” to the combination of Ablay’s Vehicle Gateway 108 and Wireless Gateway 120, whereas claim 10 recites a single HMI gateway application. App. Br. 5–6. Even accepting Appellants’ contention, *arguendo*, however, it does not demonstrate Examiner error. Combination of the functions of Ablay’s two gateways would have been merely an obvious integration or rearrangement of components without any change in their functions. “[T]he use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.” *In re Larson*, 340 F.2d 965, 968 (CCPA 1965)). Further, the relocation of parts without a change in function is a matter of engineering design choice. *In re Japikse*, 181 F.2d 1019, 1031 (CCPA 1950) (claims to a hydraulic power press which read on

the prior art except with regard to the position of the starting switch were held unpatentable because shifting the position of the starting switch would not have modified the operation of the device).

Appellants next explain the Examiner maps the recited input request to Ablay’s teaching that gateway 120 “accepts service requests from remote applications running in infrastructure 140” (Ablay ¶ 24). App. Br. 6. Appellants contend “there is no evidence presented that the ‘service request’ is an ‘input request’ and that user input is passed to the application responsive to the request’ by any of the gateways in Ablay.” *Id.* We agree with Appellants. Although claim 10 does not explicitly identify the “input [received] at a vehicle computer HMI” as being a user input, the recited interface is a “*human* machine interface (HMI),” and the broadest *reasonable* interpretation of an input received by an HMI is an input from a human, i.e., a user. Nothing in the cited portions of Ablay teaches a user input to an HMI that is provided to the infrastructure portion of a remote application (the recited “mobile application”) in response to a request for the input from the mobile application. To be sure, Wang does disclose user inputs (Wang’s “service request”) to an HMI (Wang’s “input device”) that are relayed to a remote application (Wang’s “call center”) (Wang ¶¶ 52–53) but we find nothing in the cited passages of Wang that teaches that the “service request” is in response to an input request from the call center, as recited in claim 10.

In view of our findings and conclusions, *infra*, we need not address Appellants’ contention that Wang does not teach control of a mobile application by the HMI. *See* App. Br. 6–7.

For the foregoing reasons, we do not sustain the rejection of claim 10.

NEW GROUND OF REJECTION WITHIN 37 C.F.R. § 41.50(b)

Claims 10 is rejected on a new ground of rejection under 35 U.S.C. § 103(a) as unpatentable over Ablay, Wang, and Treyz et al. (hereinafter “Treyz”) (US 6,626,335 B1; Feb. 25, 2003).² Except as addressed *supra*, we adopt as our own the Examiner’s findings and conclusions regarding the teachings of Ablay and Wang. (*See* Final Act. 6–7).

Treyz teaches the following:

The user may place an order by, for example, using a web browser on the automobile personal computer to Connect to an on-line ordering service for the restaurant over a remote wireless link.

Illustrative restaurant ordering screens **902** and **904** that may be displayed to occupants of automobile **12** (e.g., occupants other than the driver) are shown in FIG. **78**. Occupants of automobile **12** (e.g., rear-seat or front-seat passengers) may use highlight region **906** to select desired menu items from list **908**. The order may be placed with the restaurant over a remote wireless link. When the occupants have placed the order, a confirmation message such as shown in screen **904** may be displayed. An audio confirmation may also be displayed. The menu items that were ordered may be paid for in person, may be paid for over the remote wireless link during the ordering process or may be paid for using a local wireless link (e.g., as the user drives through a drive-through lane at the restaurant).

Treyz col. 65, ll. 46–63; *see also id.* col. 65, l. 64–col. 66, l. 19, col. 73, ll. 29–37, Figs. 1, 78.

Treyz’s ordering screens received from an on-line ordering service and displayed on the automobile personal computer, which request that the user press “enter” to select an option or to confirm a selection (*see* Treyz

² Treyz is prior art of record in the present application. *See* ’492 Dec’n 2.

Fig. 78), when combined with Ablay's and Wang's teachings, teaches "receiving an input request, via a human machine interface (HMI) gateway application executing on a vehicle computer, from a mobile application executing on a remote application server." The occupant selecting a menu option and placing or confirming an order, when combined with Ablay's and Wang's teachings, teaches "receiving input at a vehicle computer HMI," "relaying the input to the HMI gateway application," and "providing the input from the HMI gateway application to the mobile application responsive to the request." In this way, Treyz's automobile personal computer is enabled to control the on-line ordering service such that the occupant's order is placed by the ordering service with the restaurant, i.e., Treyz, teaches "providing the input from the HMI gateway application to the mobile application responsive to the request, to enable vehicle computer HMI control of the mobile application."

We conclude it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Treyz's teachings into Ablay's system to increase the limited functionality of Ablay's system (*see* Treyz col. 1, ll. 17–22) by permitting user interaction with applications running remotely from the vehicle, as taught by Treyz.

DECISION

The decision of the Examiner to reject claims 1–3, 6, and 10 is reversed.

We enter a new ground of rejection for claim 10 under 35 U.S.C. § 103(a).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.”

Section 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record.

37 C.F.R. § 41.50(b).

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). *See* 37 C.F.R. §§ 41.50(f), 41.52(b) (2013).

REVERSED
37 C.F.R. § 41.50(b)