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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARK EGLY

Appeal 2018-004552
Application 13/414,814
Technology Center 2600

Before JAMES R. HUGHES, CATHERINE SHIANG, and
JASON J. CHUNG, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 3, 18–21, 24–26, 31–37, 40, and 41. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention is directed to an early warning system for traffic signals and driving conditions. Spec. 1:10–14. Claim 1 is illustrative of the invention and is reproduced below:

1. An early warning system, comprising:
a vehicle having a warning device;
the vehicle having a steering wheel with a steering wheel sensor;
wherein the steering wheel sensor sends information regarding whether a driver has two hands,

one hand or no hands on the steering wheel to more than one processor;
a deactivation switch positioned on the steering wheel;
wherein when the steering wheel sensor senses that no hands are on the steering wheel a hazard condition is detected and a warning signal is issued through the warning device.

REJECTIONS AT ISSUE

Claims 1, 3, 18, 19, 24–26, 32, 33, 36, 40, and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett (US 2011/0115617 A1; published May 19, 2011) and Young (US 2004/0124985 A1; published July 1, 2004). Final Act. 2–7.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, and Rao (US 2012/0256749 A1; filed Apr. 11, 2011). Final Act. 8.

Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, and Daniel (US 8,451,109 B1; filed Jan. 7, 2010). Final Act. 8–9.

Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, and Naboulsi (US 2004/0209594 A1; published Oct. 21, 2004). Final Act. 9–10.

Claim 34 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, and Lee (US 2012/0133528 A1; filed Nov. 28, 2011). Final Act. 10.

Claim 35 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, Lermer (US 2010/0117814 A1; published May 13, 2010), and Katsman (US 2010/0157061 A1; published June 24, 2010). Final Act. 11–12.

Claim 37 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Bennett, Young, and Wahlbin (US 2004/0103010 A1; published May 27, 2004). Final Act. 12.

ANALYSIS

The Examiner determines Bennett teaches one central processor, but fails to teach more than one processor. Final Act. 3. The Examiner finds there are a finite number of solutions to process information from the steering wheel sensor, which includes: (1) sending information to the central processor for issuing warning signals and data collaboration; or (2) sending information separately to the warning device and the receiver for local processing. *Id.* The Examiner finds it would have been obvious to a person having ordinary skill in the art at the time of the invention to modify Bennett's early warning system to send the information separately to the warning device and the receiver for local processing, because it is "obvious to try" choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. *Id.* The Examiner finds Butts teaches each major part of a vehicle (e.g., display, GPS, steering and braking, transmission, etc.) individually comprises its own controller, which the Examiner maps to the limitation "more than one processor" recited in claims 1 and 40. *Id.* at 13 (citing Butts ¶ 82). The Examiner finds Butts teaches a need to include multiple controllers in a vehicle so as to increase the diagnostic ability to identify failure of a component and predict the

failure before the component fails, which the Examiner finds would make Bennett's modification "obvious to try." *Id.* at 13–14.

Appellant first argues the cited art fails to teach every limitation in claims 1 and 40 and, therefore, is incapable of providing a finite number of identified, predictable solutions to the recognized need or problem. App. Br. 3. Second, Appellant argues Bennett addresses the reality that numerous deficiencies exist in the art related to vehicle safety and driver attentiveness, which shows that a person having ordinary skill in the art would not be able to pursue the known solutions with a reasonable expectation of success. *Id.* at 3 (citing Bennett ¶ 6); Reply Br. 2–3. Appellant's third argument is that the Examiner's combination would lead to open-ended speculation on how a hypothetical embodiment would operate in this highly complex technical field, which is improper in attempting to establish an obvious to try theory. *Id.* at 4. Fourth, Appellant argues Bennett includes no indication of critical parameters of processing, and only provides a general guidance on providing a single embodiment of a vehicle driver safety device. *Id.* at 4. Appellant's fifth argument is Butts pertains to duplication of similar controllers for a single purpose, but the Examiner ignores features in the claims, disclosure, and Figures that indicate the processors are positioned in various places within the vehicle for different purposes—i.e., physical features are beyond mere duplication. *Id.* at 4–5. Sixth, Appellants argue Butts does not teach a sensor, let alone a sensor on a steering wheel that sends information to one or more processors. Reply Br. 3. We disagree with Appellant and address the arguments in turn.

As for Appellant's first three arguments (App. Br. 3–4), we disagree because Butts describes each major part of a vehicle (e.g., display, GPS,

steering and braking, transmission, etc.) having its own controller, which teaches the limitation “more than one processor” recited in claims 1 and 40. Final Act. 13 (citing Butts ¶ 82). Furthermore, we agree with the Examiner’s finding that Butts teaches a need to include multiple controllers in a vehicle so as to increase the diagnostic ability to identify failure of a component and predicts the failure before the component fails, which would make Bennett’s modification “obvious to try” choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success. Final Act. 3, 13–14. Additionally, the U.S. Supreme Court has held “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Contrary to Appellants’ argument that Bennett and Young do not provide factual support to support the obviousness rejection (App. Br. 3; Reply Br. 2–3), “[i]f the claim extends to what is obvious, it is invalid under § 103” and “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. at 418–19.

Appellant’s fourth argument (App. Br. 4) is not persuasive because Butts describes each major part of a vehicle (e.g., display, GPS, steering and braking, transmission, etc.) having its own controller that collects data such as engine speed, engine torque, wheel speed, etc., which are critical parameters of processing.

Regarding Appellant’s fifth argument (App. Br. 4), we note that claims 1 and 40 do not recite the processors within the vehicle are for

different purposes. “[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.” *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982). Nonetheless, Butts describes each major part of a vehicle (e.g., display, GPS, steering and braking, transmission, etc.) having its own controller, which teaches processors are positioned in various places within the vehicle for different purposes. *See* Butts ¶ 82.

As for Appellant’s sixth argument, Appellant’s argument filed in the Reply Brief (*see* Reply Br. 3) is untimely and waived because Appellant has not shown good cause for the belated presentation. *See* 37 C.F.R. § 41.41(b)(2); *compare* Final Act. 13–14, *with* Ans. 4–5. In any event, Appellant’s argument pertaining to Butts (Reply Br. 3) is unpersuasive because one cannot show nonobviousness “by attacking references individually” where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). In this case, Bennett teaches a steering wheel sensor within a vehicle and Butts teaches multiple processors. Final Act. 2, 13 (citing Bennett ¶ 46, Figs. 1–2; Butts ¶ 82).

We have only considered those arguments that Appellants actually raised in the Briefs. Arguments Appellant could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner’s decision rejecting claims 1, 3, 18–21, 24–26, 31–37, 40, and 41 under 35 U.S.C. § 103(a).

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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