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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER COOPER, CARLAN COOPER, and
ROBERT T. BROCKMAN

Appeal 2018-005115
Application 14/700,910
Technology Center 2600

Before CATHERINE SHIANG, JOHN P. PINKERTON, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 4–20, and 22–28, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm in part.

¹ We use “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies Key Control Holding, Inc., as the real party in interest. Appeal Br. 5.

STATEMENT OF THE CASE

Introduction

The present invention relates to “vehicle management systems.”

Spec. ¶ 2.²

An embodiment includes a lot management system. The lot management system includes a transmitter comprising a location determination module having a GPS data pathway to an RF transmission module and a receiver including an RF antenna and a receiver processor.

Spec. ¶ 4. Claim 1 is exemplary:

1. A vehicle management system comprising:

a vehicle information module, the vehicle information module including a location determination module having a GPS data pathway to an RF transmission module, the vehicle information module having a vehicle information data pathway to an RF transmission module, the vehicle information module including a diagnostic connector including a power pin connector configured in accordance with OBD-II standards and configured to plug into an OBD-II port of a vehicle, wherein the vehicle information module is adapted to communicate with at least one computer system of the vehicle to gather at least one vehicle parameter; and

a receiver comprising an RF antenna and a receiver processor.

References and Rejections

Claims Rejected	35 U.S.C. §	References
1, 4–18, 20,	103	Kim (US 2010/0060485 A1; Mar. 11, 2010),

² Throughout this opinion, we refer to the (1) Final Office Action dated May 31, 2017 (“Final Act.”); (2) Appeal Brief dated October 25, 2017 (“Appeal Br.”); (3) Examiner’s Answer dated March 8, 2018 (“Ans.”); and (4) Reply Brief dated April 17, 2018 (“Reply Br.”).

22, 23, 25, 26		Mosher (US 2014/0067231 A1; Mar. 6, 2014)
19, 24	103	Kim, Mosher, Kuo (US 2008/0165030 A1; July 10, 2008)
27	103	Kim, Mosher, Ousborne (US 5,499,182; Mar. 12, 1996)
28	103	Kim, Mosher, Kirkhart (US 6,052,646; Apr. 18, 2000)

ANALYSIS

Obviousness

Claim 1, 4–19, and 27

We disagree with Appellant’s arguments. To the extent consistent with our analysis below, we adopt the Examiner’s findings and conclusions in (i) the Final Action from which this appeal is taken and (ii) the Answer.³

On this record, the Examiner did not err in rejecting claim 1.

Appellant contends:

The combination of *Kim* and *Mosher* does not teach “a vehicle information module, the vehicle information module including a location determination module having a GPS data pathway to an RF transmission module, the vehicle information module having a vehicle information data pathway to an RF transmission module. . . wherein the vehicle information module is adapted to communicate with at least one computer system of the vehicle to gather at least one vehicle parameter; and a receiver comprising an RF antenna and a receiver processor,” as recited by claim 1.

Appeal Br. 11. In particular, Appellant contends the Examiner has not provided a sufficient rationale for combining teachings of *Kim* and *Mosher*. *See* Appeal Br. 11–14; Reply Br. 2–4. Appellant argues:

³ To the extent Appellant advances new arguments in the Reply Brief without showing good cause, Appellant has waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

The Examiner asserts that, “[T]he motivation for the combination of *Mosher* with *Kim* is to have enabled the system to send commands associated with various self-tests and diagnostics available on the vehicle.”

The foregoing assertion and the rest of the paragraph in which it is contained amount to nothing more than a conclusory statement. Likewise, the alleged support for the assertion amounts to nothing more than a statement that “more is better.”

Appeal Br. 11–12.

Appellant has not persuaded us of error. 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 Appellant’s arguments, “[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.” *Id.* at 418–19.

The Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of *Kim* and *Mosher*. See Final Act. 4; Ans. 2–8. Appellant does not persuasively explain why such reasoning is incorrect. In particular, the Examiner finds that Appellant’s invention, *Kim*, and *Mosher* are all in the same field of vehicle management systems. See Final Act. 2–4; Ans. 3–4. Appellant does not persuasively dispute that finding, as Appellant’s attorney responses about the field of endeavor (Reply Br. 2) are unsupported by objective evidence. See *In re Geisler*, 116 F.3d 1465, 1470

(Fed. Cir. 1997) (“attorney argument [is] not the kind of factual evidence that is required to rebut a prima facie case of obviousness”); *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977) (“Argument of counsel cannot take the place of evidence lacking in the record.”). Likewise, Appellant’s attorney arguments about Mosher (Appeal Br. 12–13) are unpersuasive. As a result, Appellant’s arguments about the comparison of Kim and Mosher (Appeal Br. 12–13) are also unpersuasive, because Appellant does not provide objective evidence to support such arguments.

Further, Appellant’s arguments that “a user looking for a parking space not be interested in collecting information about or controlling the engines of other cars” and “someone seeking a parking space to wish to gather information on the operational characteristics of the surrounding vehicles” (Appeal Br. 13–14) are unpersuasive, because they are not directed to the Examiner’s proposed combination, which does not include “collecting information about or controlling the engines of other cars” or “gather[ing] information on the operational characteristics of the surrounding vehicles” (Appeal Br. 13–14). As a result, Appellant’s argument about *In re Omeprazole Patent Litigation*, 536 F.3d 1361 (Fed. Cir. 2008) (Appeal Br. 13) is inapplicable here.

Appellant also contends:

The Reply Brief includes a statement that, “In the combination of Mosher with Kim, the SCU (“Secondary Control Unit”) would be added to the electronic apparatus of Kim, which includes the control unit of Kim. In the combination of Mosher with Kim, the SCU would not be communicating with the control units of other vehicles.”

Adding the SCU of Mosher only to the control unit of Kim [and no other vehicles] eliminates the entire purpose of the Kim

system. If the “location information” that is transmitted according to the present claims were limited to the location of the vehicle in which the vehicle information module is disposed, it would be of no use in locating a parking spot.

Reply Br. 3–4.

Appellant’s arguments are not directed to the Examiner’s proposed combination, which does not “[a]dd[] the SCU of Mosher only to the control unit of Kim” (Reply Br. 4). Nor does the proposed combination require “the ‘location information’ that is transmitted according to the present claims were limited to the location of the vehicle in which the vehicle information module is disposed” (Reply Br. 4). And Appellant’s attorney argument about “eliminate[ing] the entire purpose of . . . Kim” (Reply Br. 4) is unpersuasive. *See Geisler*, 116 F.3d at 1470; *Meitzner*, 549 F.2d at 782.

Contrary to Appellant’s arguments (Reply Br. 2–3), *In re Nuvasive, Inc.*, 842 F.3d 1376 (2016) is inapplicable here. In that case, the Federal Circuit finds:

Medtronic’s arguments amount to nothing more than conclusory statements that a PHOSITA would have been motivated to combine the prior art references to obtain additional information. In its summary of Medtronic’s arguments, the PTAB never articulated why the additional information would benefit a PHOSITA when implanting a posterior lumbar interbody fusion implant, such as the implants disclosed by the SVS–PR brochure and the Telamon references.

Id. at 1384.

Unlike the deficient reasoning in *Nuvasive*, the Examiner explains in this case:

the combination of Mosher with Kim would add to Kim an SCU that would send commands associated with various self-tests and diagnostics available on the vehicle to the control unit of Kim (both control units being on the same vehicle) *to determine whether the vehicle is in a desired vehicle speed state, and if not, to direct the vehicle to a desired speed state to, for example, implement start/stop override functionality.* ([0121]). This benefit is sufficient to support the combination of Mosher with Kim.

Ans. 6–7 (emphasis added).

The Examiner’s reasoning is not merely “a conclusory statement,” as Appellant asserts (Appeal Br. 12; *see also* Reply Br. 3). To the contrary, the Examiner explains the benefit of the proposed combination (“to determine whether the vehicle is in a desired vehicle speed state, and if not, to direct the vehicle to a desired speed state to, for example, implement start/stop override functionality” (Ans. 6–7)), and Appellant does not persuasively explain why the Examiner’s reasoning is insufficient. As a result, *Nuvasive* is inapplicable here.

The Examiner’s findings and conclusion are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle,” as the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. Appellant does not present adequate evidence that the resulting arrangements would have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19).

Accordingly, we agree with the Examiner that applying Mosher's feature in the Kim system would have predictably used prior art elements according to their established functions—an obvious improvement. *See KSR*, 550 U.S. at 417.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner's rejection of independent claim 1.

We also sustain the Examiner's rejection of corresponding dependent claims 4, 7–19, and 27, as Appellant does not advance separate substantive arguments about those claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Separately Argued Dependent Claims 5 and 6

Dependent Claim 5

Appellant argues:

Regarding claim 5, the asserted motivation for the combination of Mosher with *Kim* is to have “enabled the system to employ the on-board diagnostic specification that is mandatory for all cars sold in the United States. The obvious advantage of this combination is that it would enable the system of *Kim to comply with the government mandated specifications* and in so doing, it would have made it easier to obtain parts for the manufacture, assembly, and repair of the system of *Kim*.” (emphasis added).

The above-excerpted statement ignores the context of *Kim*, i.e. a system for **locating parking spaces** (not cars) and appears to attach to *Kim* a regulatory justification (see italics) that is wholly absent from either reference and has no relevance to the location of parking spaces. A system for locating parking spaces has no reason to also collect diagnostic information about other vehicles. Again, Applicant submits that this rejection is based on a wholly fabricated justification for combination that does not exist.

Appeal Br. 15; *see also* Reply Br. 5–6.

Similar to the discussions above, Appellant has not persuaded us of error. Contrary to Appellant’s arguments, “[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*, 550 U.S. at 418–19.

The Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Kim and Mosher. *See* Final Act. 5; Ans. 12–14. Appellant does not persuasively show why such reasoning is incorrect. In fact, Appellant concedes the Examiner has provided “a regulatory justification” (Appeal Br. 15) and thus a stated benefit for the proposed combination. Further, Appellant’s attorney arguments (Appeal Br. 15; Reply Br. 5–6) are unsupported, and, therefore, unpersuasive. *See Geisler*, 116 F.3d at 1470; *Meitzner*, 549 F.2d at 782. In any event, Appellant’s attorney argument that “[a] system for locating parking spaces has no reason to also collect diagnostic information about *other* vehicles” (Appeal Br. 15 (emphasis added)) is not directed to the Examiner’s proposed combination, which does not include such a feature.

Because Appellant has not persuaded us the Examiner erred, and for similar reasons discussed above with respect to claim 1, we sustain the Examiner’s rejection of dependent claim 5.

Dependent Claim 6

Claim 6 recites “[t]he vehicle management system of claim 5, wherein the vehicle information module is in electrical contact with a vehicle battery.”

Appellant argues:

The Examiner does not explain how the combination of *Kim* and *Mosher* would have provided power to a secondary control unit, not a vehicle information module. The Office Action provides no teaching in either *Mosher* or *Kim* to suggest that an OBD-II plug would have been useful for a vehicle management system, or how such a connection would be made. The Examiner provides no authority for the statement that “[t]he teachings of Mosher are sufficient without further details about how such a connection would be made.” *Mosher* provides no teaching as to how such a connection would be made and the Examiner has made no factual findings regarding whether one of ordinary skill in the art would find that “[t]he teachings of Mosher are sufficient without further details about how such a connection would be made.”

Appeal Br. 16–17; *see also* Reply Br. 6.

In response to Appellant’s arguments, the Examiner provides further explanation showing *Kim* and *Mosher* collectively teach claim 6. *See* Ans. 15. Appellant fails to persuasively respond to such findings, and, therefore, fails to show error in the Examiner’s findings. *See In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court [or this Board] to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.”).

Further, we agree with the Examiner. Claim 6 ultimately depends from claim 1, which recites the “vehicle information module.” In connection with claim 1, the Examiner finds—and Appellant does not dispute—*Kim* teaches the “vehicle information module.” Final Act. 2. The Examiner further finds—and Appellant does not dispute—*Mosher* teaches “is in electrical contact with a vehicle battery.” *Id.* at 5–6. Therefore, the Examiner concludes *Kim* and *Mosher* collectively teach “the vehicle information module is in electrical contact with a vehicle battery,” as required by claim 6. *See id.* The Examiner explains the proposed combination “would have enabled the system to

employ a vehicle information module that does not need its own internal power source.” *See id.*

The Examiner’s findings and conclusion are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle,” as the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. Appellant does not present adequate evidence that the resulting arrangements would have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters.*, 485 F.3d at 1162. In particular, Appellant has not persuasively explained why connecting the vehicle information module with an existing vehicle battery is uniquely challenging or difficult to one skilled in the art. And Appellant’s arguments (Appeal Br. 16) are not commensurate with the scope of claim 6.

Accordingly, we agree with the Examiner that applying Mosher’s feature in the Kim system would have predictably used prior art elements according to their established functions—an obvious improvement. *See KSR*, 550 U.S. at 417.

Because Appellant has not persuaded us the Examiner erred, and for similar reasons discussed above with respect to claim 1, we sustain the Examiner’s rejection of dependent claim 6.

Claims 20, 22–26, 28

We have reviewed the Examiner’s rejection in light of Appellant’s contentions and the evidence of record. We concur with Appellant’s contentions that the Examiner erred in finding the cited portions of Kim teach or suggest “transmitting the location of the vehicle information module using the RF transmission module *only when* the vehicle information module is

within a car lot,” as recited in independent claim 20 (emphasis added). *See* Appeal Br. 14–15; Reply Br. 4–5.

The Examiner acknowledges “Kim does not explicitly disclose transmitting the location information only when the vehicle information module is within a car lot.” Final Act. 9. After citing many paragraphs from Kim, the Examiner concludes Kim suggests the disputed limitation. *See* Final Act. 9–10. We have reviewed the cited Kim paragraphs, and they do not teach or suggest “transmitting the location of the vehicle information module using the RF transmission module *only when* the vehicle information module is within a car lot,” as required by claim 20 (emphasis added). In fact, the disputed limitation contradicts Kim’s objective of “avoid[ing] a situation in which a driver approaches a parking lot in spite of there being no parking space, thus consuming time and cost, and to allow the driver to find and immediately approach a parking lot with an available space.” Kim ¶ 18. To accomplish that objective, it is desirable for Kim to “transmit[] the location of the vehicle information module” *before*—not after—the vehicle enters the car lot. As a result, the Examiner has not persuasively explained why Kim teaches or suggests “transmitting the location of the vehicle information module using the RF transmission module *only when* the vehicle information module is within a car lot,” as required by claim 20 (emphasis added).

Because the Examiner fails to provide sufficient evidence or explanation to support the rejection, we are constrained by the record to reverse the Examiner’s rejection of claim 20.

We also reverse the Examiner’s rejection of corresponding dependent claims 22–25 and 28. Although the Examiner cites additional references for rejecting some dependent claims, the Examiner has not shown the additional

references overcome the deficiency discussed above in the rejection of claim 20.

For similar reasons, we reverse the Examiner's rejection of dependent claim 26 (which depends from claim 1), because claim 26 includes a similar limitation and the Examiner cites similar findings and conclusions (discussed above with respect to claim 20). *See* Final Act. 12–13.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 4–18, 20, 22, 23, 25, 26	103	Kim, Mosher	1, 4–18	20, 22, 23, 25, 26
19, 24	103	Kim, Mosher, Kuo	19	24
27	103	Kim, Mosher, Ousborne	27	
28	103	Kim, Mosher, Kirkhart		28
Overall Outcome			1, 4–19, 27	20, 22–26, 28

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED IN PART