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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUSTIN DICKOW, COREY MAYLONE,
SCOTT SMEREKA, and JOEY RAY GROVER

Appeal 2018-006060
Application 15/002,066
Technology Center 2600

Before LARRY J. HUME, NORMAN H. BEAMER, and JOYCE CRAIG,
Administrative Patent Judges.

HUME, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant,¹ Livio, Inc., appeals from the Examiner’s decision rejecting claims 11–20, which are all claims pending in the application. Appellant has canceled claims 1–10. *See generally* Appeal Br. A-1 (“Claims Appendix”). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Livio, Inc. Appeal Br. 1.

STATEMENT OF THE CASE²

The Invention

Appellants' disclosed embodiments and claimed invention "relate to determining and tracking a resident vehicle zone for a mobile device." Spec. ¶ 1.

Exemplary Claim

Claim 11, reproduced below, is representative of the subject matter on appeal (*emphasis* added to the dispositive prior-art limitation):

11. A system comprising:
wireless sensors of a vehicle; and
a vehicle processor programmed to
track values from the sensors indicative of distance
between a mobile device and the sensors;
*calculate pair values as sums of the values received from
pairs of the sensors proximate vehicle entrances; and*
identify one of the entrances through which the mobile
device passed according to the pair value with a minimum value
closest to a distance between the pair of the sensors.

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Tadayon et al. ("Tadayon") US 2011/0105097 A1 May 5, 2011

² Our Decision relies upon Appellant's Appeal Brief ("Appeal Br.," filed Feb. 1, 2018); Reply Brief ("Reply Br.," filed May 21, 2018); Examiner's Answer ("Ans.," mailed Mar. 19, 2018); Final Office Action ("Final Act.," mailed Aug. 1, 2017); and the original Specification ("Spec.," filed Jan. 20, 2016).

Rejection on Appeal

Claims 11–20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Tadayon. Final Act. 5.

ISSUE

Appellant argues (App. Br. 5–8; Reply Br. 1–3) the Examiner’s rejection of claim 11 under 35 U.S.C. § 103 as being obvious over Tadayon is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art teaches or suggests a system that includes “a vehicle processor programmed to,” *inter alia*, “calculate pair values as sums of the values received from pairs of the sensors proximate vehicle entrances,” and “identify one of the entrances through which the mobile device passed according to the pair value with a minimum value closest to a distance between the pair of the sensors,” as recited in claim 11?

ANALYSIS

For essentially the same reasons argued by Appellants (Appeal Br. 5–8), we reverse the Examiner’s rejection of independent claim 11, and also reverse the rejection of independent claim 15, which recites the dispositive limitation in commensurate form. For the same reasons, we also reverse the rejections of all claims that depend therefrom.³

³ Because we agree with at least one of the dispositive arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments. *See Beloit Corp. v. Valmet Oy*, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (finding an administrative agency is at liberty to reach a decision based on “a single dispositive issue”).

Claim 11 recites, in pertinent part, “*calculate pair values as sums of the values* received from pairs of the sensors proximate vehicle entrances,” and the Examiner relies upon Tadayon as teaching this limitation. Final Act. 6 (citing Tadayon ¶¶ 71, 77, 81, 82–84)(emphasis added).

Appellant argues, “Tadayon states that ‘[i]n one embodiment, the location of the mobile device is determined by using *the calculated ratio of the distances* of the mobile device to the transmitters/transceivers.’” Appeal Br. 7 (quoting Tadayon ¶ 77)(emphasis added). We note paragraph 81 of Tadayon further describes that “[s]imilarly, the ratio of distance of the mobile device (326) to another pair of transceivers (e.g., 332 and 334 pair) is used to determine the corresponding locus of points having the same distant ratio to the fixed points (332 and 334). The locus of these points, as depicted in FIG. 3(d), lie on a circle (374) having a center (372) on a line (379) joining the fixed points (332 and 334) and a radius (376).” Tadayon ¶ 81,

Consequently, we are persuaded by Appellant’s argument that the cited prior art does not teach or suggest the disputed limitation because, instead of calculating pair values as *sums of values* received from pairs of sensors determined and *defined by their proximity to a vehicle entrance*, Tadayon instead relies upon *ratios* of values from sensors *dispersed throughout the vehicle*.⁴

⁴ Although not essential to determining the outcome of this Decision, it appears that, in addition to not summing sensor values, Tadayon does not carry out the pairing of two sensors located near (proximate) vehicle entrances. *See, e.g.*, Tadayon ¶ 71 and Fig. 3(a) (illustrating sensors 304, 330, 332, 334, and 336 — dispersed throughout vehicle 300 — being used to

Therefore, based upon the findings above, on this record, we are persuaded of at least one error in the Examiner's reliance on the cited prior art to teach or suggest the dispositive limitation of claim 11, such that we find error in the Examiner's resulting legal conclusion of obviousness.

Accordingly, we do not sustain the Examiner's obviousness rejection of independent claim 11, and dependent claims 12–14 which stand therewith. For the same reason, we do not sustain the Examiner's obviousness rejection of independent claim 15 which recites the dispositive limitation in commensurate form. We also do not sustain the rejection of dependent claims 16–20 which depend from claim 15.

CONCLUSION

The Examiner erred with respect to the obviousness rejection of claims 11–20 under 35 U.S.C. § 103 over the cited prior art of record, and we do not sustain the rejection.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Basis / Reference	Affirmed	Reversed
11–20	103	Tadayon		11–20

REVERSED

determine mobile phone location by using a ratio of values of signals irrespective of the sensors' proximity to a vehicle entrance).