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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ECE KAMAR and ERIC J. HORVITZ

Appeal 2018-006681
Application 12/491,635
Technology Center 3600

Before ERIC S. FRAHM, NORMAN H. BEAMER,
and MICHAEL T. CYGAN, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 34–53. Claims 1–33 are cancelled. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm.

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

THE INVENTION

Appellant's disclosed and claimed invention is directed to generating and implementing collaborative plans that achieve goals for sets of individual agents based on a consideration of individual and group preferences — for example, a ridesharing plan. (Abstract, Spec. 1.)

Independent claim 34, reproduced below, is illustrative of the subject matter on appeal:

34. A computer-implemented method for a collaborative plan generation based on varying preferences and constraints, the method comprising:

receiving, by a computing device, a plurality of commute plan preferences of a corresponding plurality of agents, the commute plan preferences of each agent including an origin location, a destination location, and a time of trip;

generating, by the computing device, a rideshare plan based on the plurality of commute plan preferences of the corresponding plurality of agents, wherein the rideshare plan includes one driver agent of the plurality of agents having a driver origin location and a driver destination location and a plurality of rider agents of the plurality of agents, each rider agent having a rider origin location and a rider destination location, and wherein the rideshare plan includes a plurality of stop points corresponding to each rider origin location and each rider destination location;

receiving, by the computing device during execution of the rideshare plan, a new commute plan preference of a new rider agent, the new commute plan preference of the new rider agent including a new rider origin location, a new rider destination location, and a new rider time of trip; and

computing, by the computing device during execution of the rideshare plan, an updated rideshare plan

based on the rideshare plan and the new commute plan preference of the new rider, the updated rideshare plan including new stop points for the new rider corresponding to the new rider origin location and the new rider destination location, the new stop points being within a predetermined radius around the stop points of the plurality of rider agents.

REJECTIONS

The Examiner rejected claims 34–53 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. (Final Act. 2–14.)

The Examiner rejected claims 34–53 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. (Final Act. 15–23.)²

The Examiner rejected claims 34–53 under 35 U.S.C. § 102(b) as being anticipated by Olmi (GB 2397683 A, pub. July 28, 2004). (Final Act. 24–37.)

ISSUES ON APPEAL

Appellant’s arguments present the following dispositive issues:³

First Issue: Whether the Examiner erred in concluding claims 34–53 are directed to patent-ineligible subject matter. (Appeal Br. 17–29.)

Second Issue: Whether the Examiner erred in finding claims 34–53 fail to comply with the written description requirement. (Appeal Br. 29–36.)

² The Examiner withdrew a rejection of claims 34–53 under 35 U.S.C. § 112, second paragraph, as indefinite. (Ans. 3–4.)

³ Rather than reiterate the arguments of Appellant and the positions of the Examiner, we refer to the Appeal Brief (filed Mar. 9, 2018); the Reply Brief (filed June 15, 2018); the Final Office Action (mailed Nov. 2, 2017); and the Examiner’s Answer (mailed May 16, 2018) for the respective details.

Third Issue: Whether the Examiner erred in finding claims 34–53 anticipated by Olmi. (Appeal Br. 36–40.)

ANALYSIS

First Issue

The Examiner concludes claims 34–53 are patent-ineligible under 35 U.S.C. § 101 because the claims are directed to “**a method of organizing human activities and an idea of itself**, as well as **using mathematical relationships/formulas.**” (Final Act. 4.) The Examiner further concludes that “[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception. . . .,” finding that the only “additional elements” comprised “a computer performing generic functions.” (*Id.* at 4, 12.)

Appellant argues that the claims “contain meaningful limitations that sufficiently limit the claims to a practical application,” specifically pointing to the independent claim limitations that receive, “during execution of the rideshare plan, a new commute plan preference of a new rider agent,” and compute, “during execution of the rideshare plan, an updated rideshare plan based on the rideshare plan and the new commute plan preference of the new rider,” with “the new stop points being within a predetermined radius around the stop points of the plurality of rider agents.” (Appeal Br. 18–19.) Appellant argues that the Examiner’s conclusion that these limitations are part of an abstract idea is conclusory and fails to consider the claims as a whole. (*Id.* at 22, 25.)

Furthermore, argues Appellant, for the same reason (*i.e.*, the receiving and computing of a new commute preference), “the claims are patent eligible subject matter because they constitute an improvement to the

technical field.” (*Id.* at 26.) Relying on *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), Appellant also argues the claims are not directed to an abstract idea because they “do not preempt the basic tools of science.” (*Id.* at 27–28.) Finally, Appellant argues that the Examiner failed to meet the standards of *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018), regarding the factual support required for a finding that claimed subject matter was well-understood, routine, and conventional. (Reply Br. 2–3.)

As set forth below, we are not persuaded the Examiner erred. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. Here, independent claim 34 and its dependent claims relate to a method, independent claim 41 and its dependent claims relate to a system; and independent claim 48 and its dependent claims relate to a non-transitory computer-readable storage medium — *i.e.*, a process, machine, or manufacture, respectively. However, the Supreme Court has long held that “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 598–99 (2013)). The “abstract ideas” category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice*, 573 U.S. at 216–17.

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-part framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first

determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, and this principle cannot be circumvented by attempting to limit the use of the

formula to a particular technological environment.” *Id.* (citation omitted) (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). An “inventive concept” is “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” 573 U.S. at 217–18. “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” 573 U.S. at 221 (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

Further to the *Alice/Mayo* analytical framework, after the mailing of the Answer and the filing of the Briefs in this case, in January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).⁴ “All

⁴ In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance.

USPTO personnel are, as a matter of internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).⁵

2019 Revised Guidance, 84 Fed. Reg. at 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, under Step 2B, to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

⁵ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance — Section III(A)(2), 84 Fed. Reg. 54–55.

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

2019 Revised Guidance, 84 Fed. Reg. at 52–56.

In evaluating the claims at issue here, we consider claim 34 as representative, consistent with how Appellant and the Examiner analyze the claims. *See* 37 C.F.R. § 41.37(c)(1)(iv)(2017). We agree with the Examiner that claim 34 recites, aside from computer references (in square brackets below) to a certain method of organizing human activity — collaborative plan generation:⁶

34. A [computer-implemented] method for a collaborative plan generation based on varying preferences and constraints, the method comprising:

receiving, [by a computing device], a plurality of commute plan preferences of a corresponding plurality of agents, the commute plan preferences of each agent including an origin location, a destination location, and a time of trip;

generating, [by the computing device], a rideshare plan based on the plurality of commute plan preferences of the corresponding plurality of agents, wherein the rideshare plan includes one driver agent of the plurality of agents having a driver origin location and a driver destination location and a plurality of rider agents of the plurality of agents, each rider agent having a rider origin

⁶ We do not consider the Examiner’s alternative conclusion that the claims are directed to “mathematical relationships/formulas.” (Final Act. 4.) Although the specification includes mathematical formulas as part of the disclosure, a claim does not recite a mathematical concept (i.e., the claim limitations do not fall within the mathematical concept grouping), if it is only based on or involves a mathematical concept. *See, e.g., Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1348-49 (Fed. Cir. 2017).

location and a rider destination location, and wherein the rideshare plan includes a plurality of stop points corresponding to each rider origin location and each rider destination location;

receiving, [by the computing device during execution of the rideshare plan], a new commute plan preference of a new rider agent, the new commute plan preference of the new rider agent including a new rider origin location, a new rider destination location, and a new rider time of trip; and

computing, [by the computing device] during execution of the rideshare plan, an updated rideshare plan based on the rideshare plan and the new commute plan preference of the new rider, the updated rideshare plan including new stop points for the new rider corresponding to the new rider origin location and the new rider destination location, the new stop points being within a predetermined radius around the stop points of the plurality of rider agents.

(Appeal Br. 42–43.) As the Examiner concludes, other than the reference to a computing device, all of the above steps are part of a certain method of organizing human activity — collaborative plan generation, such as determining rideshare plans. (Final Act. 4.) *See In re Maucorps*, 609 F.2d 481 (CCPA 1979) (using an algorithm for determining the optimal number of visits by a business representative to a client). As stated in the Revised Guidance, abstract ideas include certain methods of organizing human activity. (Revised Guidance, 84 Fed. Reg. at 52). Therefore, we agree with the Examiner that the subject matter of claim 34 recites an abstract idea, as do the remaining claims.

Further pursuant to the Revised Guidance, we consider whether there are additional elements set forth in claim 34 that integrate the judicial exception into a practical application. Revised Guidance, 84 Fed. Reg. at

54–55. Here, as discussed, Appellant argues that the requirement of “computing, [] *during executing of the rideshare plan*, an updated rideshare plan based on the rideshare plan and the new commute plan preference of the new rider,” are “specific, concrete steps, which thus sets the claims outside the Office Action's broad definition of an abstract idea,” (Appeal Br. 23, 25.) However, this requirement, directed to updating the rideshare plan during its execution, is itself part of the abstract idea of collaborative plan generation as recited in the claims, and as such cannot form the basis for concluding that the recited abstract idea is integrated into a practical application. 2019 Revised Guidance, 84 Fed. Reg. 54–55 (“evaluate integration into a practical application by: (a) Identifying whether there are any additional elements recited in the claim beyond the judicial exception(s)”; 2019 Revised Guidance, fn. 24 (“USPTO guidance uses the term ‘additional elements’ to refer to claim features, limitations, and/or steps that are recited in the claim beyond the identified judicial exception.”)).

Appellant also argues that the claims “are patent eligible subject matter because they constitute an improvement to the technical field.” (Appeal Br. 26.) However, other than the requirement of computer implementation, there is nothing in the claims that relates to technology. “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Alice*, 573 U.S. at 221.

Nor does the subject matter of the claims contain additional elements that implement the judicial exception with a “particular machine,” because the claims do not specify any details in regard to collaborative plan generation beyond the abstract idea. *See* MPEP § 2106.05 (b). Further, the method does not transform matter; at best it transforms information. *See*

MPEP § 2106.05(c). Nor does claim 34 have any other meaningful limitations (MPEP § 2106.05 (e)), or any of the other considerations set forth in the Revised Guidance regarding a determination of whether additional elements integrate the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 55. Accordingly, we conclude that the subject matter of claim 34 (and the remaining claims) is directed to a method of organizing human activity — collaborative plan generation — and thus is directed to abstract ideas, and there are no additional elements recited therein that would integrate the abstract ideas into a practical application.

Turning to the second step of the *Alice* inquiry, we consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” 573 U.S. at 217 (quoting *Mayo*, 566 U.S. at 79, 78 (2012)). We do not agree with Appellant that there are any additional elements of claim 34, whether taken individually or in combination, that would add “significantly more” to the basic collaborative plan generation abstract idea encompassed by the claims sufficient to transform the claimed abstract idea into a patent-eligible application. *Alice*, 573 U.S. at 223 (“[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.”). Other than using generic computer technology, the claimed improvement consists of the claimed abstract idea itself. “It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself.” *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 890 F.3d 1354, 1359 (Fed. Cir. 2018). Moreover, “[p]atent law does not protect claims to an

‘asserted advance in the realm of abstract ideas . . . no matter how groundbreaking the advance.’” 890 F.3d at 1359.

As discussed above, Appellant argues that the subject matter of the claims embodies an improvement in technology. (Appeal Br. 26–27.) However, as discussed, the claimed invention here only uses generic computing components to implement an abstract idea as noted previously.

Appellant also argues the specific steps of the claims “do not preempt the basic tools of science.” (Appeal Br. 27.) However, “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015).

Appellant also argues the Examiner failed to consider the claims in light of the USPTO “*Berkheimer*” guidance. (Reply Br. 2–3.) However, the Examiner’s finding is consistent with that guidance:

[T]he Specification notes that the client device may be any computing device that has network access capabilities (0019), notes that the processor, memory, interface and client devices are recited at a high level of generality and the specification describes the processor and memory as a general purpose computer component (0096), cites the process may be implemented with other system architectures not described (0083) (See also, 0083 and 0092-0096 discussing the process and system structure in general, not intending to suggest any limitation as to the scope of use or functionality of the various embodiments using any suitable device).

(Final Act. 12.)

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 34. Appellant provides no arguments that would differentiate the remaining claims from claim 34. Thus, the foregoing analysis of claim 34 is

exemplary of that for claims 35–53. *See* 37 C.F.R. § 41.37(c)(1)(iv).
Therefore, we also sustain the Examiner’s 35 U.S.C. § 101 rejection of those claims.

Second Issue

The Examiner rejects claims 34–53 because:

[T]he Specification, as originally filed . . . recites a plurality of functions and processes as being required to be performed in order to perform the function of generating a rideshare plan based on the plurality of commute plan preferences of the corresponding plurality of agents, as claimed without providing an adequate written description of a process or algorithm for performing those functions.

(Final Act. 18.) In addition, for claims 39, 46, and 53, the Examiner finds that the additional requirement of generating a rideshare plan based on “personal inconvenience cost” is insufficiently described and, because it was added during prosecution, comprises new matter. (Final Act. 20–23.) The functions and processes referred to are those that are described in the illustrative embodiment set forth in the specification for carrying out the claimed steps of receiving commute plan preferences, generating a rideshare plan (including using personal inconvenience cost for the above dependent claims), receiving a new commute plan preference, and computing an updated rideshare plan. (Spec. ¶¶ 16–91.)

Appellant argues the Examiner’s rejections fail to establish the basic findings of fact as to what the specification would have taught to a person of ordinary skill in the art, but rather are based on conjecture. (Appeal Br. 33.) We agree with Appellant. “The ‘written description’ requirement serves a teaching function . . . in which the public is given ‘meaningful disclosure in exchange for being excluded from practicing the invention for a limited

period of time.” *University of Rochester v. G.D. Searle & Co., Inc.*, 358 F.3d 916, 922 (Fed. Cir. 2004) (citation omitted). Another “purpose of the ‘written description’ requirement is ... [to] convey with reasonable clarity to those skilled in the art that, as of the filing date [], [the applicant] was in possession of the invention.” *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991). *See also Enzo Biochem Inc. v. Gen-Probe Inc.*, 296 F.3d 1316, 1329 (Fed. Cir. 2002). The requirement is satisfied when the specification “set[s] forth enough detail to allow a person of ordinary skill in the art to understand what is claimed and to recognize that the inventor invented what is claimed.” *University of Rochester*, 358 F.3d at 928, 69. Whether or not a specification satisfies the requirement is a question of fact, which must be resolved on a case-by-case basis (*Vas-Cath*, 935 F.2d at 1562–63), and it is the examiner's “initial burden [to] present[] evidence or reasons why persons skilled in the art would not recognize in the disclosure a description of the invention defined by the claims” (*In re Wertheim*, 541 F.2d 257, 263 (CCPA 1976)).

For the claims at issue, which involve functions being performed by a computer, the specification must explain how the inventor intends to achieve the claimed function to satisfy the written description requirement. *See, e.g., Vasudevan Software, Inc. v. MicroStrategy, Inc.*, 782 F.3d 671, 681–683 (Fed. Cir. 2015). Where the function is supported by an algorithm, that algorithm may be expressed “in any understandable terms including as a mathematical formula, in prose, or as a flow chart, or in any other manner that provides sufficient structure.” *Finisar Corp. v. DirecTV Grp., Inc.*, 523 F.3d 1323, 1340 (Fed. Cir. 2008).

Here, the specification sets forth in considerable detail a description of embodiments of the claimed subject matter which support the claims. Appellant points to the Specification's discussion of mathematical formulas by which the "personal inconvenience cost" may be calculated. (Appeal Br. 35 (citing Spec. ¶¶ 44–55)). The Examiner cites two particular formulas for such calculation. (Ans. 24 (citing Spec. ¶¶ 47–48)). The Examiner has not explained why one having ordinary skill in the art at the relevant time would not have understood Appellant to possess the claimed calculation of a personal inconvenience cost, or of any other claimed function. Nor has the Examiner asserted, supported by adequate explanation, that the formulas and algorithms disclosed are inadequate to show possession of the scope of the claims. *Reiffin v. Microsoft Corp.*, 214 F.3d 1342, 1345 (Fed. Cir. 2000) ("The purpose of [the written description requirement] is to ensure that the scope of the right to exclude, as set forth in the claims, does not overreach the scope of the inventor's contribution to the field of art as described in the patent specification"); *cf. LizardTech Inc. v. Earth Resource Mapping Inc.*, 424 F.3d 1336, 1345 (Fed. Cir. 2005) ("A claim will not be invalidated on [§] 112 grounds simply because the embodiments of the specification do not contain examples explicitly covering the full scope of the claim language."). The Examiner has not made a prima facie showing that this description is inadequate. Therefore, we do not sustain the Examiner's written description rejections of claims 34–53.

Third Issue

In rejecting claims 34–53 as anticipated by Olmi, for the claim requirement, "computing . . . an updated rideshare plan . . . including new stop points for the new rider . . . the new stop points being within a

predetermined radius around the stop points of the plurality of rider agents,” the Examiner relies on the disclosure in Olmi in which a “journey request” from travelers who have not yet been allocated a transit vehicle is satisfied if the current geographic position of a transit vehicle is within a given driving distance radius of the traveler’s current location. (Final Act. 29–30; Olmi pp. 33, 35–36.)

Appellant argues:

Appellant submits that [new stop points] being with[in] a predetermined radius around the stop points . . . is not disclosed by a current geographic position of a transit vehicle being within the vicinity of a traveller to be picked-up’s current location

For example, [new stop points] being with[in] a predetermined radius around origin locations and destination locations of the plurality of rider agents does not factor in a location of the vehicle. The present claims consider origin and destination locations of the new rider and the plurality of rider agents. According to Appellant’s claims, a vehicle may not be within a 3 minute driving radius of the new rider and still pick-up the new rider because the new rider is within the predetermined radius around a stop point

Conversely, with Olmi, a current geographic position of a transit vehicle being within the vicinity of a traveller to be picked-up’s current location . . . requires the location of the vehicle. Thus, the vehicle will pick up the traveller even if the traveller’s [new stop points] are not with the predetermined radius around the stop points . . . of the plurality of rider agents.

(Appeal Br. 36–37.)

We agree with Appellant. The disclosure in Olmi hinges on the traveler seeking to join a ride being within a given radius of the vehicle, whereas the claims require the new traveler’s start or stop point to be within a given radius of a start or stop point of the current rideshare plan. As

established by Appellant's various examples, there is a significant difference between the claim requirement in question and the approach of Olmi. (Appeal Br. 36–37.) Accordingly, we do not sustain the Examiner's rejection of claims 34–53 as anticipated by Olmi.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	References/ Basis	Affirmed	Reversed
34–53	101	Eligibility	34–53	
34–53	112, First Paragraph	Written Description		34–53
34–53	102(b)	Olmi		34–53
Overall Outcome			34–53	

TIME PERIOD FOR RESPONSE

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