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| EXAMINER |
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| TRAN, THANG DUC |

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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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*Ex parte* LIN LIN
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Appeal 2019-003044
Application 15/592,397
Technology Center 2600
————————

Before JOSEPH L. DIXON, MAHSHID D. SAADAT, and
BRIAN D. RANGE, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–20. We have jurisdiction under
35 U.S.C. § 6(b).

We REVERSE.

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R.
§ 1.42(a) (2018). Appellant identifies the real party in interest as Motorola
Solutions, Inc. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a method for providing incident specific information at a vehicle computer. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1.     A method for providing incident specific information at a vehicle computer, the method comprising:

receiving, at a network interface of the vehicle computer, an incident assignment including information related to a current incident from a dispatch computer;

receiving, at an input interface of the vehicle computer, a query from an occupant of a vehicle associated with the vehicle computer;

identifying, at an electronic processor of the vehicle computer, a first context parameter by co-relating the query with information related to the current incident and a second context parameter by co-relating the query with information not related to the current incident;

determining, at the electronic processor, in response to receiving the query, whether a current incident status of the vehicle identifies that the vehicle is responding to the current incident or not responding to the current incident;

generating, at the electronic processor, a response to the query based on the first context parameter when the current incident status identifies that the vehicle is responding to the current incident; and

generating, at the electronic processor, a response to the query based on the second context parameter when the current incident status identifies that the vehicle is not responding to the current incident.

REFERENCES

The prior art relied upon by the Examiner is:

| Rubenstein | US 2003/0062998 A1 | Apr. 03, 2003 |
| Bachelder et al. | US 6,940,422 B1 | Sept. 06, 2005 |
| Spector | US 2011/0071880 A1 | Mar. 24, 2011 |
| Kumhyr | US 2013/0148751 A1 | June 13, 2013 |
| Friesen | US 2015/0289122 A1 | Oct. 08, 2015 |
| Sergeev et al. | US 2016/0227382 A1 | Aug. 04, 2016 |

REJECTIONS

Claims 1, 2, 4–6, 8, 9, 11–13, 15–17, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rubenstein in view of Kumhyr and further in view of Spector.

Claims 3 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rubenstein, Kumhyr, and Spector further in view of Friesen.

Claims 7 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rubenstein, Kumhyr, and Spector further in view of Sergeev.

Claims 10 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rubenstein, Kumhyr, and Spector and further in view of Bachelder.

OPINION

*35 U.S.C. § 103*

Appellant argues that claim 1 describes two different context parameters that are each identified in response to a query that is received at the vehicle computer's input interface by co-relating the query with information related to the current incident and with information not related

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to the current incident. Claim 1 further describes that a response is generated based on one of the two identified context parameters depending on whether the vehicle is responding to the current incident or not. Appeal Br. 9.

Appellant also argues that the Examiner acknowledges that the Rubenstein reference does not teach the determining step in response to receiving a query, and the Examiner relies on the Kumhyr and Spector references as disclosing this claimed feature. Appeal Br. 12. Appellant argues that the steps of the claimed method are performed by the same computer at the vehicle in response to the query from the occupant of the vehicle rather than at the dispatch computer as taught by the Kumhyr reference. Appeal Br. 12. Appellant additionally argues both "determining" as well as "receiving a query" are performed at the vehicle computer, whereas the Spector reference discloses a request signal is received from Spector's user vehicle, but the decision engine 130 that selects the responders based on the status of other user vehicle's is implemented at the server 130, which is not the same as "vehicle computer." Appeal Br. 13; *see generally* Reply Br. 3–8.

The Examiner repeatedly relies on paragraphs 64 and 65 of the Rubenstein reference where the officer in the vehicle decides whether to take an emergency call or not take an emergency call, and where the officer does not accept the call "is equivalent to the second context parameter which is the officer vehicle will not depart to the current incident scene." Ans. 9, 11; Final Act. 41; *see generally* Ans. 9–16.

"'On appeal to the Board, an applicant can overcome a rejection by showing insufficient evidence of *prima facie* obviousness or by rebutting the prima facie case with evidence of secondary indicia of nonobviousness.'" *In*

*re Kahn*, 441 F.3d 977, 985–86 (Fed. Cir. 2006) (quoting *In re Rouffet*, 149

F.3d 1350, 1355 (Fed. Cir. 1998)).

> [T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.  If that burden is met, the burden of coming forward with evidence or argument shifts to the applicant.
>
> After evidence or argument is submitted by the applicant in response, patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument.

*In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

"A rejection based on section 103 clearly must rest on a factual basis.

. . ."  *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).  "The Patent Office

has the initial duty of supplying the factual basis for its rejection.  It may not

. . . resort to speculation, unfounded assumptions or hindsight reconstruction

to supply deficiencies in its factual basis."  *Id.*

"Obviousness may not be established using hindsight or in view of the

teachings or suggestions of the inventor."  *Para-Ordnance Mfg. v. SGS*

*Importers Int'l*, 73 F.3d 1085, 1087 (Fed. Cir. 1995) (citing *W.L. Gore &*

*Assocs., Inc. v. Garlock, Inc.,* 721 F.2d 1540, 1551, 1553 (Fed. Cir. 1983)).

"The mere fact that the prior art may be modified in the manner suggested

by the Examiner does not make the modification obvious unless the prior art

suggested the desirability of the modification."  *In re Fritch*, 972 F.2d 1260,

1266 (Fed. Cir. 1992) (citing *In re Gordon,* 733 F.2d 900, 902 (Fed. Cir.

1984)).  "It is impermissible to use the claimed invention as an instruction

manual or 'template' to piece together the teachings of the prior art so that

the claimed invention is rendered obvious."  *Fritch*, 972 F.2 at 1266 (citing

*In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991)).

Additionally, Appellant argues that the Rubenstein reference does not describe that the "query" mentioned in paragraph [0049] is in any manner connected to the concepts described in paragraphs [0064] and [0065], that describe the user's decision of whether to take the dispatch call or not, and paragraphs [0064] and [0065] do not mention that both first and second context parameters are generated by respectively co-relating the query with information related to the incident and with information not related to the incident. Appeal Br. 11. Appellant also argues that paragraphs [0064] - [0065] of Rubenstein do not disclose receiving any query from the user which requires a response to be generated where, at best, may implicitly suggest receiving an input from the user that may be indicative of whether the user has accepted or declined the dispatch call. Appeal Br. 11.

Appellant contends that contrary to the Examiner's conclusion that one of ordinary skill in the art will understand that when the officer does not accept the call, the officer vehicle will send a message to CAD indicating that the user has not accepted the call and further such a message is considered equivalent to generating a response to the query based on the second context parameter, "the message even if it is sent from the vehicle computer to the CAD, such a message is not in response to any query." Appeal Br. 11–12.

Here, we find the that the Examiner has not made specific findings or provided a persuasive line of reasoning why any of the three prior art references individually or in combination teach or suggest the claimed "identifying" step where the query input (at the vehicle computer) and the information related to the current incident (received at the network interface of the vehicle computer) are both used in the identifying step. We find the Examiner relies upon impermissible hindsight using the claimed invention as

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an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious, but the Examiner does not persuasively address the facet of the claimed invention that the computer at the vehicle performs the identifying step.

Therefore, we cannot sustain the obviousness rejection of illustrative independent claim 1 and independent claim 12 which includes similar limitations and their respective dependent claims.

With respect to the dependent claims 3, 7, 10, 14, 18, and 20, the Examiner has not identified how the additional prior art teachings remedy the deficiency in the base combination. Therefore, we cannot sustain the obviousness rejections of these dependent claims for the same reasons addressed above.

## CONCLUSION

The Examiner's obviousness rejections are reversed.

## DECISION SUMMARY

In summary:

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|---|---|---|---|---|
| 1, 2, 4–6, 8, 9, 11–13, 15–17, 19 | 103 | Rubenstein, Kumhyr, Spector | | 1, 2, 4–6, 8, 9, 11–13, 15–17, 19 |
| 3, 14 | 103 | Rubenstein, Kumhyr, Spector, Friesen | | 3, 14 |
| 7, 18 | 103 | Rubenstein, Kumhyr, Spector, Sergeev | | 7, 18 |
| 10, 20 | 103 | Rubenstein, Kumhyr, Spector, Bachelder | | 10, 20 |

| Overall Outcome | | | | 1–20 |
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REVERSED