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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* HORST KLOEDEN and FELIX KLANNER

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Appeal 2019-005187  
Application 14/275,268  
Technology Center 3600

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Before HUBERT C. LORIN, NINA L. MEDLOCK, and  
KENNETH G. SCHOPFER, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> 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 Bayerische Motoren Werke Aktiengesellschaft. Appeal Br. 1.

## BACKGROUND

The Specification discloses that “[t]he invention relates to a method for determining input data of a driver assistance unit, to a corresponding computer program, and to a corresponding device for determining input data of a driver assistance unit.” Spec. ¶ 2.

## CLAIMS

Claims 1, 10, 11, and 12 are the independent claims on appeal.

Claim 1 is illustrative of the appealed claims and recites:

1. A method for determining input data of a pedestrian protection unit of a pedestrian protection system in a vehicle, the method comprising the acts of:

receiving information data at an on-vehicle control device from a portable device of a pedestrian, the information data reflecting a state of the pedestrian determined as a function of sensor measurement data of an on-device sensor by a first classifier of the portable device using a predefined first calculation rule;

receiving raw sensor measurement data at the on-vehicle control device from at least one of: the on-device sensor, and an on-vehicle sensor of the vehicle;

generating plausibility data by a second classifier of the on-vehicle control as a function of the raw sensor measurement data using a predefined second calculation rule different from the first calculation rule;

generating fusion data as a function of both the information data received from the portable device and the plausibility data generated by the second classifier of the on-vehicle control, wherein the fusion data represents the information data checked for plausibility; and

providing the fusion data as input data to the pedestrian protection unit of the vehicle so as to cause the pedestrian

protection system to control the vehicle to avoid or otherwise mitigate harm to the pedestrian by the vehicle.

Appeal Br. 15.

## REJECTIONS<sup>2</sup>

1. The Examiner rejects claims 1 and 8–14 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852<sup>3</sup> in view of Haddick.<sup>4</sup>
2. The Examiner rejects claims 2 and 3 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852 in view of Haddick and Stahlin 716.<sup>5</sup>
3. The Examiner rejects claim 4 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852 in view of Haddick, Stahlin 716, and Farmer.<sup>6</sup>
4. The Examiner rejects claim 5 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852 in view of Haddick and Farmer.
5. The Examiner rejects claim 6 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852 in view of Haddick and Myron.<sup>7</sup>
6. The Examiner rejects claim 7 under 35 U.S.C. § 103(a) as unpatentable over Stahlin 852 in view of Haddick and Cong.<sup>8</sup>

## DISCUSSION

With respect the rejection of claims 1 and 8–14, Appellant addresses the claims as a single group. *See* Appeal Br. 8–12. We select claim 1 as

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<sup>2</sup> The Examiner has withdrawn the rejection under 35 U.S.C. § 112. *See* Ans. 3.

<sup>3</sup> Stahlin et al., US 2013/0158852 A1, pub. June 20, 2013.

<sup>4</sup> Haddick et al., US 2012/0249797 A1, pub. Oct. 4, 2012.

<sup>5</sup> Stahlin et al., US 2011/0054716 A1, pub. Mar. 3, 2011.

<sup>6</sup> Farmer, US 2005/0177290 A1, pub. Aug. 11, 2005.

<sup>7</sup> Myron et al., US 6,759,954 B1, iss. July 6, 2004.

<sup>8</sup> Cong et al., US 2002/0019697 A1, pub. Feb. 14, 2002.

representative of this group of claims, and claims 8–14 will stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

With respect to claim 1, the Examiner finds that Stahlin 852 discloses a method as claimed except that Stahlin 852 does not teach receiving information from a portable device of a pedestrian including information reflecting a state of the pedestrian as required by the claim. Final Act. 3–4 (citing Stahlin 852 ¶¶ 6, 20 48–51). With respect to this claim step, the Examiner further relies on Haddick as teaching a pedestrian portable device that provides information regarding the state of a pedestrian. *Id.* at 4 (citing Haddick ¶¶ 288, 722, 833, 862). The Examiner concludes that it would have been obvious to modify Stahlin 852 in view of Haddick to arrive at the claimed method and that such a combination would “substitute for vehicle attached sensors a portable pedestrian information data device to classify pedestrian states to enhance the recognizability of pedestrian hazards proximate the vehicle pathway in determining vehicle pedestrian avoidance.” *Id.* at 4–5.

As discussed below, we are not persuaded of error in the Examiner’s findings and conclusion regarding the rejection of claim 1.

Appellant first argues that Haddick is non-analogous art. Appeal Br. 8–9. Appellant asserts that the claims are in the field of “pedestrian protection and vehicle obstacle detection systems” while Haddick is related to smart glasses, and thus, Haddick is not in same field of endeavor. *Id.* at 8. Appellant also asserts that the problems facing the inventor here are related to “improving the accuracy of a vehicle’s pedestrian detection system,” and “there is nothing about a pair of smart glasses that allows the wearer to view

his or her surroundings as well as displayed content that is pertinent to the problems facing the inventor.” *Id.* at 8–9.

We are not persuaded of error. We determine that Haddick is at least reasonably pertinent to the problems faced by the inventor here, and thus, Haddick is analogous. *In re Klein*, 647 F.3d 1343 (Fed. Cir. 2011). The Specification discloses that quality of information is often a problem with pedestrian protection systems, such as problems caused by delays in time between a change in pedestrian state and detection of that state by the vehicle. *See* Spec. ¶¶ 3, 13, 16. Thus, the invention seeks to provide “very reliable input data for the driver assistance unit.” *Id.* at ¶ 4. As noted by the Examiner, Haddick’s system may be used at least for “identifying soldiers standing near a vehicle and their proximate locations” and “communication with soldiers on foot signaling their location.” Ans. 4 (citing Haddick ¶ 509; Fig. 29b). Further, Haddick discloses use of a device “for the identification and or tracking of friends and/or allies” including the use of “real-time network tracking” to “allow a user to know where his allies and/or friendlies are.” Haddick ¶ 858. We find that Haddick’s tracking of allies or others in real-time is at least reasonably pertinent to the issues of tracking pedestrians discussed in the Specification here. Thus, we determine that Haddick is analogous art.

Next, Appellant argues that the combination of art does not teach or suggest all of the claim limitations. *See* Appeal Br. 10–11. In particular, Appellant first asserts that “Haddick does not teach or suggest transmitting its movement data to any external device, and therefore any pedestrian status information it may acquire from its sensors would not then be provided to the vehicle of Stahlin 852.” *Id.* at 10. We disagree. As noted above,

Haddick discloses that the invention may be used to track allies and others in real time. In the same paragraph, Haddick discloses that location of individuals may be “shared in real time.” Haddick ¶ 858. Thus, we disagree with Appellant’s statement that Haddick does not suggest transmission of movement data to an external device. Additionally, Haddick discloses transmitting a soldier’s state, e.g., activity and health status, to remote sources. *Id.* at ¶ 757. Haddick also discloses linking with other soldier devices and indicates sharing data with those devices. *Id.* at ¶ 833. As another example, Haddick discloses using a local area network to share information between devices and other locations, and Haddick discloses the capability to combine inputs from several soldiers for determining a location, e.g., of hostile fire. *Id.* at ¶ 509. Finally, we also agree with the Examiner that Haddick discloses interfacing the device with a vehicle or a vehicle navigation system, which at least suggests the sharing of data between a remote device and a vehicle. *See, e.g., Id.* at ¶¶ 754, 826.

We are also not persuaded of error by Appellant’s argument that Stahlin 852 does not suggest communication of data between anything other than vehicles and that Stahlin 852 thus teaches away from the proposed combination. Even if we were to agree that Stahlin 852 only discloses sharing data between two vehicles, Appellant has not identified any evidence suggesting that Stahlin 852 discourages or disparages the use of data communication with other external devices.

Finally, Appellant also asserts that “there is no reason to believe that one of ordinary skill in the art would be capable of including [Stahlin 852’s] multiple communication means in a single pair of smart glasses.” Appeal Br. 11. However, “[t]he test for obviousness is not whether the features of a

secondary reference may be bodily incorporated into the structure of the primary reference. . . . Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). Here, as discussed above, Haddick discloses communication between a pair of smart glasses and a vehicle. Based on this disclosure, we are not persuaded that there is no reason to believe that one of ordinary skill in the art would not have been capable of implementing suitable communication means between Haddick’s device and a vehicle as disclosed by Stahlin 852.

Based on the foregoing, we are not persuaded of any error in the rejection of claim 1 by Appellant’s arguments. Accordingly, we sustain the rejection of claim 1, and we also sustain the rejection of claims 8–14, which fall with claim 1. Regarding the remaining rejections, Appellant does not present any further arguments and instead relies on the arguments discussed above. *See* Appeal Br. 12–13. We are not persuaded by these arguments with respect to the remaining rejections, and thus, we also sustain the rejections of claims 2–7.

### CONCLUSION

We AFFIRM the rejections of claims 1–14.

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 8–14	103(a)	Stahlin 852, Haddick	1, 8–14	
2, 3	103(a)	Stahlin 852, Haddick, Stahlin 716	2, 3	

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
4	103(a)	Stahlin 852, Haddick, Stahlin 716, Farmer	4	
5	103(a)	Stahlin 852, Haddick, Farmer	5	
6	103(a)	Stahlin 852, Haddick, Myron	6	
7	103(a)	Stahlin 852, Haddick, Cong	7	
<b>Overall Outcome</b>			1-14	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a). See 37 C.F.R. § 1.136 (a)(l)(iv).

**AFFIRMED**