



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes application details for 15/353,809 and examiner information for ARAQUE JR, GERARDO.

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

- Vredeveld@gardner-linn.com
clark@gardner-linn.com
patents@gardner-linn.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS FOURNIER,
LOTHAR GEILEN and BRIAN HERRON

Appeal 2019-006196
Application 15/353,809
Technology Center 3600

Before CARL W. WHITEHEAD JR., ADAM J. PYONIN and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Appellant¹ is appealing the final rejection of claims 1, 2 and 6–10 under 35 U.S.C. § 134(a). Appeal Brief 2. Claims 3–5 and 11–20 are

¹ Rather than reiterate Appellant’s arguments and the Examiner’s determinations, we refer to the Appeal Brief (filed April 4, 2019), the Reply Brief (filed August 20, 2019), the Final Action (mailed December 14, 2018) and the Answer (mailed June 20, 2019), for the respective details.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies Drew Technologies, Inc., as the real party in interest. Appeal Brief. 3.

canceled. *See* Final Action 2; *see also* Appeal Brief, Claims Appendix. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Introduction

According to Appellant, the claimed invention “generally relates to devices and methods for determining compliance with motor vehicle recalls and mandatory service updates related to vehicle safety or emissions.” *See* Specification ¶ 2.

Representative Claim

1. A device to measure and ensure compliance with vehicle recalls or mandatory service updates, the device comprising:
 - a housing;
 - a processor disposed within the housing;
 - a communication device in communication with the processor and at least partially disposed within the housing, the communication device being configured to connect to one or more electronic control modules of a vehicle under inspection;
 - wherein the processor is in communication with a database, the database containing (a) identifying data that identifies specific makes and models or Vehicle Identification Number (VIN) series that are subject to recalls or updates and (b) recall data that identifies which recall or updates should have been performed;
 - wherein the processor is configured to (1) retrieve identifying data from one or more electronic control modules of the vehicle that identifies specific make and model or Vehicle Identification Number (VIN) of the vehicle under inspection, (2) determine which recalls or updates should be performed based on the vehicle identifying data received from the vehicle and the identifying data and recall data from the database, and (3) determine that that recalls or updates have been performed on the vehicle under inspection;

wherein the database further comprises a current listing of calibration identifications (CALIDs) associated with recalls or updates;

wherein the processor is configured to retrieve at least one CALID from the vehicle under inspection;

wherein the processor is configured to compare the at least one CALID retrieved from the vehicle under inspection with the current listing of calibration identifications (CALIDs) associated with recalls or updates from the database;

wherein the processor is configured to determine that that recalls or updates have been performed on the vehicle based on the comparison of the at least one CALID retrieved from the vehicle under inspection with the current listing of calibration identifications (CALIDs) associated with recalls or updates in the database, wherein a match of the at least one CALID retrieved from the vehicle under inspection with at least one of the current listing of calibration identifications (CALIDs) of the database indicates that the recall or update has been performed; and

wherein the processor is configured to modify or create an inspection log stored in a storage device of the vehicle under inspection, wherein the inspection log includes recall identification information including at least one time, date, location, or identifying number or name of completed recalls or updates programmed into the vehicle.

References

Name²	Reference	Date
Corn	US 2008/0040268 A1	February 14, 2008
Jefferies	US 2013/0317693 A1	November 28, 2013

² All reference citations are to the first named inventor only.

*Rejections on Appeal*³

Claims 1 and 6–10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Corn and Jefferies.⁴ Final Action 16–24.

Claim 2 stands rejected under 35 U.S.C. § 103 as being unpatentable over Corn, Jefferies and Official Notice. Final Action 24–26.

ANALYSIS

The Examiner finds Corn discloses “a housing; a processor disposed within the housing; a communication device in communication with the processor and at least partially disposed within the housing, the communication device being configured to connect to one or more electronic control modules of a vehicle under inspection.” Final Action 17 (citing Corn, Figure 2, ¶¶ 32, 33). The Examiner cites the entirety of Corn’s paragraphs 32 and 33 without specifying which elements of Corn teach the dealer’s computer communicating with a vehicle’s electronic control units. *See* Final Action 17. However, we find the claimed housing, processor and communication device reads on the car dealer’s computer disclosed in Corn’s paragraph 33 (“Dealer’s computer **24** then transmits the VIN to the master database **34** at third party location **30**, across a communication link

³ The Examiner has withdrawn the 35 U.S.C. § 101 rejection of claims 1, 2 and 6–10. *See* Answer 3. The Examiner is advised to consult the 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (January 7, 2019) to evaluate if the claims are directed to an abstract idea.

⁴ The Examiner addresses cancelled claim 11 in the 35 U.S.C. § 103 rejection; we view this as harmless error. *See* Final Action 17 (“(Claim 11) a method to measure and ensure compliance with vehicle recalls or mandatory service updates by a device, the method comprising the steps of:).”

Appeal 2019-006196
Application 15/353,809

28 via network interfaces **26** and **36** at the dealer’s side and master database’s side, respectively.”).

Appellant contends, “Corn discloses a vehicle that has an RFID tag on the vehicle” and “[w]hen the vehicle pulls into a service shop, an RFID tag reader located in the service shop reads the information from the RFID tag on the vehicle.” Appeal Brief 14. Appellant argues, “However, the device disclosed in Corn cannot communicate directly with one or more electronic control units of the vehicle.” Appeal Brief 14 (emphasis added).

We do not find support for Appellant’s assertion that “Corn cannot communicate directly with one or more electronic control units,” and Appellant does not indicate where in Corn there is support for the assertion. *See* Appeal Brief 14. Nor are we persuaded the Examiner errs in finding the disputed limitations to be obvious in view of the cited art. Corn discloses a “Vehicle **10** has associated with it an identification device **12**, which in the illustrative embodiment is a passive RFID transponder having read/write capabilities.” Corn ¶ 32. Corn further discloses, “that any identification device could be used, preferably one that allows a unique identification code such as a VIN or serial number to be automatically read at a distance whenever the vehicle enters or exits a defined area.” Corn ¶ 32 (emphasis added). Corn does not specify the type of identification device that could be used to identify the vehicle other than a passive RFID transponder. However, Jefferies discloses another type of identification device to identify the vehicle, “The ODB [on-board diagnostic] port may be used to query a wide range of information from the vehicle, including, but not limited to, vehicle information, such as a Vehicle Identification Number (VIN), Calibration Identification, Calibration Verification Number, Electronic Control Unit or Module (ECU and ECM) firmware version.” Jefferies ¶ 45

Appeal 2019-006196
Application 15/353,809

(emphasis added). We find Jefferies resolves Corn’s deficiency because in addition to Jefferies communicating with a vehicle’s electronic control unit and providing a vehicle’s calibration information, Jefferies also discloses “a method of remotely gathering vehicle data and searching the national vehicle recall database and displaying that specific vehicle’s recall information (recall notice, repair status; repaired/not repaired).” Jefferies ¶ 10; *see* Final Action 19–20.

Appellant contends, “combining Corn with Jefferies, the other cited reference, would not disclose or suggest the claimed invention to one skilled in the art” because “Jefferies does not disclose updating a vehicle and does not disclose storing update information on the memory of the vehicle itself.” Appeal Brief 15. Claim 1 recites, “wherein the processor is configured to modify or create an inspection log stored in a storage device of the vehicle under inspection.” Appellant’s Specification discloses, “By comparing the CALID retrieved from the vehicle 120 to the approved recall/update CALID stored in the database 122, the device 110 makes a positive determination as to whether the recall/update has been complied with.” Specification ¶ 33; *see* Appeal Brief 4. Appellant’s Figure 1 shows the database 122 is connected to the vehicle via an OBD cable 118. *See* Specification ¶ 12.

The Specification discloses:

As such, the memory device 116 may be a magnetic storage device, an optical storage device, a solid-state storage device, or any suitable device capable of storing digital information. The communication device 114 may be any device capable of allowing for the processor [112] to communicate with other electronic systems outside the device 110 itself. For example, the communication device 114 may be an OBD type device capable of connecting to an OBD cable 118.

Specification ¶ 12.

We do not find Appellant’s arguments persuasive of Examiner error because Jefferies also discloses connecting a database to a vehicle via an OBD port. *See* Jefferies ¶ 45. Further, both Corn and Jefferies disclose databases that are updated. *See* Corn ¶ 34 (“The database could include notes regarding the customer’s history and recommendations for accommodating the customer, such as giving the customer special care and handling because the customer is perceived as being potentially litigious, or is to be accorded VIP treatment”); Jefferies ¶ 10. We agree with the Examiner that the combination of Corn and Jefferies teaches, or at least suggests, a reasonable construction of the recited modifying or creating of an inspection log stored in a storage device *of* the vehicle. *See* Answer 6. We sustain the Examiner’s obviousness rejection of claim 1, as well as, claims 2 and 6–10 not argued separately. *See* Appeal Brief 15.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 6–10	103	Corn, Jefferies	1, 6–10	
2	103	Corn, Jefferies	2	
Overall Outcome			1, 2, 6–10	

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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED