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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DONALD REMBOSKI, JACQUI DEDO,
ASSI BITTON, and YOAV MEGGED

Appeal 2020-000754
Application 15/404,304
Technology Center 3600

Before JEREMY M. PLENZLER, LISA M. GUIJT, and
LEE L. STEPINA, *Administrative Patent Judges*.

STEPINA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–17, 24, 25, 49, and 50.² We have jurisdiction 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 Traffilog Ltd. as the real party in interest. Appeal Br. 3.

² Claims 18–23 and 26–48 have been cancelled. Appeal Br. 36–38 (Claims App.).

CLAIMED SUBJECT MATTER

Appellant's disclosure is directed to methods and systems for evaluating vehicle performance and selecting vehicle configurations.

Claim 1, reproduced below, is illustrative of the claimed subject matter.

1. A method for evaluating a performance of a vehicle when the vehicle is operated according to a given application, the method comprises:

sensing sensed vehicle parameters by multiple vehicle sensors that comprise multiple types of sensors;

determining, by a vehicle monitor, based on the sensed vehicle parameters, duty related parameters of multiple vehicle components; wherein the vehicle monitor is mechanically coupled to the vehicle or installed in the vehicle; and

calculating the performance of the vehicle when operating according to the given vehicle configuration;

wherein the calculating is based on, at least, (i) the duty related parameters of the multiple vehicle components and (ii) relationships between the duty related parameters of the multiple vehicle components and the performance of the vehicle.

Appeal Br. 34 (Claims App.).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Duncan	US 2015/0161893 A1	June 11, 2015
Cox	US 2015/0228129 A1	Aug. 13, 2015

REJECTIONS

I. Claims 1–17, 24, 25, 49, and 50 are rejected under 35 U.S.C. § 101 as being patent-ineligible.

II. Claims 1–17, 24, 25, 49, and 50 are rejected under 35 U.S.C. § 103(a) as unpatentable over Cox and Duncan.

OPINION

Rejection I—Eligible Subject Matter

Claims 1–17, 49, and 50

The Examiner determines that claim 1 is “directed to the comparison of information regarding a sample or test subject to a control or target data.” Final Act. 3. The Examiner concludes that claim 1 is similar to the claim at issue in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). *Id.* at 4–5.

Appellant’s argument begins with reciting legal principles applicable to the patent eligibility analysis, referring to the 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “Revised Guidance”).³ Appeal Br. 29–30. Appellant reproduces a portion of the Revised Guidance listing the three major groupings of concepts identified by the courts as abstract ideas, namely, (i) mathematical concepts, (ii) certain methods of organizing human activity, and (iii) mental processes. *Id.* at 30. After these opening remarks, Appellant

³ Appellant states, “[a]ll the arguments related to the 35 USC 101 rejections (especially the reference to the **Berkheimer memo**) are incorporated herein.” Appeal Br. 29. We understand Appellant to be referring to an April 19, 2018, Memorandum from Robert W. Bahr, Deputy Commissioner for Patent Examination Policy to the Patent Examining Corps, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” and to our reviewing court’s decision in *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). However, Appellant makes no arguments regarding *Berkheimer*. See Appeal Br.

concludes “[t]he claims of the current application do not fall on any of these groupings and thus the 35 USC [§] 101 [ground] should be rejected.” *Id.*

Appellant next quotes portions of the Revised Guidance relating to Step 2A, Prong Two, reproduces claims 1 and 24 in their entirety with certain limitations underlined, and states “[c]laim 1 of the current application discusses a highly efficient method for evaluating a performance of a vehicle - which is a practical application,” and “[c]laim 24 of the current application claims a highly efficient method for selecting a selected vehicle configuration - which is a practical application.” *Id.* at 30–32.

Appellant’s arguments do not apprise us of Examiner error. An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *See Alice*, 573 U.S. 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.” *Id.* 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)).

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 (internal citation omitted). “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].’” *Id.* (alteration in the 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.*

Under Step 2A of the Revised Guidance, 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); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) §§ 2106.05(a)–(c), (e)–(h) (9th Ed., Rev. 08.2017, 2018)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look, in 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

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

See Revised Guidance.

Step 1 – Statutory Category

Claim 1 recites “[a] method for evaluating a performance of a vehicle when the vehicle is operated according to a given application” (Appeal Br. 34 (Claims App.)), and, therefore, falls into the process category of subject matter.

Step 2A, Prong 1 – Recitation of Judicial Exception

Claim 1 sets forth a method involving two kinds of parameters, namely, “sensed vehicle” parameters and “duty related” parameters. *See id.* Claim 1 recites, in part, “determining, by a vehicle monitor, based on the sensed vehicle parameters, duty related parameters of multiple vehicle components.” *Id.* Once the step of sensing the sensed vehicle parameters is performed, claim 1 does not place any specific limits on the manner of determining the duty related parameters. Appellant’s Specification states, “[t]he duty related parameters may reflect S-N curves of components that are subjected to cyclic fatigue failure or may be any compressed representation of the sensed vehicle parameters. For example- a single duty related

parameter may represent the values of sensed vehicle parameters over a period of time.” Spec. ¶ 58. The Specification further explains, “[t]he *monitoring and/or calculation of the duty related parameters* of the multiple vehicle components provides a real estimate of the actual application (the actual manner in which the vehicle is used by a client) and may be used for selecting the vehicle configuration that may fit that given application.” Spec. ¶ 62 (emphasis added). Paragraph 178 of the Specification states, “[a]dditionally or alternatively, duty related parameters may be deducted based on information provided by the OEM, by clients of the OEM, [] and the like.” Thus, the broadly recited step of “determining” is a step that can be performed mentally (monitoring).

Claim 1 further recites, “calculating the performance of the vehicle when operating according to the given vehicle configuration.” Appeal Br. 34 (Claims App.). The plain and ordinary meaning of this recitation is the performance of a mathematical calculation or mental process. The Specification does not alter this meaning.

Finally, claim 1 includes a “wherein” clause that further defines the calculation step by reciting “the calculating is based on, at least, (i) the duty related parameters of the multiple vehicle components and (ii) relationships between the duty related parameters of the multiple vehicle components and the performance of the vehicle.” *Id.* Thus, the last paragraph of claim 1 is merely an extension of the step of “calculating” recited in the prior paragraph.

As both the “determining” and “calculating” steps are mathematical concepts or are mental processes that can be performed in the human mind, claim 1 recites an abstract idea, one of the judicial exceptions. *See Alice*,

573 U.S. at 216. Accordingly, the outcome of our analysis under Step 2A, Prong 1, requires us to proceed to Step 2A, Prong 2. *See Revised Guidance*, 84 Fed. Reg. at 54.

Step 2A, Prong 2 – Integrated Into a Practical Application

In Step 2A, Prong 2, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. *See Revised Guidance*. This evaluation requires an additional element or a combination of additional elements in the claim to apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception. *See id.*

Appellant’s contention that “[c]laim 1 of the current application discusses a highly efficient method for evaluating a performance of a vehicle - which is a practical application” (Appeal Br. 31) is merely conclusory and provides no explanation supporting a finding that claim 1 integrates the above-noted exceptions into a practical application. Claim 1 recites three steps, specifically, “sensing,” “determining,” and “calculating.” As discussed above, the steps of determining and calculating are abstract ideas. The remaining step, sensing, is broadly recited and requires no specific technical process. We see no improvement to other technology or technical field, no implementation via a particular machine, and no transformation of an article from one form to another. The requirement in claim 1 that the

vehicle monitor that performs the “determining” step is “mechanically coupled to the vehicle or installed in the vehicle” does not indicate that the recited method is performed on a particular machine, nor does Appellant contend it does. *See* Appeal Br. Rather, this recitation of a mechanical coupling is generically recited, and, in light of Appellant’s Specification, does not appear to require anything more than existing electronic components, much less require claim 1 to be performed on a particular machine as this term relates to the machine-or-transformation test. *See* Spec. ¶¶ 33, 93, 113, 475–478; *see also Bilski*, 561 U.S. at 604.

In summary, claim 1 does not integrate the recited judicial exception into a practical application. Thus, we proceed to step 2B.

Step 2B – Well-Understood, Routine, Conventional Activity

With respect to Step 2B, Appellant states, “[a]ll the arguments related to the 35 USC [§] 101 rejections (especially the reference to the **Berkheimer memo**) are incorporated herein.” Appeal Br. 29. We understand Appellant to be referring to an April 19, 2018, Memorandum from Robert W. Bahr, Deputy Commissioner for Patent Examination Policy to the Patent Examining Corps, entitled “Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*)” and to our reviewing court’s decision in *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). However, Appellant makes no arguments regarding *Berkheimer*. *See* Appeal Br. Rather, Appellant’s entire discussion of *Berkheimer* is the statement reproduced above. Appellant’s mere reference to the existence of the *Berkheimer* case does not apprise us of Examiner error.

Of the three steps recited in claim 1 (“sensing,” “determining,” and “calculating”) only the step of “sensing sensed vehicle parameters by multiple vehicle sensors that comprise multiple types of sensors” is not a recitation of a calculation or a mental process. Claim 1 recites this step at a high level of generality, failing to limit the parameters sensed, the structure used to perform the sensing function, or even that structure is required to perform this data gathering function. We see no reason such generic data gathering, taken as an individual step or in combination with the remaining calculation and determination steps in claim 1, amounts to significantly more than the above-noted judicial exception itself.

We have considered all of Appellant’s arguments in support of the patent eligibility of claim 1, but find them unpersuasive. Appellant makes no additional arguments in support of any claims depending from claim 1. *See* Appeal Br. Accordingly, we sustain the rejection of claims 1–17, 49, and 50 as being directed to patent-ineligible subject matter.

Claim 24

Independent claim 24 recites substantially similar steps to those discussed above regarding claim 1, but requires the step of calculating to be “for each vehicle configuration out of a group of vehicle configurations a performance of a vehicle when operated according to a given application and configured according to the vehicle configuration.” Appeal Br. 36 (Claims App.). Claim 24 also recites a step not recited in claim 1, specifically, “selecting the selected configuration out of the group of vehicle configuration[s].” Claim 24 requires that the “vehicle configurations of the group of vehicle configurations differ from each other by one or more major components” and “a major component of the one or more major component

is selected out of an engine, a transmission, a driveline, a brake and an axle.”
Id.

Appellant’s argument in support of the patent eligibility of claim 24 is to state that claim 24 “claims a highly efficient method for selecting a selected vehicle configuration - which is a practical application,” followed by copy of claim 24 with certain limitations underlined. Appeal Br. 32.

As discussed above, the plain and ordinary meaning of the step of “calculating” is the performance of a mathematical calculation or mental process. We do not view the additional limitations relating to the step of calculating a performance of a vehicle under the particular conditions recited in claim 24 to integrate this judicial exception into a practical application in any sense relevant to patent eligibility.

Regarding the step of “selecting the selected configuration out of the group of vehicle configuration[s],” this step can be performed entirely in the human mind, i.e., it amounts to a mental process, which is one of the groupings of abstract ideas that qualify as a judicial exception to patent eligibility. Accordingly, we sustain the rejection of claim 24 as being directed to patent-ineligible subject matter.

Claim 25

With respect to claim 25, Appellant states, “the same arguments applicable to claim 24 should be applied.” Appeal Br. 32. Claim 25 recites a computer program product storing instructions that perform a method similar to the method recited in claim 1. Appeal Br. 37 (Claims App.). For the same reasons discussed above regarding the rejection of claim 1 as being directed to patent ineligible subject matter, we sustain the rejection of claim 25.

Rejection II—Unpatentability over Cox and Duncan

Appellant makes no arguments contesting the rejection of claims 1–10, 14, 15, 17, 25, and 49. *See* Appeal Br. Accordingly, any argument that these claims patentably distinguish over the Examiner’s proposed combination of the teachings of Cox and Duncan is waived.

Claims 11 and 12

Claim 11 depends from claim 1 and recites “an aggregate size of the duty related parameters of the multiple vehicle components is less than one thousandth of an aggregate size of the sensed vehicle parameters.” Appeal Br. 35 (Claims App.). Similarly, claim 12 recites “an aggregate size of the duty related parameters of the multiple vehicle components is less than one millionth of an aggregate size of the sensed vehicle parameters.” *Id.* The Examiner identifies paragraph 65 of Cox as teaching these claim limitations. Final Act. 9–10.

Appellant argues that paragraph 65 of Cox merely indicates the fuel efficiency as a percentage of a hypothetical optimal fuel efficiency, and this is not a teaching of an aggregate size of duty related parameters as being less than one thousandth of an aggregate size of a sensed vehicle parameter.

In reply, the Examiner states:

Cox teaches that a vehicle control system compares sensed vehicle data (¶ 65; from vehicle monitor device 20 of Figure 1) and compares these data to “stored or recorded information,” including but not limited to efficiency percentages (¶ 65). Cox does not impose any limits on the results of these comparisons, or teach that the controller stops taking measurements once the comparison ratios reach a threshold level. The controller of Cox draws from a number of “hypothetical routes” in order to compile the historical data (¶ 65). These historical data are then compared with sensor measurements (¶ 65). Given the range of historical

data that Cox contemplates compiling (§§ 62-65; “alternative routes” and “alternative variations”), it would fall within the range of normal comparison results to see duty related parameters that are less than one thousandth, or one millions, of sensed values.

Ans. 4.

During examination of a patent application, pending claims are “given their broadest reasonable construction consistent with the specification.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Appellant sets forth no explicit interpretation of the term “size” in claims 11 and 12. *See* Appeal Br. 23–26. However, Appellant’s Specification discusses the ratios of the aggregate size of the duty related parameters to the aggregate size of the sensed vehicle parameters recited in claims 11 and 12 and then states “[d]ue to the size difference[,] the transmission of the duty related parameters of the multiple vehicle components is cost effective and does not impose unreasonable limits of the bandwidth.” Spec. ¶ 59.

Paragraphs 88–91 of the Specification discuss the reduction of “data size” and the resultant reduction in the need for transmission bandwidth.

Consistent with the Specification, the broadest reasonable interpretation of the term “aggregate size” in claims 11 and 12 is “data size,” i.e., the size of memory required to store (or the amount of bandwidth required to transmit) the duty related parameter or sensed vehicle parameter. A preponderance of the evidence does not support a finding that paragraphs 62–65 disclose the ratios of data size recited in claims 11 and 12. Accordingly, we do not sustain the rejection of these claims as unpatentable over Cox and Duncan.

Claim 13

Claim 13 depends indirectly from claim 1 and recites “a duty related parameter of vehicle component of the multiple vehicle components is a stress cycle histogram of the vehicle component.” Appeal Br. 35 (Claims App.). The Examiner finds paragraph 126 of Cox discloses this limitation. Final Act. 10. Appellant contends that paragraph 125 and 126 of Cox both fail to support the Examiner’s finding. Appeal Br. 26–28.

In reply, the Examiner states,

Cox teaches that “the vehicle profiler 430 can analyze the vehicle information” (¶ 126; vehicle profiler 430 of Figure 4) to determine vehicle component longevity. Cox also teaches that the vehicle controller collects information on braking frequency (¶ 120) in addition to other vehicle properties. Given [the] repeated references to compilation of historical data (¶¶ 70, 109, 111, 113), and the repeated references to data analysis (¶¶ 25, 55–56, 72–73, 125–126) and braking frequency (¶ 120), *a person of skill in the art might well resort to using a histogram, such as a stress cycle histogram, to draw meaning from these data.*

Ans. 4–5 (emphasis added). Regardless of whether a person of ordinary skill in the art might have resorted to the use of a histogram at the time the invention was made, the Examiner’s finding that Cox actually discloses the use of a histogram as recited in claim 13 is not supported by a preponderance of the evidence. Accordingly, we do not sustain the rejection of claim 13 as unpatentable over Cox and Duncan.

Claim 16

Claim 16 depends from claim 1 and recites, “the determining of the duty related parameters of multiple vehicle components comprises measuring a distribution of engine power over time.” Appeal Br. 36 (Claims App.). The Examiner finds Duncan discloses this process in paragraph 30. Final Act. 10.

Appellant quotes paragraph 30 of *Cox*, with certain portions underlined, and asserts “paragraph [0030] fails to teach or suggest *the determining of the duty related parameters of multiple vehicle components comprises measuring a distribution of engine power over time*[.] Accordingly – Cox fails to teach or suggest the subject matter of claim 16. Duncan fails to cure this deficiency.” Appeal Br. 29.

As the Examiner relies on paragraph 30 of Duncan, not Cox, to teach the above-noted limitation in claim 16, Appellant’s argument does not address the Examiner’s rejection. Specifically, Appellant’s argument that *paragraph 30 of Cox* fails to disclose the pertinent process does not apprise us of Examiner error. Accordingly, we sustain the rejection of claim 16 as unpatentable over Cox and Duncan.

Claims 24 and 50

Claim 24 recites “selecting the selected configuration out of the group of vehicle configuration.” Appeal Br. 36 (Claims App.). Claim 24 limits what the vehicle configurations may be, reciting “[the] vehicle configurations of the group of vehicle configurations differ from each other by one or more major components . . . a major component of the one or more major component is selected out of an engine, a transmission, a driveline, a brake and an axle.” *Id.* Claim 50 depends from claim 1 and recites substantially similar limitations to those discussed above regarding claim 24. *Id.* at 38. Appellant argues for the patentability of these claims together. Appeal Br. 23.

The Examiner finds that paragraphs 28–32 and 73 of Cox disclose the above-noted “selecting” step. Final Act. 11. Appellant contends Cox

merely discloses planning a route, selected from various routes, but the route is selected for only one vehicle (or vehicle configuration). Appeal Br. 22.

In response, the Examiner finds

Cox teaches a route analysis system “can be directed to a user account or device in a manner that is asynchronous with the use of the vehicle” (¶ 32). Based on this teaching, as well as a route analysis system (¶ 31) that “includes processes data provided from the vehicle monitor device” (¶ 30), a person of skill in the art might well conclude that the Cox reference considers the general settings and configurations of the vehicle in calculating a performance level, and trying to improve that performance level by choosing a preferable route (¶¶ 31–32).

Ans. 3.

We do not understand paragraphs 30–32 of Cox to disclose selection from among various vehicle configurations as recited in claim 24 because the cited portion of Cox teaches that a route may be optimized based on the characteristics (metrics) of a particular vehicle, not that various configurations of a vehicle are selected for a given route. *See* Cox ¶¶ 30–32.

Next, the Examiner finds that, based on Cox’s disclosure in paragraphs 64 and 89, “a person having ordinary skill in the art would conclude that Cox teaches that claimed configuration calculation and selection steps of Claim 24.” Ans. 4.

As is the case with paragraphs 30–32 of Cox, paragraphs 64 and 89 appear to relate to the determination of different characteristics of a single vehicle, not configurations of that vehicle. Accordingly, the Examiner’s rejection of claims 24 and 50 is based on an unsupported finding of fact, and we do not sustain the rejection of these claims as unpatentable over Cox and Duncan.

CONCLUSION

The Examiner's rejections are affirmed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference/Basis	Affirmed	Reversed
1-17, 24, 25, 49, 50	101	Eligibility	1-17, 24, 25, 49, 50	
1-17, 24, 25, 49, 50	103	Cox, Duncan	1-10, 14-17, 25, 49	11, 12, 13, 24, 50
Overall Outcome			1-17, 24, 25, 49, 50	

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

AFFIRMED