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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HIROSHI KAMATA

Appeal 2020-001107
Application 15/869,937
Technology Center 3600

Before JENNIFER D. BAHR, BRETT C. MARTIN, and
GEORGE R. HOSKINS, *Administrative Patent Judges*.

BAHR, *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 1–20 under 35 U.S.C. § 102(a)(1) as anticipated by Stehle et al. (US 2007/0293958 A1, published Dec. 20, 2007, hereinafter “Stehle”). We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42.

CLAIMED SUBJECT MATTER

Appellant’s invention is directed to “the technology of a visitor traffic line indicating the traffic of visitors” to locations where commodities and/or services are, or are proposed to be, provided. Spec. ¶¶ 2, 7–10. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. An information processing system comprising:
 - a processor configured to control the system to implement:
 - a visitor traffic line generator configured to retrieve a shortest route from a location on a road to a destination on a basis of road information included in map information and to generate a visitor traffic line indicating a line of visitor’s traffic by setting the shortest route as the visitor traffic line;
 - a predicted traffic volume calculator configured to calculate predicted traffic volumes of visitors on the visitor traffic line on a basis of numbers of visitors traveling the visitor traffic line;
 - a visitor traffic generation unit configured to generate a visitor traffic based on the visitor traffic line, visitor attribute information computed from the visitor traffic line, and the predicted traffic volumes of visitors; and
 - a proposal unit configured to display and propose, on a graphical user interface, a commodity and/or service according to the visitor attribute information and the commodity and/or the service to be recommended, based on the visitor traffic, at a specified location on the visitor traffic line.

OPINION

Appellant criticizes the Examiner’s rejection as failing to provide sufficient explanation and specificity as to exactly how Stehle discloses the features of the claims. *See* Appeal Br. 6 (stating that “the Office’s blanket reference to nearly every figure without further designation of the pertinence of these citations does not meet the obligation under 37 C.F.R.

§ 1.104(c)(2)”). Appellant’s criticism is justified. As Appellant points out, the vast majority of the rejection of claim 1 amounts to a regurgitation of the claim language with a parenthetical inviting us to “see at least [several enumerated drawing figures and/or paragraphs of Stehle]” to inform our understanding of the rejection.² *Id.*; see Final Act. 2–3. Further, the rejection of other claims makes little attempt to separately address the different limitations of the various claims. See Final Act. 3–5.

In particular, Appellant contends that “Stehle does not teach ‘suggesting a commodity or service,’ as required by independent claims 1, 11[,], and 18.” Appeal Br. 7. Further, Appellant argues that “Stehle also does not teach or suggest ‘a commodity and/or service to be recommended based on the visitor traffic.’” *Id.* We understand Appellant’s arguments to be directed to the “proposal unit configured to display and propose, on a graphical user interface, a commodity and/or service according to the visitor attribute information and the commodity and/or the service to be recommended, based on the visitor traffic, at a specified location on the visitor traffic line” recitation in claim 1; to the “proposal unit configured to display and propose, on a graphical user interface, a commodity and/or service according to the visitor attribute information and the commodity and/or the service to be recommended, based on the visitor traffic line, at a specified location on the visitor traffic line” recitation in claim 18; and to the “location proposal unit configured to display and propose, on a graphical

² Unfortunately, Appellant’s summary of the claimed subject matter on pages 3–5 of the Appeal Brief takes a similar approach in mapping the claimed subject matter to the underlying disclosure and, thus, is not as helpful as it could be.

user interface, a location on the visitor traffic line on a basis of the visitor traffic, the location being a location at which a predetermined commodity and/or service according to the visitor attribute information is to be provided” recitation in claim 11. *See* Appeal Br. 12, 15, 17 (Claims App.). Appellant’s Specification explains that a service proposal can “include a proposal for a new commodity and the sales time thereof, a proposal for the sales time of a conventional commodity, and a proposal for an inventory volume.” Spec. ¶ 181. In particular, the Specification explains that

a service proposal [may] include a proposal of loading a vending machine with coffee bottles for commuters which can be capped, a proposal for the sale of sandwiches in the early morning, a proposal for commodity layouts corresponding to time zones at a convenience store or the like, and a proposal for time zones in which a discount or bonus is provided.

Id.

In addressing the “proposal unit” in the rejection, the Examiner offers nothing more than a direction to “see at least fig. 14-17 and par. 2-5, 103-104” of Stehle. Final Act. 3 (boldface omitted). Paragraphs 2–5 are a summary of Stehle’s invention, with paragraph 2 constituting simply an introduction to the summary. Paragraph 3 generally describes creating a national traffic-prediction model based on considering user-entered information, as well as demographic data and other socioeconomic data to draw inferences about people’s traffic patterns to more accurately predict traffic patterns, and also discloses that location-based services may be provided. Paragraph 4 describes presenting to a user advisory data based on a user profile, which may include road segments of interest to a user. Paragraph 5 describes optimizing traffic predictions, forecasting traffic

patterns using user-assigned trip patterns, communicating traffic-related alerts based on user information, and presenting location indications based on temporal or geographical proximity. Paragraph 103 discloses that system-provided routes are usually based on the shortest time or distance, but recognizes that users may wish to allocate a higher priority to other factors, such as designating a particular portion of the route, and discusses allowing users to do so. Paragraph 104 discusses using indicated preferences of multiple users, such as large numbers of users designating a particular segment of a route, in recommending routes to other users who have not provided such a specific indication. Stehle's system may present by default the shortest distance or shortest time route and also present an alternative that includes the segment designated by the user. Stehle ¶ 104. For example, if a user includes a notation such as "construction for the next month" in designating a certain segment of a route, when another user requests routing, Stehle's system may provide the default route along with a suggestion and a note indicating that this alternative route may be desirable due to construction on the default route. *Id.* It is not immediately apparent from the rejection where in these paragraphs of Stehle, or in Figures 14–17, the Examiner finds a "proposal unit" as called for in any of claims 1, 11, and 18.

In responding to Appellant's request for the Examiner to identify with more specificity the portion(s) of Stehle's disclosure corresponding to the claimed "proposal unit," the Examiner first attempts to justify the lack of specificity in identifying the structure in Stehle corresponding to the claimed "proposal unit" in the rejection by pointing out Appellant's use of "broad language" in the claims. Ans. 6. The Examiner states that "the sections

cited in the prior art may seem to encompass a broad section of the reference, this is only because all of the cited sections read on the claimed limitations *in one way or another.*” *Id.* (emphasis added). This response is unavailing. The breadth of Appellant’s claims does not categorically discharge the Examiner’s burden to identify with sufficient specificity where the prior art reference shows each claim limitation to inform Appellant as to the reasons for the rejection. Indeed, the broader the claim limitation, the easier it should be for the Examiner to specify a corresponding disclosure.

Perhaps recognizing the need to provide additional explanation as to where Stehle discloses the claimed subject matter, the Examiner states that, in order to satisfy the “proposal unit” limitations of the claims, the prior art need only show “[s]ome sort of suggesting, proposing, advertising, displaying of a commodity--which is interpreted to be any item, material or type of product and even can be taken to mean something of value such as time”³ or “a service which [is] interpreted to be any form of traffic and/or route related guidance/directions prompts and/or presenting something such as a pit stop [based on predefined locations] or weather and/or road hazard alerts.” *Id.* The Examiner then directs our attention to several paragraphs of Stehle not previously relied on in the rejection itself. *See id.* at 6–7.

More specifically, the Examiner finds that Stehle “discloses alerting, proposing, advertising and/or suggesting the points of interest such as an upcoming gas station and/or grocery store in order to refuel and/or

³ To the extent that the Examiner considers displaying to be sufficient to satisfy the claim limitation “configured to display and propose,” we do not agree. Such a claim construction fails to take into account that the claims require that the proposal unit be configured both to “display” and to “propose,” which evinces that proposing is different than displaying.

recharge.” Ans. 6 (citing Stehle ¶¶ 96–101). According to the Examiner, “Stehle here clearly suggests/proposes a physical location of a commodity such as a gas station and/or a grocery store.” *Id.* For the reasons that follow, the Examiner’s findings misinterpret what Stehle teaches in paragraphs 96–101.

Paragraph 96 of Stehle discloses the system using the number of gas stations and their locations, along with information about how often a particular user will need to stop for gas based on the type of car the user drives, to further increase the accuracy of the traffic-prediction component. Stehle’s paragraph 96 does not mention displaying gas stations and their locations along a user’s route and proposing one or more of them.

In paragraph 97, Stehle discloses that a user may indicate preferred shopping patterns, such as a pattern of stopping at a specific grocery store during a specific day and time of the week each week. In other words, the user, not the system, enters this shopping pattern; the system does not display and propose this grocery store. Stehle discloses that this information can be used as a factor by the traffic-prediction component to further increase the accuracy of its results. Stehle ¶ 97.

In paragraphs 98–100, Stehle discloses using both user-entered data, such as stopping pattern information as discussed above, and real-time data, which reflects the actual movement of users, to generate more accurate traffic prediction forecasts. These paragraphs do not disclose displaying and proposing a gas station or grocery store.

In paragraph 101, Stehle discloses providing a suggested route based on a user-provided origin and destination and a computer algorithm, but also allowing a user to customize that route by, for example, specifying a

particular bridge that the user prefers to take or a certain gas station that the user likes to travel past. In this way, the user may indicate that a specific segment of a route be taken. Stehle ¶ 101. Stehle does not disclose, in paragraph 101, displaying and proposing a gas station.

The Examiner also finds that “Stehle proposes taking certain actions based on predefined time requirements, such as notifying--suggesting to the user--that they will not be able to make it in the desired time to a previous engagement such as daycare (see at least par. 131).” Ans. 6. In paragraph 131, Stehle discloses that, where a daycare location, arrival time window, and duration of delay have been associated with a particular user, and the system determines that a traffic jam on the user’s route associated with the daycare location will delay the user’s arrival to beyond the predefined window, “an alert can be sent to the user informing the user that the user will not make the predefined window.” Stehle also discloses that the user “can be presented with options for an alternative route.” Stehle ¶ 131. The Examiner explains that this portion of Stehle “suggests saving time--a commodity--by presenting alternative routes based on user defined parameters and current traffic and travel conditions (i.e., location, road conditions etc.)” Ans. 6–7.

Even if we accept the Examiner’s position that time is a commodity, we do not agree with the Examiner that a system component that suggests an alternative route that would save time is displaying and proposing the commodity of saving time. In the alternative, the Examiner asks us to consider receiving real-time traffic and weather alerts, and/or offering pit stop suggestions to a user based on predetermined parameters such as driving history or user defined preferences, to be a service. *See* Ans. 7. We

agree with the Examiner that providing traffic and weather alerts to the user is a service. We do not find, however, that providing such information constitutes displaying and suggesting/proposing a service or a location at which such a service is to be provided. Rather, displaying such information constitutes providing the service. The Examiner mentions “offering pit stop suggestions” (Ans. 7), but does not identify where Stehle discloses displaying and suggesting pit stops.⁴

Appellant submits that the closest that Stehle comes to suggesting a commodity or service “is an ability to show user-prepared reminders to the user, such as is described in paragraph [0127] and Figure 15.” Appeal Br. 7. Appellant contends, however, that “[t]o the extent that the [Examiner] is interpreting displaying a reminder to the user as a ‘service’, the reminder of Stehle is still not recommended based on the visitor traffic” and that, “[a]t best, it may be displayed based on the user’s own location, which does not incorporate any visitor traffic information.” *Id.* at 7–8.

The disclosure to which Appellant alludes is directed to the display of reminders *added by the user*. See Stehle ¶ 127. The alert is triggered based upon the trigger information (e.g., “bring medicine to daycare M-T” along with parameters such as days on which the user wants to be reminded to take this action) that the user enters. *Id.*; see *id.*, Fig. 15. The system can display a reminder icon on a map in connection with the location associated with the reminder, as indicated by reference numeral 1610 in Figure 16. *Id.* ¶ 127.

⁴ We note that, in Figures 14 and 15, Stehle illustrates user interface screens, in which the user can input an address and description for a location, as well as a label for this location, such as “PIT STOP,” and days and times at which the user may stop at this location. See Stehle ¶¶ 114–116, 124–126.

To the extent that the Examiner may be relying on Stehle’s disclosure of displaying reminder alerts or icons of this type, Appellant’s argument that Stehle does not display or recommend the reminder alerts or icons based on the visitor traffic, as recited in claims 1 and 11, or based on the visitor traffic line, as recited in claim 18, is persuasive. Moreover, the Examiner does not refute Appellant’s argument in this regard.

For the above reasons, the Examiner fails to identify where Stehle discloses structure corresponding to the “proposal unit” recited in claims 1, 11, and 18, and, thus, fails to establish that Stehle anticipates the subject matter of these claims, or their dependent claims.⁵ Accordingly, we do not sustain the rejection of claims 1–20 as anticipated by Stehle.

DECISION SUMMARY

| Claims Rejected | 35 U.S.C. § | Reference(s)/Basis | Affirmed | Reversed |
|------------------------|--------------------|---------------------------|-----------------|-----------------|
| 1–20 | 102(a)(1) | Stehle | | 1–20 |

REVERSED

⁵ Our determination that the Examiner has not established that Stehle anticipates the subject matter of claims 1, 11, and 18 should not be interpreted as a determination on our part as to the patentability of the claims. We appreciate the Examiner’s concern with the breadth of the claims, but determine simply that, based on the record before us, the Examiner has not shown by a preponderance of the evidence where Stehle discloses each and every limitation of the claims.