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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/498,027	04/26/2017	John Michael Galan Ferrer	83795244(65080-2414)	4881

113140 7590 09/18/2020

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EXAMINER	
TO, TUAN C	

ART UNIT	PAPER NUMBER
3662	

NOTIFICATION DATE	DELIVERY MODE
09/18/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN MICHAEL GALAN FERRER, JAYANTHI RAO, and VICTORIA LEIGH SCHEIN

Appeal 2020-001416
Application 15/498,027
Technology Center 3600

Before CHARLES N. GREENHUT, CARL M. DEFRANCO, and ERIC C. JESCHKE, *Administrative Patent Judges.*

GREENHUT, *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. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

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[1] We use the term "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Ford Global Technologies, LLC. Appeal Br. 3.

CLAIMED SUBJECT MATTER

The claims are directed to a blind spot object detection system and method. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A system, comprising a computer including a processor and a memory, the memory storing instructions executable by the processor to:
>
> identify a destination roadway lane that is separated from a current roadway lane of a vehicle by at least one intervening roadway lane; and
>
> upon determining that a blind spot of an operator of the vehicle, extending across a roadway lane between the destination roadway lane and the current roadway lane and into the destination roadway lane, is free of objects, actuate a means for providing an alert.

REFERENCES

The prior art relied upon by the Examiner is:

Name	**Reference**	**Date**
Basson	US 2009/0063053 A1	Mar. 5, 2009
Belcher	US 2013/0201012 A1	Aug. 8, 2013
Kuwabara	US 2014/0081566 A1	Mar. 20, 2014
Shiraishi	US 2016/0355178 A1	Dec. 8, 2016

REJECTIONS

Claims 1–9 and 11–19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shiraishi, Kuwabara, and Basson. Final Act. 3.

Claims 10 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shiraishi, Kuwabara, Basson, and Belcher. Final Act. 5.

OPINION

Claims 1, 2, 4–12, 14–20

Claim 1 is representative of claims 1, 2, 4–9, 11, 12, 14–19 pursuant to 37 C.F.R. § 41.37(c)(1)(iv). Separate arguments are not presented for claims 10 and 20, which we presume Appellant intended to argue based only on dependency from their respective parent claims.

The Examiner relies on Shiraishi as disclosing the basic system of claim 1 albeit without blind spot detection in a "destination roadway lane that is separated from a current roadway lane of a vehicle by at least one intervening roadway lane," for which the Examiner relies on Kuwabara, and "an alert" for which the Examiner relies on Basson. Final Act. 3–4. Appellant and the Examiner appear to be in general agreement that Shiraishi discloses at least some sort of "blind spot" detection scheme, but, arguably, that detection extends only *into* an adjacent lane as opposed to "across" it and into a "lane that is separated from a current roadway lane of a vehicle by at least one intervening roadway lane." Appeal Br. 9 ("The sensors [of Shiraishi] 10 have specific areas of detection and define a blind spot D1 that extends only into an adjacent lane.").

Appellant argues that "blind spot" should be given its plain and ordinary meaning. Appeal Br. 7–8. However, Appellant does not apprise us of any instances in which this has not been done by the Examiner. Appellant presents the ordinary and customary meaning of "blind spot" but Appellant does not present any evidence or argument to demonstrate that Kuwabara, a reference from the same art, uses the term "blind spot" in any way that is inconsistent with that plain and ordinary meaning. Kuwabara might not provide the elaborate definition of the phrase Appellant supplies, specifically relating Kuwabara's sensor areas to Kuwabara's mirrors (Appeal Br. 11).

However, absent evidence to the contrary, it is a fair assumption that references deriving from the same art share the same lexicon. *In re Cortright*, 165 F.3d 1353, 1358 (Fed. Cir. 1999) ("Prior art references may be 'indicative of what all those skilled in the art generally believe a certain term means . . . [and] can often help to demonstrate how a disputed term is used by those skilled in the art.'"). Indeed, Kuwabara acknowledges that one skilled in the art would know what a "blind spot" is, and also acknowledges, albeit generally, it is a function of the capabilities of the vehicle's mirrors:

> It is well known that an inner rearview mirror (rearview mirror) and outer view mirrors (door mirrors or fender mirrors) in a vehicle can have a blind spot that corresponds to a rearward area on the left or right side of the vehicle.

Kuwabara para. 5.

It is not apparent what logical or evidentiary basis Appellant has for the remark: "what the Final Office Action contended is Kuwabara's disclosure blind spots is in fact Kuwabara's disclosure of sensor ranges, and therefore irrelevant to the present claims' recited blind spots." Appeal Br. 9. Though the precise areas themselves differ somewhat in the embodiments depicted in Figures 1 and 9, Kuwabara consistently, and expressly, equates the sensor detection areas or ranges 61, 62 as corresponding to the "blind spot." Ans. 11 (citing Kuwabara para. 29 and detection areas 61, 62 ("In FIG. 1, the blind spot corresponds to areas 61 and 62 defined by the radial lines.")); *see also* Kuwabara Fig. 9 (cited at Final Act. 3) and para. 72 (discussing the difference in areas 61, 62 between Figures 1 and 9). The fact that the example illustrated in Figure 9 of Kuwabara depicts only a vehicle in an adjacent lane 52 (Appeal Br. 10) is of no moment as the detection area clearly includes, and the system considers vehicular presence in, a lane

"separated from a current roadway lane of [vehicle 41] by at least one intervening roadway lane." Kuwabara's system operates to provide a warning to the driver of vehicle 41 so long as a vehicle is within the blind-spot region, regardless of whether another vehicle 42 is in the adjacent lane or a separated lane, and regardless of whether the intent of the driver of vehicle 42 is to change to the adjacent lane or the separated lane. Kuwabara paras. 28–29; Fig. 5 (steps S43, S44). We see no basis for Appellant's conclusion: Kuwabara does not teach or suggest "'a blind spot' as recited in claim 1." Appeal Br. 10.

For the foregoing reasons, we sustain the Examiner's rejection of claims 1, 2, 4–12, and 14–19.

Claims 3 and 13

Appellant is reminded of the obligation under 37 C.F.R. § 41.37(c)(1)(iv) to define the claim grouping for our consideration. Here, we will give Appellant the benefit of the doubt and assume Appellant intended to include claim 13 with the arguments presented regarding claim 3, as the claims recite limitations that would raise substantially the same issues. Appeal Br. 11.

With regard to claim 3, and presumably claim 13, Appellant argues:

> Basson discloses passively detecting vehicles in the blind spot and actuating indicators when the vehicles enter the blind spot but does not teach or suggest any active actuation of the vehicle to clear the blind spot.

Appeal Br. 11.

The Examiner points out that claim 3, unlike claim 2, does not require any actual vehicular acceleration. Ans. 11. Indeed the Examiner is correct in

this regard, and claim 3 does not depend from claim 2 to incorporate the limitations of claim 2 either. Nevertheless, claim 3 does require processor-executable instructions to actuate a means for providing an alert "upon determining to accelerate the vehicle until the blind spot is free of objects." Claim 13 similarly requires a "means" for doing so. Thus, while, as the Examiner points out, acceleration itself may not be required of claims 3 and 13, what *is* required is some software or other structure that will trigger an alert *if* a determination is made to cause such acceleration. *See, e.g.*, *Ex parte Schulhauser*, Appeal No. 2013-007847, 2016 WL 6277792 (PTAB 2016) (precedential). This differs from an alert actuated upon determining one or more vehicles are in the blind spot (Ans. 11–12) and we do not find this subject matter addressed anywhere by the Examiner.

Accordingly, we do not sustain the Examiner's rejection of claims 3 and 13.

CONCLUSION

The Examiner's rejection of claims 1, 2, 4–9, 11, 12, and 14–19 under 35 U.S.C. § 103(a) as being unpatentable over Shiraishi, Kuwabara, and Basson is affirmed.

The Examiner's rejection of claims 3 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Shiraishi, Kuwabara, and Basson is reversed.

The Examiner's rejection of claims 10 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Shiraishi, Kuwabara, Basson, and Belcher is affirmed.

DECISION SUMMARY

Claim(s) Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1–9, 11–19	103(a)	Shiraishi, Kuwabara, Basson	1, 2, 4–9, 11, 12, 14–19	3, 13
10, 20	103(a)	Shiraishi, Kuwabara, Basson, Belcher	10, 20	
Overall Outcome			1, 2, 4–12, 14–20	3, 13

TIME PERIOD FOR RESPONSE

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)(1)(iv).

AFFIRMED IN PART