UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GARMIN INTERNATIONAL, INC. ET AL.
Petitioner

v.

Patent of CUOZZO SPEED TECHNOLOGIES LLC
Patent Owner

Case IPR2012-00001
Patent 6,778,074

PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE

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I. The Board Properly Construed the Term "Integrally Attached"

The Board should reject Cuozzo's request to broaden the construction of "integrally attached." Cuozzo's proposed construction reads out the "attached" limitation required by the plain language of the claims, it attempts to encompass subject matter not disclosed or supported in the specification, and it is contrary to Cuozzo's reliance on the '074 Patent's mechanical (*i.e.*, non-graphical) speedometer to support its amendment during prosecution.

First, Cuozzo's construction is contrary to the plain language of the claims. Claim 10 does not merely recite an "integrated" speedometer and colored display, as Cuozzo's construction proposes. Rather, claim 10 recites a speedometer "integrally attached" to a colored display, meaning that each of these two components has a separate identity. Cuozzo's construction reads out the requirement that the components be "attached." Further, if they were merged into a single, indivisible electronic display, as proposed by Cuozzo, the claimed colored display being "adjusted independently of the speedometer" would be meaningless.

Second, the '074 Patent consistently describes the colored display and speedometer as separate components that are attached. (Paper 15 at 8; '074 Patent at 5:9–12.) Cuozzo proffers that the two components can be "integrated" because the specification discusses a speedometer that "has" a colored display. (Paper 31 at 3–4 (citing '074 Patent at 5:8–10).) But this disclosure is entirely consistent with a

speedometer that has an attached colored display and never suggests that the two components are merged into a single, indivisible electronic display. Indeed, the specification never once discloses a single electronic display that itself operates as both a speedometer and a colored display.

Third, importantly, when Cuozzo amended the claims to add the "integrally attached" requirement, he cited to these very same portions of the specification that describe the speedometer and colored display as separate and discrete elements. (Paper 15 at 8 (citing Ex. 1013 at 7:23–25).) Indeed, Cuozzo concedes that this disclosure describes the components "as separate and discrete elements." (Paper 31 at 6.) This is further evidence that Cuozzo's proposed construction of "joined or combined to work as a complete unit" is incomplete and overbroad, because it captures only the "integrally" aspect of the limitation and reads out the "attached" requirement. The Board's construction properly requires that each part retain its own separate identity.

Cuozzo's reliance on claim differentiation also fails. (Paper 31 at 9–13.) Cuozzo and its expert, Dr. Morris, rely on dependent claims 12 and 18 to argue that the '074 Patent discloses an "electronic embodiment" of the invention in which a single electronic display operates as both a speedometer and a colored display. (Paper 31 at 5; Ex. 2002 at ¶¶ 23, 28, 29 (opining that electronic embodiment is "implie[d]" and it would be "natural" to combine both on a single

LCD).) Garmin respectfully disagrees. First, claim 18 does not depend from claim 12 and thus does not disclose that the speedometer comprises the same LCD that is the colored display in claim 12. And notably, while claim 12 recites that the colored display "is" an LCD, claim 18 uses different language, namely that the speedometer "comprises" an LCD.[1] This means the speedometer includes, but is not *limited* to, an LCD. *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1360 (Fed. Cir. 2007) ("In the patent claim context the term 'comprising' is well understood to mean 'including but not limited to.'"). This claim language is entirely consistent with the Board's construction and the specification in which the speedometer can be integrally attached to an LCD but nonetheless remains a separate component that retains its own identity and is not itself an LCD.

Second, Dr. Morris's deposition testimony supports the Board's construction. He concedes the claims themselves never recite that the speedometer and the colored display are implemented on the same LCD. (Ex. 1021 at 11, tr. 41:2–12.) Dr. Morris also notes in his declaration that an LCD "is described in only two passages of the '074 patent" (Ex. 2002 at ¶ 19), and "neither of those two passages indicates that the speedometer is itself an LCD" (Ex. 1021 at 14,

[1] An exemplary embodiment where the speedometer "comprises" the LCD and the colored display "is" the LCD is the LCD sitting behind a mechanical speedometer needle and changing colors as the speed limit changes.

tr. 55:14–17). Thus, the specification provides no support for a construction in which the speedometer and colored display are graphically displayed on a single LCD, as Cuozzo proposes.

Dr. Morris also confirms that "'attached' is not a common term of art in software" and that it would be "uncommon" to "refer to two things displayed on a common display as 'attached.'" (Ex. 1021 at 17–18, tr. 68:17–20, 69:2–6.) Finally, when asked if he would "ever use the term 'attached' to refer to the relationship between two items that are graphically displayed on the same display," Dr. Morris, as one skilled in the art, candidly responded: "I don't think I would." (Ex. 1021 at 18, tr. 70:23–71:1.)

II. Mr. Cuozzo's Attempt to Swear Behind Aumayer and Awada Fails

A. Mr. Cuozzo's Purported Conception of His Invention Is Not Commensurate with the Scope of the Claims

Although claim 10 does not recite an electronic display that itself operates as both a speedometer and a colored display, Cuozzo now attempts to construe claim 10 as incorporating this electronic embodiment. (Paper 31 at 5.) But Mr. Cuozzo's swear-behind declaration does not mention such an embodiment. Instead, the relied-upon disclosure document to Invention Submission Corporation describes only "wir[ing] the speedometer to the GPS" and nothing about graphically displaying a speedometer. (Ex. 3001 at ¶¶ 12–13.) As Mr. Cuozzo later confirmed in his deposition, this description in his disclosure incorporated "the fundamentals"

of his invention as he conceived it in November 1999. (Ex. 1023 at 15–16, tr. 58:4–61:5.) Indeed, Cuozzo admits that the drawings submitted to ISC contemplated an "*analog* speedometer output" with the "*delineation* changing" based on GPS information. (Paper 31 at 18 (emphases added).) This is inconsistent with the electronic-display limitation that he now advocates for claim 10.

To establish prior conception, a swear-behind declaration must demonstrate with factual evidence that the inventor "was in possession of *each limitation* recited in the appealed claims at the time of alleged conception." *Ex Parte Debendra Das Sharma*, No. 2009-000030, 2009 WL 1709135, at *6 (Pat. Bd. May 29, 2009) (emphasis added); *see also Dawson v. Dawson*, 710 F.3d 1347, 1358 (Fed. Cir. 2013); *Coleman v. Dines*, 754 F.2d 353, 359 (Fed. Cir. 1985). Because Mr. Cuozzo's declaration lacks any evidence that he conceived of an electronic, LCD embodiment, he has not shown that he possessed each limitation of his preferred construction of claim 10 at the alleged conception date. Accordingly, Cuozzo's attempt to swear behind Aumayer and Awada fails.

B. Mr. Cuozzo Did Not Diligently Reduce His Invention to Practice and Lacks Corroboration for His Purported Excuse

Cuozzo's attempt to swear behind Aumayer and Awada also fails because Mr. Cuozzo did not diligently reduce his invention to practice and has no legitimate excuse for his inactivity. *See Illumina Inc. v. Complete Genomics Inc.*, No. C-10-05542 EDL, 2013 WL 1282977, at *7 (N.D. Cal. Mar. 26, 2013);

Intellect Wireless, Inc. v. HTC Corp., --- F. Supp. 2d ----, 2012 WL 4107232, at *4 (N.D. Ill. Sept. 6, 2012); MPEP § 2138.06. Further, Mr. Cuozzo does not corroborate the supposed reasons for his lack of diligence. *See Stamps.com Inc. v. Endicia, Inc.*, 437 Fed. Appx. 897, 908 (Fed. Cir. 2011).

Although Mr. Cuozzo learned on March 20, 2001, that his invention was potentially patentable, he did not start the patent-application process until August 8, 2001. Mr. Cuozzo avers that the patent-application costs presented a "significant financial obstacle" to him, and that it "took a few months" to convince his parents to let him use money from his trust account. (Ex. 3001 at ¶¶ 17, 19.)

Mr. Cuozzo's excuse that he needed time to gather funds is "more in the nature of commercial development, not accepted as an excuse for delay, than the 'hardship' cases most commonly found" in the case law. *Griffith v. Kanamaru*, 816 F.2d 624, 625 (Fed. Cir. 1987); *see also Intellect Wireless*, 2012 WL 4107232, at *4. The Federal Circuit has held that inventors who take time off to raise money are not reasonably diligent in reducing to practice. *Griffith*, 816 F.2d at 629.

Moreover, Mr. Cuozzo's declaration contains the requisite corroboration only of his eventual fee payment, not of any fundraising efforts he undertook. He does not corroborate his "insufficient income," why financing through ISC "was not an option," or why it "took a few months" to get money from an extant trust fund. (*See* Ex. 3001 at ¶ 19.)

Indeed, Mr. Cuozzo later testified—inconsistent with his declaration—that he merely borrowed the money directly from his parents and later paid them back with money from his trust fund, which his parents did not control. (Ex. 1024 at 2–4, tr. 100:20–105:20, 106:4–10.) He did not try to borrow money from anyone else or look for sources of the money other than his parents. (*Id.* at 4, tr. 106:11–16.) Rather, Mr. Cuozzo's only activity for nearly five months was talking to his parents about a loan—and he cannot even remember how many times he talked to them about it. (*Id.* 4, tr. 105:21–106:3.) Because Mr. Cuozzo was not reasonably diligent in reducing to practice and has no good excuse for it, and because his corroboration is at best inconsistent and at worst nonexistent, Cuozzo's attempt to swear behind Aumayer and Awada fails.

III. Cuozzo's Unpatentability Arguments Do Not Fairly Consider the Prior Art's Teachings and Misapply the Law of "Teaching Away"

A. Aumayer Discloses Determining the Speed Limit at a "Vehicle's Present Location"

Cuozzo argues that Aumayer does not disclose displaying the speed limit for a vehicle's present location, because Aumayer's disclosed speed limit is "for a certain class of road in a given region." (Paper 31 at 25.) This argument fails on its face. Aumayer states that "speed limits *at the current location* may be displayed on the speed scale itself," and the "*current location* may be obtained from an on-board GPS." (Ex. 1001, Abstract (emphases added).)

Aumayer also discloses an embodiment wherein the GPS determines the "current geographic position of the vehicle," which is in turn used to determine "[t]he region or area (having the same predetermined speed limits and/or physical units for speed values)." (*Id.* at 7:2–9, 4:48–53.) A "region" is an area having the same speed limit for the same type of streets or roads. (*Id.* at 8:1–6.) Aumayer "determines the speed limits for the individual classes of streets and roads." (*Id.* at 7:22–26.) As the vehicle travels from one class of street or road to another, the speed-limit information on the speed-display device 101 is updated. (*See id.* at 5:2–5, 5:63, 2:57–59.) Thus, Aumayer teaches displaying the speed limit for the vehicle's current position.

Another Aumayer embodiment adjusts the displayed speed limit to account for vehicle data, such as whether a trailer is attached, but Aumayer also recognizes that such an adjustment may not be necessary. (*Id*. at 4:64–66.) Hence, Aumayer teaches an additional step beyond what is claimed in claim 10. But this teaching does not negate that Aumayer discloses an embodiment wherein the speed limit for the vehicle's present location, without adjustment, is displayed on the speedometer.

B. Applying the Board's Construction, One of Ordinary Skill in the Art Would Have Had a Credible Rationale for Combining Aumayer, Evans, and Wendt

Applying the Board's construction, Cuozzo argues that one of ordinary skill in the art ("OSA") would not combine Aumayer's dynamic, continuously

controlled display system with the immovable colored plate of Evans and the manually rotatable pointer and rubber suction cup unit of Wendt. (Paper 31 at 26–27.) Garmin respectfully disagrees. It would have been obvious to one of OSA to modify Evans's colored plate to be rotatable, as taught by Wendt's rotatable pointer. Evans already recognizes the problem that the speed limit may change and teaches that its colored plate can be "adjustable for changes in the speed limits." (Ex. 1009 at 2:19–20, 3:37–44.) It is well within the skill of one of OSA to make Evans's plate rotatable, especially when presented with Wendt's rotatable pointer.

Wendt further teaches mounting its rotatable pointer to the glass cover of the speedometer via a suction-cup unit. (Ex. 1011 at 2:30–41.) In solving the problem of adjusting for changes in speed limits, as noted by Evans, it would have been obvious to one of OSA to mount, as taught by Wendt, the colored plate of Evans to the glass cover of a speedometer so that the colored plate is rotatable. A credible rationale for doing so is that one of OSA would want to adjust for changes in the speed limit while still being able to determine, by glancing at the dial, whether the speed limit is being exceeded, as taught by Evans. (Ex. 1009 at 2:10–15.)

It also would have been obvious to one of OSA to mount the rotatable colored plate of Evans and Wendt to the glass cover of Aumayer's LCD. Although Aumayer's preferred embodiment is a combined instrument having a display screen on which the speed limit and current speed are both displayed, Aumayer

also allows for the use of "mechanical display elements." (Ex. 1001 at 2:45–53, 7:42–44.) One such "mechanical display element" is a rotatable colored plate mounted to a glass cover. One of OSA would have had a credible rationale to mount the suction-cup unit of Wendt to the LCD of Aumayer to be able to determine the range of speed values that are in excess of the speed limit, as taught by Evans. (Ex. 1009 at 2:9–15.) This does not otherwise prevent Aumayer from continuing to illustrate its red speed-limit tick mark on the LCD. Instead, mounting the rotatable colored plate to Aumayer's LCD adds another feature.

Aumayer also does not teach away from its disclosed mechanical embodiment simply because the disclosed electronic embodiment is described as "preferred" (Ex. 1001 at 2:49–53, 7:42–44). *See In Re Fulton*, 391 F.3d 1195, 1200 (Fed. Cir. 2004) ("[O]ur case law does not require that a particular combination must be the preferred, or the most desirable, combination described in the prior art in order to provide motivation for the current invention."). A reference's teaching of a preferred embodiment does not necessarily teach *away* from other embodiments—especially when, as here, the other embodiments are called out in the reference's specification. *Ex Parte Ruiz*, No. 2012-00974, App. No. 10/407,967, at 9–10 (Pat. Bd. Sept. 13, 2012) ("[The prior art] cannot 'teach away' from a disclosure that [the prior art] provides."). To teach away, the prior art must criticize, discredit, or discourage the claimed solution, MPEP § 2145(X)(D)(1)

(and references cited therein), leading one of OSA "in a direction divergent from the path that was taken by the applicant." *Ruiz*, No. 2012-00974, at 9. Aumayer does not do this with respect to the mechanical display.

Further, Evans and Wendt disclose a mechanical speedometer behind a glass cover and a colored filter (Evans) or rotatable pointer (Wendt) mounted to the glass cover. This teaching does not discourage mounting a rotatable colored plate to the glass cover of an LCD. In fact, mounting the rotatable plate to the LCD is similar to Wendt's teaching of mounting the rotatable pointer to the speedometer's glass cover via the suction-cup unit.

C. Applying Cuozzo's Construction, One of Ordinary Skill in the Art Would Have Had a Credible Rationale for Combining Aumayer, Evans, and Wendt

If the Board adopts Cuozzo's claim construction, the obviousness analysis is trivial. Under Cuozzo's single electronic-display construction, Aumayer anticipates claim 10. For an electronic embodiment of the rotatable colored display of claims 14 and 17, collectively, one of OSA would have found it obvious to modify the graphical display of the Aumayer/Tegethoff LCD to include a graphical representation of a colored plate, as taught by Evans, and rotate the colored plate, as taught by Wendt. (Ex. 2002 at ¶¶ 23, 28, 29.) Under Cuozzo's construction, the alleged invention becomes a mere application of known modern electronics to prior art mechanical devices. *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485

F.3d 1157, 1161 (Fed. Cir. 2007) ("Accommodating a prior art mechanical device that accomplishes that goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices. Applying modern electronics to older mechanical devices has been commonplace in recent years."). "[U]sing modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost" is obvious. *Id*. at 1162.

D. Tegethoff Discloses the Speed Limit at a Vehicle's Location

Cuozzo argues that Tegethoff's disclosure of a "maximum permissible speed" (herein "max speed") is not equivalent to the claimed "speed limit." (Paper 31 at 30.) First, claim 12 of Tegethoff recites that a "marking shows a currently permitted maximum speed (5) on a road section on which the vehicle is currently located." One of OSA would understand that Tegethoff discloses a speed limit of the road section. Second, claim 13 of Tegethoff further differentiates that the max speed is determined by an element for navigation and traffic-control information or by sensors for receiving traffic information. Applying claim differentiation, claim 12 is broader than a max speed determined solely by the methods of claim 13, which would be understood by one of OSA reviewing claims 12 and 13.

Additionally, Cuozzo's argument that the max speed could be set at 45 mph, even though the legal speed limit is actually 65 mph, is mere supposition.

Tegethoff does not state this or give such an example. Even if the max speed accounts for traffic and is therefore lowered, this does not exclude a circumstance where the max speed is the legal speed limit. Such may be the case when no traffic warrants lowering the speed limit. A reference that teaches A + B can be used for A, even if B is an additional feature.

E. One of Ordinary Skill in the Art Would Have Had a Credible Rationale for Combining Tegethoff, Awada, Evans, and Wendt

Cuozzo argues that Tegethoff and Awada teach away from being combined because Tegethoff teaches an embodiment wherein the max speed can be manually set, while Awada determines the speed limit via a GPS. (Paper 31 at 33.) This argument misses the point, because Awada is being used only for teaching GPS. One of OSA could easily substitute a GPS for the "element for navigation" taught in Tegethoff. (Ex. 1003 at 6, col. 1.) Regardless, Tegethoff's teaching of multiple methods to set the max speed (*e.g.*, manually and by the navigation element and traffic information) does not rise to the level of discouraging, discrediting, or criticizing determining the legal speed limit from the GPS. *See* MPEP § 2145(X)(D)(1) (and references cited therein).

Cuozzo further argues that one of OSA would not combine Awada's electronic apparatus with Evans's or Wendt's mechanical apparatus. (Paper 31 at 34–35.) Again, Awada is being used only for GPS. But in any event, this is essentially the same argument Cuozzo makes against Aumayer. Wendt mounts a

rotatable pointer to a mechanical speedometer. It is an obvious step to mount the same rotatable pointer, modified to be a colored plate as taught by Evans, to the glass cover of an LCD, as taught by Tegethoff. The reason for doing so is to provide "connections between different driving parameters [that] can be clarified to the driver in a very clear and intuitively comprehensible manner." (Ex. 1003 at 3, col. 1.) This is also one of the reasons advanced by Cuozzo for allowance during original prosecution. (Ex. 1013 at 7 (distinguishing Awada because the driver is "forced to look in two separate locations").)

Cuozzo further asserts that the prior art teaches away from combining Tegethoff or Awada with Evans or Wendt. Cuozzo highlights Tegethoff's statement that its display system has good readability and provides additional information. (Paper 31 at 35.) Cuozzo argues that Tegethoff is "expressly stat[ing] that its computer display system is meant to replace the conventional speedometers" of Evans and Wendt. (Paper 31 at 35.) But a reference touting advantages of a described invention is not a discouragement, discredit, or criticism of other inventions. *See* MPEP § 2145(X)(D)(1) (and references cited therein).

As another example, Wendt identifies the advantage that its invention disciplines a driver to observe speed-limit signs. Cuozzo argues that Tegethoff's automatic adjustments would "frustrate the purpose of the Wendt device, because the driver would not observe speed-limit signs but would rely on the automatic

adjustments." (Paper 31 at 37.) Not only is this pure conjecture, it is also irrelevant. One of OSA would not completely discredit Wendt's rotatable pointer simply to ensure manual adjustment, as opposed to Tegethoff's automatic adjustment.

It is important to not lose sight of the question at hand: would one of OSA, reviewing Tegethoff, Awada, Evans, and Wendt, deem the claimed invention obvious? Tegethoff discloses a red tick mark for displaying a max speed. Awada discloses displaying the legal speed limit. Evans discloses a red colored filter, and Wendt discloses a rotatable speed-limit pointer. This is not such an overly complicated invention that one of OSA would not have found it obvious to mount a rotatable colored plate, as taught by Evans and Wendt, to the glass cover of an LCD that continuously adjusts the speed-limit readings, as taught by Tegethoff, so as to display the legal speed limit, as taught by Awada.

IV. Conclusion

In view of the above, Garmin requests that claims 10, 14, and 17 be found unpatentable. Should the Board adopt Cuozzo's construction, Garmin requests that the Board reconsider institution of the IPR against all claims with all rejections originally proposed by Garmin.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 21, 2013, a true and correct copy of *Petitioner's Reply to Patent Owner's Response* has been provided, via electronic mail, to counsel of record as follows:

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