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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SAMI RONKAINEN

Appeal 2010-007580
Application 11/024,280
Technology Center 2600

Before KALYAN K. DESHPANDE, JASON V. MORGAN, and
BRYAN F. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 43-47 and 50-62. App. Br. 2. Claims 1-42, and 49¹ are cancelled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

INVENTION

The invention is directed to using the means of portable devices, by which, e.g., a silent alarm informing of an incoming call can be given, for giving the user also other abstract information, not modeling reality, by utilizing specific silent alarm patterns the user is able to feel. *See Spec. 2:25-29.*

Claim 43 is exemplary of the invention and is reproduced below:

43. A portable communication device, comprising:
control means for monitoring and controlling the operation of the portable communication device; and
a user interface which comprises alarm means for performing a silent alarm producing a silent, invisible, tactile sensation in the mobile communication device;
the control means are arranged to detect multiple internal operational

¹ Should there be further prosecution before the Examiner, claims 48 should be formally cancelled, as Appellant have demonstrated a clear intent in the Appeal Brief (see App. Br. 4, not pursuing an appeal of claim 48) not to appeal this claim. *See Ex Parte Ghuman*, No. 2008-1175, 2008 WL 2109842 (BPAI May 1, 2008) (precedential) (holding that when appellant is silent in the notice of appeal as to the specific claims being appealed, and then clearly states in the appeal brief that some of the finally rejected claims are not being pursued in the appeal, appellant should have canceled those claims not pursued).

events of the portable communication device and in response thereto provide abstract information on the multiple internal operational events by using various silent alarm patterns of silent, invisible sensations produced by the alarm means and wherein, the alarm patterns differ from one another such that at least one alarm pattern characteristic varies to indicate, the detected internal operational event.

REFERENCES

Komatsu	US 5,076,260; Filing Date: Dec. 31, 1991
Stone	US 5,767,778; Filing Date: Jun. 16, 1998
Haavisto	US 5,864,603; Filing Date: Jan. 26, 1999
Gendel	US 6,127,936; Filing Date; Oct. 3, 2000

REJECTIONS AT ISSUE²

Claims 43, 53, and 59 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Stone and Komatsu. Ans. 3-5.

Claims 44, 52, 54, 58, and 61 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Stone, Komatsu, and Gendel. Ans. 5-6.

² Appellant assert “[t]he Examiner has improperly issued a final rejection, while citing the new primary reference Stone in the Office action of December 19, 2008.” App. Br. 10. However, this relates to a petitionable matter and not to an appealable matter. *See In re Schneider*, 481 F.2d 1350, 1356-57, 179 USPQ 46, 51 (CCPA 1973) and *In re Mindick*, 371 F.2d 892, 894, 152 USPQ 566, 568 (CCPA 1967). *See also* the MPEP § 1002.02(c), item 3(a) and § 1201. Thus, the relief sought by the Appellant would have been properly presented by a petition to the Commissioner under 37 C.F.R. § 1.181 instead of by appeal to this Board. Accordingly, we will not further consider this issue.

Claim 45-47, 49-51, 55-57, 60, and 62 is rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Stone, Komatsu, and Haavisto. Ans. 7.

Claims 43, 53, and 59 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 6,850,150. Ans. 7-9.

ISSUES

1. Did the Examiner err in rejecting claims 43, 53, and 59 on the ground of nonstatutory obviousness-type double patenting; and
2. Did the Examiner err in finding that the combination of Komatsu is analogous art to Stone and that the combination of Komatsu and Stone teach the limitations of claim 43?

ANALYSIS

Nonstatutory obviousness-type double patenting
Claims 43, 53, and 59

Appellant does not make any arguments regarding the Examiner's rejection of claims 43, 53, and 59 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 11 of U.S. Patent No. 6,850,150. Accordingly, this rejection is summarily affirmed.

35 U.S.C. § 103(a) – Stone and Komatsu
Claims 43, 53, and 59

We adopt as our own the findings and reasons set forth by the Examiner in the action from which this appeal is taken and the reasons set forth by the Examiner in the Examiner's Answer (*see* Ans. 11-12) in response to this argument in Appellant's Appeal Brief. However, we highlight and address specific findings and arguments for emphasis as follows.

Regarding claim 43, Appellant argues that "there is no teaching of generating multiple alarm patterns with varying characteristics and further there is no teaching that the varying characteristics may be designed to indicate the nature of a particular event" in Stone. App. Br. 6. However, the Examiner relies on Komatsu to show generating multiple alarm patterns with varying characteristics and further there is no teaching that the varying characteristics may be designed to indicate the nature of a particular event. Ans. 4-5. Appellant also argues "[a]s shown in figure 1 of Komatsu, there are no internal sensors capable of detecting multiple internal operational events as required by the claims of this application." However, the Examiner relies on Stone to show a notification of a detected internal operational event. App. Br. 7. Thus Appellant's arguments do not respond to the Examiner's specific findings and are not persuasive.

Appellant further argues that Komatsu is not in the same field of endeavor as the invention and is not reasonably pertinent to the problem solved by the invention. App. Br. 7-10. We find that Komatsu is analogous art.

Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of the problem addressed and, (2) if the reference is not within the

field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

In re Klein, 647 F.3d 1343, 1348 (Fed. Cir. 2011).

Appellant asserts that the prior art does not relate to the field of endeavor of the invention because “the small, portable structure of a mobile communication device and the function of a vibration alert within a handheld device is a marked contrast to a vibrating bed and the transmission of sensations that may, among other things, induce the user to a pleasant sleep or to evacuate.” App. Br. 8.

We agree with the Examiner that Komatsu teaches using a circuit to create “sensible body vibration,” i.e., vibrations that a person can sense, by providing “sensitivity vibration signals of various patterns with different wave signals by varying the waves oscillated by a voltage control oscillator and a voltage control amplifier.” Ans. 11 (citing 4:4-25; 5:40-6:6; and Figures 1-2 and 9). The invention relates to providing a circuit which gives the user also other abstract information, not modeling reality, by utilizing specific silent alarm patterns the user is able to feel, i.e. vibrations. Spec. 2:25-29. Therefore, we find that Komatsu is in the same field of endeavor as the invention. *See Comaper Corp. v. Antec, Inc.*, 596 F.3d 1343, 1351 (Fed. Cir. 2010). Therefore, we find that the cited references are analogous prior art.

Appellant does not make any specific arguments regarding claims 44-47 and 50-62, therefore those claims fall with claim 43.

DECISION

The Examiner's decision to reject claims 43-47 and 50-62 is affirmed.

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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)(iv).

AFFIRMED

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