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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GREGORY M. GLENN, DAMON SILVA, and TIMOTHY HENRY[1]

Appeal 2010-007857
Application 11/245,360
Technology Center 2600

Before JEAN R. HOMERE, LARRY J. HUME, and JOHN G. NEW, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final rejection claims 1-24, i.e., all pending claims in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] The Real-Party-in-Interest is Cumulous Communications Corporation. App. Br. 3.

STATEMENT OF THE CASE [2]

The Invention

Appellants' invention relates generally to monitoring conditions, and more particularly, to the ability to monitor environmental conditions at a site with increased reliability and accuracy, as well as the ability to access real-time data from a remote location. Spec. p. 1, ¶ [0002]

Exemplary Claim

Claim 1 is an exemplary claim representing an aspect of the invention which is reproduced below (***emphasis*** added):

> 1. A remote monitoring system for monitoring a plurality of sensors, the remote monitoring system comprising:
>
> a sensor interface communicatively coupled to the plurality of sensors, ***the sensor interface configured*** to receive sensor information concerning environmental conditions from the plurality of sensors and ***to calibrate the plurality of sensors for reading data*** concerning the environmental conditions by downloading executable code into the sensors;
>
> a processor configured to process the sensor information to form at least one data packet, the sensor information including a data reading and an identifier associated with a sensor from the plurality of sensors; and
>
> a wireless communication interface in communication with the sensor interface, the wireless communication interface configured to transfer the at least one data packet over a

[2] Our decision refers to Appellants' Appeal Brief ("App. Br.," filed Nov. 9, 2009); Reply Brief ("Reply Br.," filed Mar. 8, 2010); Examiner's Answer ("Ans.," mailed Jan. 7, 2010); Final Office Action ("FOA," mailed Mar. 5, 2009); and the original Specification ("Spec.," filed Oct. 5, 2005).

wireless communications network to a server configured to communicate the executable code for calibrating the plurality of sensors to the sensor interface via the wireless communication interface.

Prior Art

The Examiner relies upon the following prior art in rejecting the claims on appeal:

Wilson	US 5,400,246	Mar. 21, 1995
Kail, IV	US 5,959,529	Sep. 28, 1999
Lauber	US 2004/0090950 A1	May 13, 2004

Rejections on Appeal

1. Claims 1-2, 4-7, 9-11, 13-16, and 18-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kail, Lauber, and Wilson. Ans. 3.

2. Claims 3, 8, 12, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kail, Lauber, and Wilson in view of the Examiner's Statement of Official Notice regarding Appellants' Admitted Prior Art. Ans. 9.

ISSUES

Appellants argue (App. Br. 12-16; Reply Br. 2-4) that the Examiner's unpatentability rejection of claim 1 under 35 U.S.C. § 103(a) over Kail and Lauber in view of Wilson is in error. These contentions present us with the following issues:

(a) Did the Examiner err in finding that the combination of Kail and Lauber in view of Wilson teaches or suggests

Appellants' claimed remote monitoring system for monitoring a plurality of sensors that includes, *inter alia*, "a sensor interface . . . configured . . . to calibrate the plurality of sensors for reading data concerning the environmental conditions," as recited in claim 1?

(b) Did the Examiner err in finding proper motivation to combine the references in the manner suggested?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We disagree with Appellants' conclusions with respect to claim 1, and we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons and rebuttals set forth by the Examiner in the Examiner's Answer in response to Appellant's Arguments. However, we highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

Issue (a)

With respect to Issue (a), above, we agree with the Examiner's finding that the combination of Kail and Lauber in view of Wilson teaches or suggests Appellants' claimed remote monitoring system for monitoring a plurality of sensors that includes, *inter alia*, "a sensor interface . . . configured . . . to calibrate the plurality of sensors for reading data concerning the environmental conditions," as recited in claim 1," as recited in claim 1. (Ans. 3-7 and 10-14).

Appellants contend that:

> [T]o 'calibrate' means "to standardize by determining a deviation from a standard so as to ascertain the proper correction factors." E.g., *Merriam-Webster Online Dictionary*: http://www.merriam-webster.com/dictionary/calibrate. As such, general "control" does not teach the specifically claimed calibration of the sensors for reading data. The Examiner therefore fails to point to anything in either *Kail*, *Wilson*, or *Lauber* that specifically discloses the claimed 'calibrat[ing] the plurality of sensors for reading data.'

App. Br. 14. Further in this regard, Appellants contend that the Examiner is relying upon the theory of inherency in making the rejection because the Examiner states that Kail's calibrating element "**would have been met** by, since the first transceiver receives programming instructions that **would have allowed** the microprocessor to calibrate all devices in the system." App. Br. 14 (citing FOA 2). Appellants also contend that "[j]ust because a transceiver receives instructions does not require that the instructions pertain to **calibration**," and "[a]n argument that calibration **may be present** is not sufficient to support a prima facie case of obviousness under Section 103." App. Br. 14. We disagree with Appellants' contentions, and agree with the Examiner's findings in this regard.

The Examiner finds that:

> The fact that the appellant has provided a particular definition of the term which supports his argument does not preclude use of other definitions of the term for the purpose of interpreting the claimed subject matter. For example, based on the definition provided on www.dictionary.com, which utilizes a definition of calibrate based on the Random house Dictionary, Random House, Inc. 2009, the definition of calibrate is stated

> as: "***to determine, check, or rectify the graduation of any instrument giving quantitative measurements.***" This particular definition clearly reads on the functions of the prior art of record. It is for this reason that, absent any specific definition of a particular limitation, the limitations of the claimed subject matter are given their broadest reasonable interpretation.

Ans. 11-12. We agree with the Examiner's findings and claim interpretation because, during prosecution:

> the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

In further support of the Examiner's claim interpretation, we note that the ***sole*** mention of "calibration" in Appellants' Specification is that "[t]he use of the SDI-12 sensors for data acquisition have a further benefit in that calibration and/or control of the sensor is achieved more easily . . . [and] is generally done by downloading executable software code into the sensor." Spec. ¶ [0051]. Thus, Appellants have not provided any substantive details or specialized definition regarding their claimed calibration methodology other than to cite one of a number of dictionary definitions of the term "calibrate." We find that the Examiner's definition and resulting claim construction is reasonable.

Further, as mentioned above, Appellants contend that the Examiner has not pointed to anything in either Kail, Wilson, or Lauber that specifically

discloses the claimed "calibrat[ing] the plurality of sensors for reading data," as recited in independent claim 1. App. Br. 14. We disagree.

We first note and agree with the Examiner's finding that "since the central monitoring device (14) provides the programming instructions to the portable units (12), those instructions would have constituted executable code that would have read on the claimed subject matter" [i.e., the claimed "sensor interface configured to receive sensor information concerning environmental conditions from the plurality of sensors and to calibrate the plurality of sensors for reading data"], as recited in claim 1. Ans. 5. In addition, we point out Kail's teaching that:

> In some cases, it is desired to receive either data or reprogramming from an external source such as a personal computer connected to the portable monitoring device 12 through the port 37. If the port 37 is interfaced to an external sensor and the information is data, the reading is performed in the same manner as described in relation to FIG. 4 for the sensors 28. If the information is reprogramming in the form of an application update or new parameters, the portable monitoring unit 12 is powered in the normal manner. The original application loads into the microprocessor 22, the activation parameters are retrieved and set, and the sensor interface unit 20 enters the operational state.

Kail col. 8:29-40. In further agreement with the Examiner's position, we find that the entry of "new parameters" for Kail's portable monitoring unit (i.e., sensor) teaches or suggests calibrating the sensor. As cited by the Examiner in Wilson, the system is customizable by a user such that remote analog and digital sensors are enabled to receive commands that allow various controls of the sensor's functions (i.e. threshold settings) via the

Master Control Program of the PC (12). Ans. 12 (citing Wilson col, 5:42-59 and col. 6:3-43). Still further, in the portion of Wilson cited by the Examiner, Wilson teaches that "[t]he primary advantage of using soft control panels is the ability to readily customize the control system for a particular application, e.g., from a security system to a production monitor, or to change the system configuration 'on the fly', e.g., to accommodate a faulty sensor." Wilson col. 6:11-16.

Accordingly, Appellants have not provided persuasive evidence or arguments that the Examiner erred in the characterization of the cited art and related claim construction.

Issue (b)

With respect to the motivation to combine the references in the manner suggested by the Examiner, Appellants contend that:

> The Examiner states that the motivation to combine *Lauber* with *Kail* is to provide "a reliable and efficient method" and the motivation to combine *Wilson* with *Kail* is to "further enhance configuration abilities" . . . [t]he Examiner fails, however, to explain how the motivation would be [sic] achieved the proposed combination. For example, the Examiner does not explain how the data packets of *Lauber* would lead to any increased reliability or efficiency in *Kail*. Similarly, the Examiner does not explain how the sensor commands of *Wilson* would "further enhance configuration abilities" beyond the instructions of *Kail*. In both cases, the Examiner simply makes a conclusory statement with the benefit of impermissible hindsight.

App. Br. 15 (citing FOA 4-5). We disagree with Appellants' contention that the Examiner has not provided adequate explanation regarding the motivation to combine the references in the manner suggested.

The U.S. Supreme Court has held that "[t]he obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation, or by overemphasis on the importance of published articles and the explicit content of issued patents." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Instead, the relevant inquiry is whether the Examiner has set forth "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (cited with approval in *KSR*, 550 U.S. at 418).

Additionally, Appellants argue that the Examiner improperly used hindsight to combine the references. App. Br. 15. We disagree and add the following for emphasis.

First, as explained in *In re McLaughlin*:

> Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made and does not include knowledge gleaned only from applicant's disclosure, such a reconstruction is proper.

In re McLaughlin, 443 F.2d 1392, 1395 (CCPA 1971).

Our review of the record establishes that the Examiner bases his case for obviousness only on knowledge which was within the level of ordinary

skill at the time of Appellants' invention, and does not include knowledge gleaned only from the Appellants' disclosure. In addition, we find that the Examiner's stated motivational basis for combining Kail with Wilson,[3] and the stated basis for combining Kail with Lauber[4] meet the legal requirements of *KSR*, i.e., the Examiner has provided an articulated reasoning with a rational underpinning to support the legal conclusion of obviousness.

Accordingly, Appellants have not provided persuasive evidence or arguments that the Examiner erred in combining the cited art in the manner suggested. Therefore, we sustain the Examiner's unpatentability rejection of claim 1.

Appellants have not provided separate arguments for the patentability of independent claims 10 and 19, which recite the contested limitation in commensurate form, nor have they provided any separate, substantive arguments with respect to dependent claims 2-9, 11-18, and 20-24, such that we sustain the rejection of these claims as well.

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[3] It would have been obvious to one of ordinary skill in the art to incorporate the analog and digital sensors of Wilson, which are enabled to be calibrated and controlled, into the sensors (28) of Kail, since this would have further enhanced the configuration abilities by allowing specific sensors to be calibrated to monitor certain parameters as configured by a user of the system. Ans. 7.

[4] Since the transmission of data via wireless communication is already taught by Kail, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the data packets of Lauber into the data transmissions of Kail, since this would have provided a reliable and efficient method of transmitting data via wireless communication. Ans. 5.

CONCLUSIONS

(1) The Examiner did not err with respect to the unpatentability rejection of claims 1-24 under 35 U.S.C. § 103(a) over the art of record, and the rejection is sustained.

DECISION

The decision of the Examiner to reject claims 1-24 is affirmed.

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) (2011).

AFFIRMED

ELD