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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEYHAN KARAOGUZ

Appeal 2011-008380
Application 10/314,292
Technology Center 2600

Before JOSEPH L. DIXON, ST. JOHN COURTEANY III, and
CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1-13, 15-26, 29, 30, 32, and 34. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's claimed invention is directed to using signal-generated location information to control transmission levels of a device in a wireless network environment and optimizing power usage based on the distance range location information of a mobile wireless device (Spec. ¶ [0002]).

Independent claim 1, reproduced below, is representative of the subject matter on appeal.

1. A method of adjusting power output of a device in a wireless network, the method comprising:

performing, by one or more processors and/or circuits:

activating a power control device of a wireless device;

using the power control device of the wireless device to detect and identify a plurality of other wireless devices;

determining coordinates of at least one of the plurality of other wireless devices;

transmitting a first signal from the power control device;

receiving a second signal at the power control device;

determining a location information on the at least one of the plurality of other wireless devices based on the coordinates, the first signal and the second signal; and

adjusting a power output level based on and corresponding to the location information, wherein the adjusting the power output level comprises optimizing a power consumption of the power control device,

wherein the performing occurs in a short range wireless network governed by wireless technologies comprising at least one of IEEE 802.11 technology, an industrial specification for wireless personal area network and ultra-wideband technology.

REFERENCES and REJECTIONS

The Examiner rejected claims 1-4 and 15-18 under 35 U.S.C. § 103(a) based upon the teachings of Overy (US Patent No. 6,961,541 B2, November 1, 2005, filed May 24, 2002) and Johanson (US Patent Application Publication No. 2003/0018744 A1, January 23, 2003, filed February 7, 2001).

The Examiner rejected claims 8-11 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Johanson, Zhang (US Patent No. 7,096,034 B2, August 22, 2006, filed October 1, 2001), and Vayanos (US Patent No. 6,420,999 B1, July 16, 2002).

The Examiner rejected claims 5, 6, 19, and 20 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Johanson, and Chen (US Patent Application Publication No. 2002/0142791 A1, October 3, 2002).

The Examiner rejected claims 12 and 13 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Johanson, Zhang, Vayanos, and Chen.

The Examiner rejected claims 7 and 21 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Johanson, and Sheynblat (US Patent Application Publication No. 2004/0203853 A1, October 14, 2004, filed Apr. 24, 2002).

The Examiner rejected claims 22-24 and 35-37 under 35 U.S.C.

§ 103(a) based upon the teachings of Overy, Johanson, Oh (US Patent No. 7,260,415 B1, August 21, 2007, filed May 31, 2001), and Calvert (US Patent Application Publication No. 2002/0102989 A1, August 1, 2002).

The Examiner rejected claims 25 and 38 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Calvert, Zhang, and Johanson.

The Examiner rejected claims 26 and 39 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Calvert, Johanson, and Asano (US Patent No. 7,206,552 B2, April 17, 2007, filed March 26, 2002).

The Examiner rejected claims 29, 30, 33, and 34 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Johanson, and Calvert.¹

The Examiner rejected claims 31 and 32 under 35 U.S.C. § 103(a) based upon the teachings of Overy, Zhang, Vayanos, Johanson, and Calvert.

ANALYSIS

The Examiner's rejection relies upon Overy and Johanson for each rejection with additional references added for the various rejections. Appellant addresses only these two references in addition to Calvert in their arguments, thus we address only these references in our opinion. (App. Br. 15, 18).

Appellant contends Overy does not disclose using a power control device of a wireless device to detect and identify other wireless devices as claimed (App. Br. 16). Appellant also contends Johanson merely requests GPS coordinates of other devices. That is, Johanson transmits a request for

¹ Claim 33 was included in this rejection (Ans. 25); however, claim 33 was cancelled by Appellant on May 4, 2010 (App. Br. 2) and is therefore not before us on Appeal.

GPS coordinates via a transceiver and response signals are sent back to the transceiver. (App. Br. 17) Therefore, Appellant asserts, the combination of these references does not teach or suggest “using the power control device of the wireless device to detect and identify a plurality of other wireless devices” as claimed (App. Br. 17).

The Examiner finds Overy adjusts or controls power based on location and Johanson discloses a wireless device that detects and identifies a plurality of other devices (Ans. 28). Although Appellant asserts the Examiner failed to point to any portion of either reference that “expressly or necessarily describes, teaches or suggests” the contested limitation, we do not agree (Reply Br. 2-3). The Examiner has articulated reasoning in the rejection that possesses a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) (citation omitted). The Examiner states, and we agree, even though Johanson requests GPS information, this information and device type information are used to detect and identify nearby wireless devices (Ans. 27-28). Contrary to Appellant’s arguments, the test is not that the claimed invention must be expressly suggested in any or all of the references, “the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (citations omitted). Thus, we are not persuaded of Examiner error. We find the weight of the evidence supports the Examiner’s ultimate legal conclusion of obviousness. Therefore, the Examiner’s rejection of claim 1, and claims 7 and 21 not separately argued, is sustained (App. Br. 30).

Appellant contends, with respect to claim 15, the Examiner *may* assert Calvert as Calvert discloses “a system and method ‘for accurately locating a

communicating device in the system.”² Appellant then asserts “the system infrastructure [of Calvert] transmits a request to the communication device for a more accurate geographic location” (App. Br. 18). Appellant contends Calvert discloses detecting “an approximate location of a device and then merely overlaying a map on a display” (App. Br. 18), which is different from determining a surrounding geographic area of a device and displaying a geographic map overlay of the area (App. Br. 19). That is, Appellant argues the portion of Calvert that *may* be relied upon by the Examiner does not disclose determining a geographic area surrounding a device as claimed (App. Br. 18). However, giving the claim language a broad but reasonable interpretation, we conclude Calvert’s detecting an approximate location is similar to detecting a surrounding geographic area.

We therefore agree with the Examiner’s findings and adopt them as our own (Ans. 4-5 and 28-29). Further, it appears Johanson discloses determining a geographic area surrounding a wireless device (Johanson, ¶¶ [0019], [0020]). Appellant has not provided arguments as to why Overy and Johanson do not teach or suggest this claim limitation or how Calvert is different except for using different language. We find the weight of the evidence supports the Examiner’s ultimate legal conclusion of obviousness. Therefore, the Examiner’s rejection of claim 15, claim 8 similarly argued, and claims 22-26, 29, 30, 32, and 34 not separately argued, is sustained (App. Br. 31).

Claims 4, 11, and 18 recite “adjusting the power output level when a predetermined period of time has lapsed.” Although Appellant argues claims 4 and 18 separately from claim 11, the arguments for both sets of claims are

² Calvert was not asserted by the Examiner against claim 15.

the same and are therefore addressed together (App. Br. 19-20; 22-24). Appellant contends Overy does not disclose this feature. Rather, Overy relies on a distance measurement to adjust power and not on a predetermined period of time as claimed (App. Br. 20).

While it is true that Overy teaches adjusting the power level when a distance measurement occurs, as the Examiner finds, there will be a finite period of time during which said distance measurement occurs (Ans. 29). There will thus ultimately be an adjustment of the power level based on the passage of a period of time. Furthermore, Appellant provides no further detail regarding the predetermined time to sufficiently distinguish from Overy. Thus, absent such detail, we are not persuaded of Examiner error. We find the weight of the evidence supports the Examiner's ultimate legal conclusion of obviousness. Therefore the Examiner's rejection of claims 4, 11, and 18 is sustained.

Claims 5, 6, 19, and 20 recite "adjusting the power output level when the second signal contains an amount of errors that equals to or exceeds a predetermined threshold" (claims 5 and 19) and "adjusting the power output level when the second signal contains a power saturated signal" (claims 6 and 20). Reciting the features of the claims, Appellant asserts Chen in view of Overy and Johanson does not disclose these features. (*See In re Jung*, 637 F.3d 1356, 1362-65 (Fed. Cir. 2011) ("Before the examiner, Jung merely argued that the claims differed from Kalnitsky, and chose not to proffer a serious explanation of this difference."); *see also* 37 C.F.R. § 41.37(c)(1)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); 37 C.F.R. § 1.111(b) ("A general allegation that the claims define a patentable

invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”).

Although Appellant provides additional arguments in the Reply Brief, these arguments were not previously raised and are therefore waived as untimely. *See* Reply Br. 7-8. Accordingly, we do not consider these arguments. *See Ex parte Borden*, 93 USPQ2d 1473, 1474 (BPAI 2010) (informative) (“[T]he reply brief [is not] an opportunity to make arguments that could have been made in the principal brief on appeal to rebut the Examiner's rejections, but were not.”) Thus, we find Appellant did not particularly point out errors in the Examiner’s reasoning to persuasively rebut the Examiner’s prima facie case of obviousness of claims 5, 6, 19, and 20. We also find the weight of the evidence supports the Examiner’s ultimate legal conclusion of obviousness. Therefore, the Examiner’s rejection of claims 5, 6, 19, and 20, and claims 12, 13, argued separately but with the same arguments, is sustained.

DECISION

The Examiner’s decision rejecting claims 1-13, 15-26, 29, 30, 32, and 34 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)(2010).

AFFIRMED

peb