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HENRY M FEIEREISEN				
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELANOR HEPWORTH and STEPHEN McCANN

Appeal 2015-001013
Application 12/312,491
Technology Center 2400

Before ROBERT E. NAPPI, MICHAEL J. STRAUSS, and
JOHN D. HAMANN *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) of the Examiner's Non-Final Rejection of claims 9 through 11, 13 through 15, 18 through 20, 22 through 25, 27, 30, 32 through 39, 41 through 46, and 48 through 51. The Examiner has indicated claims 40 and 47 are allowable, the remainder of the claims have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We heard oral arguments on November 17, 2016. A transcript of the hearing will be added to the record in due time.

We affirm.

INVENTION

The disclosed and claimed inventions are directed to an emergency alert system which sends an unsolicited broadcast from a network to wireless

terminals in the network. The broadcast includes an indicator that an emergency alert is waiting and the indicator triggers a request to be sent from the terminal to the network to download the alert. *See Abstract.*

CLAIMED SUBJECT MATTER

Claim 9 is illustrative of the invention and reproduced below:

A method of providing an emergency alert to a terminal via a wireless area network communicating with all terminals using an Internet Protocol, comprising:

 sending an unsolicited broadcast from a network edge device of the wireless area network to all terminals in a predetermined category, the unsolicited broadcast including an indicator that an emergency alert is waiting;

 receiving at least the indicator at a terminal; and

 sending a request from the terminal to the wireless area network for the emergency alert to be downloaded to the terminal, said receiving of the indicator acting as a trigger for said sending.

REFERENCES AND REJECTION AT ISSUE

The Examiner rejected claims 9 through 11, 13 through 15, 18 through 20, 22 through 25, 27, 30, 32 through 38, 42 through 45, and 49 through 51 under 35 U.S.C. § 103(a) as being unpatentable over Bowser et al. (US 2007/0207771 A1; Sept. 6, 2007) (“Bowser”) and Sennett et al. (US 8,548,419 B1; Oct. 1, 2013) (“Sennett”). Office Act. 3–15.¹

¹ Throughout this Decision we refer to the Appeal Brief dated May 8, 2014, Reply Brief dated October 29, 2014, Non-Final Rejection dated January 28, 2014, and the Examiner’s Answer mailed on August 29, 2014.

The Examiner rejected claims 39 and 46 under 35 U.S.C. § 103(a) as being unpatentable over Bowser, Sennett, and Dravida et al. (US 2007/0008925 A1; Jan. 11, 2007) (“Dravida”). Office Act 15–16.

The Examiner rejected claims 41 and 48 under 35 U.S.C. § 103(a) as being unpatentable over Bowser, Sennett, Dravida, and Chiussi et al. (US 2007/0220573 A1; Sept. 20, 2007) (“Chiussi”). Office Act 17–18.

ANALYSIS

We have reviewed Appellants’ arguments in the Briefs, the Examiner’s rejections and the Examiner’s response to Appellants’ arguments. Appellants’ arguments have not persuaded us of error in the Examiner’s rejections of claims 9 through 11, 13 through 15, 18 through 20, 22 through 25, 27, 30, 32 through 39, 41 through 46, and 48 through 51 under 35 U.S.C. § 103(a).

Appellants argue the Examiner’s rejection of independent claim 9 is in error as Sennett teaches away from modifying Bowser. App. Br. 3–4. Appellants assert that Sennett requires the use of a cellular network and would not be applied to Bowser which does not. App. Br. 4.

Additionally, Appellants state that claim 9 recites sending the unsolicited broadcast from a network and sending a request from the wireless terminal to the network for the emergency alert to be downloaded. App. Br. 4. Appellants argue that neither Bower nor Sennett, disclose using the same network for both the broadcast and the request for the alert. App. Br. 4–5.

The Examiner has provided a comprehensive response to Appellants’ arguments on pages 4 through 8 of the Answer. We have reviewed the Examiner’s Answer and the evidence cited and we concur with the

Examiner. The Examiner finds that Bowser teaches an unsolicited emergency broadcast. Office Act. 3–4. Further, the Examiner finds Sennett teaches an emergency broadcast system in which the user is sent an indicator of emergency alert, and sending a request from the terminal for the emergency alert to be downloaded. Office Act. 5–6. The Examiner finds Sennett’s text-based messages may be used in any type of network architecture/protocol, and thus, the Appellants’ argument that Sennett does not apply to Bowser is not persuasive of error. Ans. 5. We concur with the Examiner. We further note Sennett’s Figures 3 and 4 show communication to the mobile unit is by one radio access network, and thus, Appellants’ argument that Bowser and Sennett do not teach that unsolicited broadcast and request for the alert are on separate networks is not persuasive of error.

For the first time in the Reply Brief, Appellants assert Sennett teaches different information in the communications than the claimed indicator and alert (Reply Br. 3–4). Appellants have not shown good cause as to why these arguments could not have been presented earlier. As such, this argument has not been considered, and is waived. *See Ex parte Borden*, 93 USPQ2d 1473, 1473–74 (BPAI 2010) (informative) (absent a showing of good cause, the Board is not required to address arguments in Reply Brief that could have been presented in the principal Appeal Brief).

DECISION

We sustain the Examiner’s rejection of claims 9 through 11, 13 through 15, 18 through 20, 22 through 25, 27, 30, 32 through 39, 41 through 46, and 48 through 51 under 35 U.S.C. § 103(a).

Appeal 2015-001013
Application 12/312,491

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