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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIKKO TIRRONEN, PHILIP GINZBOORG, SAMI VIRTANEN,
KARI LEPPANEN, and MARKKU TAPIO TURUNEN

Appeal 2015-003584
Application 12/956,886
Technology Center 2400

Before NORMAN H. BEAMER, MELISSA A. HAAPALA, and
JOYCE CRAIG, *Administrative Patent Judges*.

HAAPALA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' invention is directed to selecting devices to form a community of the devices. *See Spec.* ¶¶ 2–3. Claim 1 is exemplary of the subject matter on appeal:

1. A method comprising facilitating a processing of and/or processing (1) data, (2) information, and/or (3) at least one signal the data, information, and/or at least one signal based at least in part on the following:

at least one determination of one or more candidate devices within proximity of at least one device;

at least one determination to initiate at least one synchronized capture of sensor data by the at least one device and at least one of the one or more candidate devices;

at least one determination to form a community based, at least in part, on the at least one synchronized capture; and

at least one determination to generate a community key, a community identifier, or a combination thereof based, at least in part, on the sensor data of the synchronized capture,

wherein the community includes a plurality of users.

REJECTIONS ON APPEAL

Claims 1–8, 10–17, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Ayyagari (US 2007/0150565 A1; June 28, 2007), Vasseur (US 8,452,572 B2; May 28, 2013), and Miluzzo (US 2010/0299615 A1; Nov. 25, 2010).

Claims 9 and 18 stand rejected as being as being obvious over the combination of Ayyagari, Vasseur, Miluzzo, and Falk (US 2011/0158410 A1; June 30, 2011).

ISSUES

Appellants' contentions present us with the following issues:

A) Did the Examiner err in finding the combination of Ayyagari, Vasseur, and Miluzzo teaches or suggests *at least one determination to form a community based, at least in part, on the at least one synchronized capture* ("form community" limitation), as recited in independent claim 1? ¹

B) Did the Examiner err in finding the combination of Ayyagari, Vasseur, and Miluzzo teaches or suggests *at least one determination of one or more contexts*, as recited in dependent claim 4?

C) Did the Examiner err in finding the combination of Ayyagari, Vasseur, Miluzzo, and Falk teaches or suggests *at least one determination to encrypt communication* ("encrypt" limitation), as recited in dependent claim 9?

ANALYSIS

We have reviewed the Examiner's rejections in consideration of Appellants' contentions and the evidence of record. We disagree with Appellants' contentions that the Examiner's rejections of the claims are in error.

¹ Appellants also newly contend in the Reply Brief that the cited references do not teach or suggest an additional recitation of claim 1 (the determination to initiate at least one synchronized capture of sensor data). *See* Reply Br. 2–6, 8. In the absence of showing of good cause explaining why the argument could not have been presented in the principle Brief, we decline to consider the argument and deem it waived. *See* 37 C.F.R. § 41.41(b)(2)(2014); *In re Hyatt*, 211 F.3d 1367, 1373 (Fed. Cir. 2000) (noting that an argument not first raised in the brief to the Board is waived on appeal).

Appellants contend the combination of Ayyagari, Vasseur, and Miluzzo does not teach or suggest the “form community” limitation recited in claim 1. App. Br. 5–11. In support of this contention, Appellants argue that any alleged communities formed in Ayyagari are not based on captured sensor data, but are based on the already known fact of the known location of the sensors. *See* App. Br. 6–8.

The Examiner finds Ayyagari teaches forming a group of network sensors capable of cooperative information gathering. Ans. 10. The Examiner correlates the grouping of sensor nodes, which collect environmental parameters, to a community. *Id.* The Examiner further finds that Ayyagari teaches rejecting measurements of sensors if the measurements fall outside a specified tolerance range, and, therefore, teaches forming a community based on captured sensor data. *See* Ans. 10–11.

The cited sections of Ayyagari describe forming a group of sensors as part of sensor network, which may have multiple sensor nodes collecting data about similar/related environmental parameters. *See* Ayyagari ¶¶ 5, 42. Ayyagari further describes if the management system determines that the integrity of the data from a given sensor node cannot be established (e.g., because the measurements are beyond the expected range), it can ignore the data received from the problematic node or disables it. *Id.* at ¶ 42. Appellants do not provide persuasive argument or explain why the broadest reasonable interpretation of the “form community” limitation is not taught or suggested by Ayyagari’s teaching of disabling an existing sensor from the sensor network based on the captured data, which effectively forms a new community of sensors that excludes the disabled sensor.

For the reasons stated above, Appellants fail to persuade us of error in the rejection of claim 1. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of: (1) claim 1; (2) independent claims 12 and 19, for which Appellants rely on the same arguments made for claim 1 (App. Br. 11); and (3) dependent claims 2, 3, 5–8, 10, 11, 13, 14, 16, 17, and 20, which are not argued separately.

Issue B: Claims 4 and 15

Appellants contend Ayyagari does not teach *at least one determination of one or more contexts*, as recited in claim 4, because any context in Ayyagari is predetermined and not determined. App. Br. 11–13. We are not persuaded of error.

The Examiner finds the disputed limitation is taught by Ayyagari’s description of determining a context based on a mission plan, in which a network controller determines which sensors are active for information gathering. Ans. 12 (citing Ayyagari ¶¶ 57–59). Appellants do not address these specific findings made by the Examiner. Furthermore, Appellants’ argument that any context in Ayyagari is predetermined is not commensurate with the scope of claim 4, which does not contain any restriction on when the determination is made. Thus, Appellants do not persuade us the Examiner errs in finding Ayyagari teaches the claimed determination of one or more contexts. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claim 4 and claim 15, argued together with claim 4.

Issue C: Claims 9 and 18

Appellants argue the cited references do not teach the “encrypt” limitation recited in claim 9 because Ayyagari’s validation of information is not encryption. App. Br. 15–16. We are not persuaded by this argument

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because the Examiner relies on Falk, not Ayyagari, to teach encrypting communications (measurement data from sensors). *See* Ans. 9.

Furthermore, we disagree with Appellants' contention (App. Br. 16) that Ayyagari teaches away from encrypting data. To teach away, a reference must actually "criticize, discredit, or otherwise discourage" investigation into the claimed solution. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004). The section of Ayyagari cited by Appellants does not criticize or discredit encrypting communications, but merely states an advantage of its authentication scheme is that it eliminates the need to *perform authentication* based on Public Key Infrastructure (PKI). *See* Ayyagari ¶ 39.

Appellants do not persuade us of error in the rejection of claim 9. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claim 9 and claim 18, argued together with claim 9.

DECISION

We affirm the Examiner's decision to reject claims 1–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED