



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/351,092	01/16/2012	Sarah Hernandez	WAV-PT063.1	5252
61521	7590	12/12/2016	EXAMINER	
DOVAS LAW P.C. 307 BAINBRIDGE STREET PHILADELPHIA, PA 19147			NEALON, WILLIAM	
			ART UNIT	PAPER NUMBER
			2643	
			NOTIFICATION DATE	DELIVERY MODE
			12/12/2016	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DDOVAS@DOVASLAW.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SARAH HERNANDEZ, ANDREW TALBOT, and
MITCHELL SCOTT OZER

Appeal 2015-007822
Application 13/351,092
Technology Center 2600

Before MARC S. HOFF, KRISTEN L. DROESCH,
and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–19.¹ We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ Appellants identify WaveMarket, Inc., as the real party in interest. (Br. 1.)

THE INVENTION

Appellants' disclosed and claimed invention is directed to logging and reporting mobile device information. (Abstract.) Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implemented method for logging and reporting mobile device information comprising:

receiving device activity information corresponding to use of a particular mobile device via a client executed on the particular mobile device;

sorting the activity information based on at least one predetermined criterion; and

providing a display to a user showing a plurality of graphical indications respectively corresponding to at least one of a plurality of days and a plurality of time slots in a day to report the sorted activity information to the user.

REJECTION

The Examiner rejected claim 9 under 35 U.S.C. § 112(a), first paragraph, as failing to comply with the written description requirement. (Final Act. 3.) Appellants do not address this rejection in their brief, and therefore this rejection is summarily affirmed.²

The Examiner rejected claims 1–3, 11–12, and 17–19 under 35 U.S.C. § 103(a) as being unpatentable over Eldering (US 2008/0176585 A1, pub. Jul. 24, 2008) and Sheha (US 2011/0045868 A1, pub. Feb. 24, 2011). (Final Act. 4–6.)

² We note Appellants' amended claim 9 after the Final Action, which amendment was entered by the Examiner. (2/6/2014 Reply Pursuant to 37 C.F.R. § 1.116, p. 5; 2/24/2014 Advisory Action.) However, the Examiner has not withdrawn the Section 112 rejection. (*See* Ans. 3.)

The Examiner rejected claims 4 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, and Klassen (US 2011/0055546 A1, pub. Mar. 3, 2011). (Final Act. 6–7.)

The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, and Khazaka (US 6,529,724 B1, issued Mar. 4, 2003). (Final Act. 7–8.)

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, Khazaka, and Klassen. (Final Act. 8–9.)

The Examiner rejected claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, and Angiolillo (US 2010/0330972 A1, pub. Dec. 30, 2010). (Final Act. 9–10.)

The Examiner rejected claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, Angiolillo, and Klassen. (Final Act. 10–11.)

The Examiner rejected claims 13–16 under 35 U.S.C. § 103(a) as being unpatentable over Eldering, Sheha, and Malik (US 7,272,633 B2, Sep. 18, 2007). (Final Act. 11–12.)

ISSUES ON APPEAL

Appellants' arguments in the Appeal Brief present the following dispositive issues:³

³ Rather than reiterate the arguments of Appellants and the findings of the Examiner, we refer to the Appeal Brief (filed May 24, 2014); the Final Office Action (mailed Nov. 6, 2013); and the Examiner's Answer (mailed Sep. 15, 2014) for the respective details.

Issue One: Whether the Examiner erred in finding the combination of Eldering and Sheha teaches or suggests the independent claim 1 limitation, “providing a display to a user showing a plurality of graphical indications respectively corresponding to at least one of a plurality of days and a plurality of time slots in a day to report the sorted activity information to the user,” and the similar limitations recited in independent claims 18 and 19. (App. Br. 5–8.)

Issue Two: Whether the Examiner erred in finding the combination of Eldering and Sheha teaches or suggests the additional limitations of dependent claim 11. (App. Br. 9–10.)

Issue Three: Whether the Examiner erred in finding the combination of Eldering, Sheha, and Klassen teaches or suggests the additional limitations of dependent claims 4 and 10. (App. Br. 10–12.)

Issue Four: Whether the Examiner erred in finding the combination of Eldering, Sheha, and Angiolillo teaches or suggests the additional limitations of dependent claim 8. (App. Br. 13–14.)

Issue Five: Whether the Examiner erred in finding the combination of Eldering, Sheha, and Malik teaches or suggests the additional limitations of dependent claims 13–16. (App. Br. 17–19.)

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments that the Examiner errs. As to the obviousness rejections of claims 1–3, 5–7, and 12–19, we disagree with Appellants’ arguments, and we adopt as our own (1) the pertinent findings and reasons set forth by the Examiner in the Action from which this appeal is taken (Final Act. 3–9, 11–12) and (2) the corresponding reasons set forth by the Examiner in the Examiner’s

Answer in response to Appellants' Appeal Brief (Ans. 3–7). We concur with the applicable conclusions reached by the Examiner and emphasize the following.

Issue One

In finding that Eldering and Sheha teach or suggest the limitation at issue for the independent claims, the Examiner relies on the disclosure in Eldering of displaying contact records arranged by order of number of calls placed to the contacts, and/or durations of such calls. (Final Act. 4–5; Eldering Fig. 15A, ¶¶ 58–60.) The Examiner also relies on the disclosure in Sheha of displaying the call history, for a date and time range specified by the user, of calls or messages to or from contacts. (Final Act. 4; Sheha Figs. 11, 12, ¶¶ 153, 319–320.) In addition, the Examiner interprets the pertinent claim language as requiring, “displaying a view of sorted activity information, the view showing some type of indication(s) of one of (1) a plurality of days and (2) time slots in a day.” (Ans. 4.)

Appellants argue that the references do not teach or suggest displaying “graphical indications” to report sorted activity, but rather only discloses “listing a call history showing caller names.” (App. Br. 7–8.) Appellants further argue the references “fail to suggest or disclose ‘showing a plurality of graphical indications respectively corresponding to a plurality of days and a plurality of time slots’ as recited in independent claims 1, 18, and 19.” (App. Br. 8.) As to the latter argument, Appellants mischaracterize the claim requirement, which, as the Examiner finds, require only graphical indications corresponding to “a plurality of days” OR “time slots in a day.” (Ans. 4.) We agree with the Examiner that the cited references teach or suggest at least the “plurality of days” alternative. Particularly taking into

account the “time range identifiers 1102” of Figure 11 of Sheha, the lists in the cited figures of Eldering and Sheha teach or suggest the display of calls spanning multiple days. (Eldering Fig. 15A; Sheha Figs. 11, 12, ¶ 319.) Therefore we are not persuaded the Examiner errs in finding the combination of Eldering and Sheha teach or suggest the subject matter of this limitation. In combination, the references teach or suggest displaying a list, spanning multiple days, of calls in the order of call duration. (e.g., Eldering Fig. 15A; Sheha Figs. 11, 12.)

As to the former argument, Appellants dispute that such a listing includes “graphical indications” of sorted activity corresponding to a plurality of days. (App. Br. 7.) However, we agree with the Examiner that the claims broadly encompass displays “showing some type of indication(s)” of the required information. (Ans. 4.) The lists disclosed in the cited art are comparable to the list of calls ranked by communication frequency depicted in Figure 6 of the Specification, which Appellants admit is a “graphical example[]” of the claimed subject matter. (App. Br. 3; *cf.* Eldering Fig. 15A and Sheha Figs. 11, 12, *with* Spec. Fig. 6, ¶ 33.)

Accordingly, we sustain the Examiner’s rejection of independent claims 1, 18, and 19.

Issue Two

Dependent claim 11 specifically requires the display of activity levels for “a plurality of predetermined time slots during at least one day.” (App. Br. 23.) The Examiner cites the above-discussed portions of Eldering as teaching or suggesting this limitation. (Final Act. 5.)

Appellants argue that Eldering does not teach displaying activity levels by predetermined time slots. (App. Br. 9.) The Examiner responds:

Examiner sees the actual cited portions of Eldering as disclosing the specific subject matter of limitation and the combination of Eldering with Sheha as teaching/suggesting all the elements of the claim including those claims that the claim depends from.

(Ans. 5.)

In contrast to the teaching in the cited art of displaying graphical indications for a “plurality of days” as discussed above for the independent claims, we are unable to discern in the cited portions of Eldering and Sheha a teaching or suggestion of displaying activity levels by “predetermined time slots,” and the Examiner’s response does not assist us. Therefore, on the record before us, we are constrained to find the Examiner errs in rejecting claim 11.

Issue Three

Dependent claim 4 requires “an alert to the user for each of the plurality of days for which the activity information corresponds to the predetermined period of time,” and claim 10 requires “an alert to the user for each of the plurality of days corresponding to the at least one predetermined criterion.” (App. Br. 20–22.) In addition to the disclosures of Eldering discussed above, the Examiner relies on the additional disclosure in Eldering of “time of day” directives to control which contacts are displayed at a particular time of day, in combination with the general teachings in Klassen regarding alerts of user activity on a mobile device, as teaching or suggesting this limitation. (Final Act. 6–7; Eldering Fig. 9A, ¶¶ 45, 51; Klassen ¶ 62.)

Appellants argue neither Eldering nor Klassen teach or suggest providing the required alerts. (App. Br. 11–12.) Appellants admit that Klassen generally teaches the concept of generating alerts, but argue

“Klassen fails to suggest that such alerts can be displayed in conjunction with indications of a plurality of days based on predetermined criteria.” (App. Br. 12.) Instead, the Examiner relies on the disclosure of Eldering as teaching or suggesting the determinations of whether activity information corresponds to a predetermined criterion such as time periods, relying on Klassen only for the additional requirement of providing alerts when the predetermined criterion are satisfied. (Final Act. 7.)

In regard to the Examiner’s reliance on Eldering, Appellants argue that the Examiner misunderstands the Eldering disclosure:

Eldering, paragraph [0051] does not teach disclosing for each of a plurality of days anything at all. The correct understanding of paragraph [0051] is that it teaches the use of specific “time of day” directives to control what is displayed when and how. . . .

. . . What is taught is that viewable contact fields can be controlled by time of day directives. . . .

(App. Br. 11.)

We agree with Appellants — the portion of Eldering relied on by the Examiner does not relate to determining whether activity information corresponds to a predetermined criterion, but rather provides for establishing criterion for which contacts are to be displayed on a contact list, and when they are to be displayed. (Eldering Fig. 9A, ¶¶ 45, 51.) Although Klassen does generally teach the concept of generating alerts, and portions of Eldering, in combination with Sheha, as discussed above in connection with the independent claims, do not teach displaying sorted activity information for a plurality of days, we do not find a teaching or suggestion in the cited references, whether taken alone or in combination, that teach or suggest the “predetermined period of time” and “predetermined criterion” limitations at

issue. Therefore, on the record before us, we are constrained to find the Examiner errs in rejecting claims 4 and 10.

Issue Four

Dependent claim 8 requires the display of the total duration of phone calls or electronic messages for each of a plurality of time slots in a day. (App. Br. 22.) The Examiner again cites the above-discussed portions of Eldering relied on for the rejection of the independent claims as teaching or suggesting this limitation. (Final Act. 10.) In addition, the Examiner relies on the disclosure in Angiolillo of a dynamic contact list with the capability of displaying contacts that typically occur during a specified time period in the day. (Final Act. 10; Angiolillo Fig. 7, ¶¶ 67–68.) As discussed above for claim 11, we agree with Appellants that Eldering does not teach or suggest displaying activity levels by predetermined time slots. (See App. Br. 13–14.) We also agree that the disclosure in Angiolillo regarding sorting contact lists does not provide any additional pertinent teaching or suggestion. (App. Br. 14.) The Examiner’s response, “Examiner, being one of ordinary skill in the art, disagrees with the Appellants characterization of the prior art of Angiolillo, Sheha, Eldering and Klassen” (Ans. 6), is conclusory and unpersuasive, and accordingly we do not sustain the rejection of claim 8. We also do not sustain the rejection of claim 9, which depends from claim 8.

Issue Five

Dependent claim 13 requires the activity information of claim 1 to include a “communication level based on at least two forms of communication,” claim 15 further requires the communication forms to comprise “phone communications and electronic messages,” and claims 14

and 16 (dependent, respectively, from claims 13 and 15) further require the communication level to be based on “factors.” (App. Br. 23.)

In rejecting these claims, the Examiner relies on the above discussed teachings or suggestions in Eldering and Sheha of displaying call history, for a date and time range, ordered by call duration or number of calls, together with the disclosure in Malik of “a computer-implemented manager that allows a user to participate in, keep track of, log and monitor all types of communication activity including call activity, email, IMs, etc.” (Final Act. 11; Malik Abstract, col. 7, ll. 52–67, col. 14, ll. 19–24.) The Examiner also finds Malik teaches the required use of factors. (Final Act. 2; Malik Fig. 5A, col. 20, ll. 43–62, col. 22, ll. 51–67.)

Appellants, relying on the disclosure in the Specification of an example of determining communication levels based on factors, argue “Malik does not determine a communication level based on multiple forms of communication.” (App. Br. 18; *see* Spec. ¶ 33.) This argument is unpersuasive in that it focuses on Malik alone, whereas the rejection is based on the combination of Eldering, Sheha, and Malik. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (the test for obviousness is whether the combination of references, taken as a whole, would have suggested the patentee’s invention to a person having ordinary skill in the art). In addition, as the Examiner states, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *See In re Van Geuns*, 988 F.2d 1181 (Fed. Cir. 1993).

In sum, we are not persuaded that the Examiner erred in rejecting claims 13–16. Broadly but reasonably construing the requirement of

determining a communication level based on factors, the combination of displaying call history, for a date and time range, ordered by call duration or number of calls as disclosed in Eldering and Sheha, together with the processing of multiple communication forms as disclosed in Malik, reasonably teaches or suggests the limitations at issue.

We note that Appellants do not challenge the Examiner's finding, for claim 12 (from which the claims at issue depend), that Eldering teaches determining a communication level for a mobile device. (Final Act. 5; Eldering Fig. 15A, ¶ 58–59.) Further, given the teaching of Malik regarding multiple communication forms, the Examiner's findings are reasonable because the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle,” because the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 420–21 (2007)). We are persuaded the claimed subject matter exemplifies the principle that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR*, 550 U.S. at 416.

CONCLUSIONS

Given the failure of Appellants to address the rejection, we summarily affirm the rejection of claim 9 pursuant to 35 U.S.C. § 112(a), First Paragraph.

For the reasons stated above, we sustain the obviousness rejections of claims 1, 18, and 19 over Eldering and Sheha, and of claims 13–16 over Eldering, Sheha, and Malik.

We also sustain the obviousness rejections of claims 2–3, 12, and 17 over Eldering and Sheha, of claim 5 over Eldering, Sheha, and Khazaka, of claim 6 over Eldering, Sheha, Khazaka, and Klassen, and of claim 7 over Eldering, Sheha, and Angiolillo, which rejections are not argued separately with particularity.

Also for the reasons stated above, we do not sustain the obviousness rejection of claim 11 over Eldering and Sheha, of claims 4 and 10 over Eldering, Sheha, and Klassen, and of claim 8 over Eldering, Sheha, and Angiolillo. We also do not sustain the rejection of claim 9 over Eldering, Sheha, Angiolillo, and Klassen, which depends from claim 8.

DECISION

We affirm the Examiner’s rejection of claim 9 pursuant to 35 U.S.C. § 112(a), First Paragraph.

We affirm the Examiner’s obviousness rejections of claims 1–3, 5–7, and 12–19.

We reverse the Examiner’s obviousness rejections of claims 4 and 8–11.

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-IN-PART