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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RAFAEL HEREDIA and MICHAEL WAYNE CROWE<sup>1</sup>

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Appeal 2015-007885  
Application 12/332,056  
Technology Center 2600

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Before BRUCE R. WINSOR, AMBER L. HAGY, and  
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner’s decision rejecting claims 1–6, 8, 10–12, 15, 17–18 and 21–26<sup>2</sup>. We have jurisdiction over this appeal under 35 U.S.C. § 6(b).

We AFFIRM.<sup>3</sup>

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<sup>1</sup> According to Appellants, the real party in interest is Zipit Wireless, Inc. *See* Appeal Br. 3.

<sup>2</sup> Claims 7, 9, 13, 14, 16, 19, and 20 have been cancelled.

<sup>3</sup> Throughout this Opinion, we refer to: (1) Appellants’ Specification filed Aug. 1, 2011 (“Spec.”); (2) the Final Office Action (“Final Act.”) mailed June 18, 2014; (3) the Appeal Brief (“Appeal Br.”) filed Jan. 20, 2015; (4) the Examiner’s Answer (“Ans.”) mailed June 30, 2015; and (5) the Reply Brief (“Reply Br.”) filed Aug. 25, 2015.

## BACKGROUND

Appellants' application generally relates to a computer network communication device that enables a parent/administrator to control data communication sessions between the device and a mobile communication device that may be accessed through a cellular network. Spec. ¶ 13.

Claims 1, 5, 15, and 22 are independent claims.

Claim 1 is representative and is reproduced below with the disputed limitations emphasized:

1. A mobile computer network communication device that regulates an instant message session with a mobile telephone comprising:

an input device that generates alphanumeric data in response to manipulation of the input device;

a display that generates visible indicia;

a memory for storing data;

a processor operatively connected to the input device, the display, and the memory, *the processor being configured to execute an instant messaging (IM) application program that generates data messages with alphanumeric data received from the input device for delivery to a Short Message Service (SMS) server in response to the processor retrieving a recipient identifier from the memory that corresponds to a cellular telephone number, and that generates data messages in an IM service protocol in response to the processor retrieving a recipient identifier from the memory that corresponds to an IM service subscriber;*

a housing configured to integrate the input device, display, memory, and processor into a handheld terminal; and

a communication module located within the housing of the mobile computer network communication device, the communication module being operatively connected to the processor executing the IM application program to receive the data messages generated for delivery to the SMS server and to

receive the data messages generated in the IM service protocol, the communication module being configured to communicate the data messages generated by the processor for delivery to the SMS server over a computer communication network and to communicate the data messages generated by the processor in the IM service protocol over the computer communication network with an IM service server that is not associated with the SMS server.

#### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal includes:

Appelman et al. ("Appelman")	US 2006/0168204 A1	July 27, 2006
Digate et al. ("Digate")	US 2006/0234735 A1	Oct. 19, 2006
White	US 7,305,234 B1	Dec. 4, 2007
Walter et al. ("Walter")	US 2008/0305764 A1	Dec. 11, 2008
Klassen et al. ("Klassen")	US 2009/0100378 A1	Apr. 16, 2009

#### REJECTIONS

Claims 1 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Digate and Klassen. Final Act. 3–11.

Claims 2, 3, 5, 6, 8, 10, 11, 23, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Digate, Klassen, and White. Final Act. 11–22.

Claims 4, 12, 15, 17, 18, 21 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Digate, Klassen, White, and Walter. Final Act. 22–33.

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Digate, Klassen, White, and Appelman. Final Act. 34–25.

Our review in this appeal is limited to the above rejections and issues raised by Appellants. We have not considered other possible issues that have not been raised by Appellants and which are, therefore, not before us. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

#### ISSUE

Did the Examiner err in finding that the combination of Digate and Klassen teaches or suggests:

the processor being configured to execute an instant messaging (IM) application program that generates data messages with alphanumeric data received from the input device for delivery to a Short Message Service (SMS) server in response to the processor retrieving a recipient identifier from the memory that corresponds to a cellular telephone number, and that generates data messages in an IM service protocol in response to the processor retrieving a recipient identifier from the memory that corresponds to an IM service subscriber,

as recited in claim 1?

#### DISCUSSION

After review of Appellants' arguments and the Examiner's findings and reasoning, Appellants have not persuaded us of error in the Examiner's rejection of claims 1–6, 8, 10–12, 15, 17–18 and 21–26. Accordingly, we sustain the rejections for reasons set forth by the Examiner in the Final Office Action and the Answer. *See* Final Act. 3–37; Ans. 3–10. We add the following for emphasis and completeness.

*Claim 1*

The Examiner relies on Digate and Klassen to teach or suggest each of the disputed limitations of claim 1. Final Act. 3–6. Specifically, the Examiner relies upon Digate’s mobile client 102a.1 to describe generating data messages in an IM service protocol and for delivery to a SMS server. Final Act. 5–7. Appellants contend that Digate teaches that a separate PC 102b translates instant messages into an SMS protocol and transmits SMS messages to mobile telephone 102a.1 and thus telephone 102.a.1 does not execute an IM application that both generates data messages for delivery to an SMS server and generates data messages in an IM service protocol. Appeal Br. 13. Appellants further argue that the cited paragraph in Digate includes no teaching that the instant messaging application is capable of generating an SMS message. Appeal. Br. 15.

We are not persuaded by Appellants’ contentions. We agree with the Examiner’s finding that Digate’s mobile client 102a.1 includes an IM application program that generates data messages for delivery to a SMS server (SMSC 114) and that generates data messages in an IM service protocol (by logging on directly to instant messaging server 106). Final Act. 5–7 (citing Digate ¶¶ 27 and 48).

Appellants further contend:

Digate merely describes a mobile telephone 102a.1 that is configured to send and receive SMS messages, but not that the mobile telephone 102a.1 executes an instant messaging application that generates IM messages in response [to] retrieving an IM recipient address and that generates SMS messages in response to retrieving a cellular telephone number for the recipient as is required by claim 1.

Appeal Br. 14, 15.

Appellants' arguments are not persuasive because the Examiner relies on Klassen, not Digate, to teach "generates data messages . . . for delivery to a [SMS] server in response to the processor retrieving a recipient identifier from the memory that corresponds to a cellular telephone number, and that generates data messages in an IM service protocol in response to the processor retrieving a recipient identifier" (claim 1). See Final Act. 5–6. "[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Appellants offer similar arguments at pages 15 and 16 of the Appeal Brief. These arguments are also not persuasive because they attack the individual teachings of the references and do not address what the combination of references teaches, as explained by the Examiner.

Appellants contend that the Examiner's finding of fact is in error because Klassen teaches a user interface that enables a user who is already engaged in a chat with another party using an IM application to *manually* select an alternative communication channel for contacting the party. Appeal Br. 17. Appellants' contention is not commensurate with the scope of claim 1. Appellants contend Klassen's IM application, in contrast with claim 1, requires the user to manually select an alternative communication channel for responding to the party. Claim 1, however, does not require that the IM application program generate data messages for delivery to a SMS server or in an IM service protocol automatically or without further user input. We, therefore, find Appellants' argument unpersuasive.

Appellants contend Klassen discusses using alternative communication channels that are not a part of the conventional instant messaging application for responding to a party with whom the user is chatting and thus Klassen fails to disclose “an IM application that both generates messages for delivery to a SMS server and that generates messages in an IM protocol.” Appeal Br. 17 (citing Klassen ¶ 56 and Figs. 5 and 7). Appellants contend Klassen’s alternative communication channel should be interpreted as a different software application and so Klassen uses more than a single IM application to generate both types of messages. *Id.*

Appellants’ contentions are unpersuasive. Appellants essentially argue that claim 1 is distinguished from Klassen because claim 1 uses a *single* software application to generate both types of messages while Klassen uses *more than one* software application to perform identical functions. Without objective evidence to the contrary, we conclude simply integrating known components is insufficient to establish patentability. *In re Larson*, 340 F.2d 965, 968 (CCPA 1965) (“[T]he use of a one piece construction instead of the structure disclosed in [the prior art] would be merely a matter of obvious engineering choice.”). On this record, Appellants have not persuaded us that the Examiner’s proffered combination of references would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007)). Nor have Appellants provided objective evidence of secondary considerations, which, as our reviewing court instructs, “operates as a beneficial check on hindsight.” *Cheese Sys., Inc. v. Tetra Pak Cheese and Powder Systems, Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 1. Appellants argue claims 2–6, 8, 10–12, 15, 17–18 and 21 together with claim 1. Appeal Br. 18. Accordingly, for the reasons discussed above regarding claim 1, we sustain the rejection of claims 2–6, 8, 10–12, 15, 17–18 and 21.

*Claim 22*

Although Appellants nominally argue the rejection of independent claim 22 separately (App. Br. 19–20), Appellants reiterate similar arguments made in connection with claim 1 and thus fail to explain why the limitations of claim 22 are separately patentable. We are not persuaded by these arguments for the reasons discussed above with respect to claim 1. Accordingly, we sustain this rejection. Claims 23–26, which depend from claim 22, are not separately argued. *See* Appeal Br. 20. Therefore, we likewise sustain the rejections of these claims under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's decision rejecting claims 1–6, 8, 10–12, 15, 17–18 and 21–26.

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