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Paratus Law Group, PLLC 1765 Greensboro Station Place Suite 320 Tysons Corner, VA 22102			PATEL, NIRAV B	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AKIHIRO KOMORI, QIHONG WANG, TOMOHISA TANAKA,
and TSUYOSHI ISHIKAWA

Appeal 2015-008123
Application 13/474,333¹
Technology Center 2400

Before ROBERT E. NAPPI, JAMES R. HUGHES, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

McNEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3–10, and 12–20, which are all the claims pending in this application.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is Sony Corporation. App. Br. 3.

² Claims 2 and 11 have been canceled. Final Act. 2.

STATEMENT OF THE CASE

Introduction

Appellants' application relates to establishing a connection between communication terminals. Spec. ¶ 3. Claim 1 is illustrative of the appealed subject matter and reads as follows:

1. An information processing apparatus comprising:

at least one processor;

a communication unit for communicating with another information processing apparatus using the at least one processor, wherein the another information processing apparatus outputs a variable signal having a operation pattern having at least one variable component; and

a determination unit for determining whether or not to authenticate the another information processing apparatus on the basis of the operation pattern output to a user and an analysis result of a responsive variable input of user's operation of the user that substantially imitates the at least one variable component of the operation pattern using the at least one processor.

The Examiner's Rejections

Claims 1, 5, 8–10, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Teague (US 8,260,261 B2; Sept. 4, 2012) and Thorn (US 2009/0153342 A1; June 18, 2009). Ans. 2–4.

Claims 3, 4, 6, 7, 12, 13, 15, and 16 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Teague, Thorn, and Igarashi (US 2007/0220255 A1; Sept. 20, 2007). Ans. 4–6.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner has erred. We disagree with Appellants' contentions. Except as noted below, we adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. We concur with the conclusions reached by the Examiner. We highlight the following additional points.

Appellants argue the Examiner erred in rejecting claim 1 because the combination of Teague and Thorn does not teach or suggest "a responsive variable input of user's operation of the user that substantially imitates the at least one variable component of the operation pattern." App. Br. 14–19; Reply Br. 5. In particular, Appellants argue the Examiner concedes Teague does not teach the disputed limitation, and Thorn is silent regarding "any kind of user imitation of an operation pattern." App. Br. 15. Appellants argue Thorn teaches a "tap pattern," but this pattern is used to control a user application and is not an imitation of an operation pattern. App. Br. 18.

The Examiner finds Teague teaches secure pairing between two or more communication devices where the devices generate a verification pattern in the form of blinking LED lights. Ans. 8 (citing Teague, Fig. 1, Fig. 2, 9:57–63). The Examiner further finds Thorn teaches interacting with a device based on a validated tap pattern. *Id.* (citing Thorn Fig. 5, 10:24–40). The Examiner finds an ordinarily skilled artisan would have been motivated to apply Thorn's validation of tap patterns to Teague's secure pairings and the combination teaches the claimed "imitation" of "the at least

one variable component of the operation pattern.” *Id.* More specifically, the combination involves a user imitating Teague’s blinking light verification pattern using Thorn’s validated tap pattern.

Appellants’ argument is unpersuasive because it focuses on the disclosure of Teague while ignoring the disclosure of Thorn and the combined teachings of the references. One cannot show nonobviousness by attacking references individually when the rejection is based on a combination of references. *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The Examiner explained that the combination of Teague and Thorn, not Teague alone, discloses this limitation. Ans. 8.

Moreover, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007). In addition, Appellants have not identified persuasive evidence in the record before us that the Examiner’s combination would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Accordingly, we agree with and adopt the Examiner’s findings regarding the combination of Teague and Thorn.³

³ We need not reach Appellants’ argument that the Examiner erred in interpreting claims 1 and 18 under 35 U.S.C. § 112(f), pre-AIA 35 U.S.C. § 112, sixth paragraph, as means-plus-function claims (*see* App. Br. 12–13) because under either interpretation, Teague and Thorn teach or suggest every claim limitation.

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Application 13/474,333

DECISION

We affirm the decision of the Examiner to reject claims 1, 3–10, and 12–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED