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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 14/201,612   | 03/07/2014  | Craig S. Etchegoyen  | UN-NP-SC-098        | 3945             |
| 96051  | 7590        | 11/01/2016           | EXAMINER            |                  |
| Uniloc USA Inc.<br>Legacy Town Center<br>7160 Dallas Parkway<br>Suite 380<br>Plano, TX 75024 |             |                      | GEE, JASON KAI YIN  |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2495                |                  |
|  |             |                      | NOTIFICATION DATE   | DELIVERY MODE    |
|  |             |                      | 11/01/2016          | ELECTRONIC       |

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CRAIG S. ETCHEGOYEN

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Appeal 2016-000343  
Application 14/201,612<sup>1</sup>  
Technology Center 2400

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Before CAROLYN D. THOMAS, HUNG H. BUI, and  
AARON W. MOORE, *Administrative Patent Judges*.

BUI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) of the Examiner’s Final Office Action rejecting claims 11–15, which are all of the claims pending on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.<sup>2</sup>

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<sup>1</sup> According to Appellant, the real parties in interest are Uniloc Luxembourg S.A. and Uniloc USA, Inc.

<sup>2</sup> Our Decision refers to Appellant’s Appeal Brief filed May 18, 2015 (“App. Br.”); Reply Brief filed October 5, 2015 (“Reply Br.”); Examiner’s Answer mailed August 5, 2015 (“Ans.”); Final Office Action mailed November 18, 2014 (“Final Act.”); and original Specification filed March 7, 2014 (“Spec.”).

STATEMENT OF THE CASE

Appellant's invention relates to "methods of and systems for detecting tampering of a device such as a network appliance." Spec. 2.

Claim 11 is independent and is illustrative of Appellant's invention, as reproduced with a disputed limitation emphasized below:

11. A device comprising:

at least one processor;

a computer readable medium that is operatively coupled to the processor; and

authentication logic (i) that executes at least in part in the processor from the computer readable medium and (ii) that, when executed, causes the processor to detect modification of the device by at least:

for each of one or more components of the device:

measuring one or more characteristics of the component that are capable of modifying the behavior of the device; and

*comparing the characteristics of the component to corresponding predetermined reference characteristics of the component that are measured at manufacture of the device; and*

determining that the device may have been modified after manufacture upon a condition in which at least one characteristic does not match the corresponding reference characteristic for at least one component.

App. Br. 15 (Claims App.).

*Examiner's Rejections and References*

(1) Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson et al. (US 2007/0143844 A1; published June 21, 2007; "Richardson"). Final Act. 5–6.

(2) Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson and Wiseman et al. (US 2004/0003288 A1; published Jan. 1, 2004; “Wiseman”). Final Act. 6–7.

(3) Claims 13–14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson, Wiseman, and Hollander (US 2007/0266447 A1; published Nov. 15, 2007; “Hollander”). Final Act. 7–8.

(4) Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Richardson, Wiseman, and Buer (US 2006/0090084 A1; published Apr. 27, 2006; “Buer”). Final Act. 8–9.

#### ISSUE

Based on Appellant’s arguments, the dispositive issue presented on appeal is whether the Examiner erred in finding the cited prior art teaches or suggests the disputed limitation “comparing the characteristics of the component to corresponding predetermined reference characteristics of the component that are measured at manufacture of the device,” as recited in independent claim 11. App. Br. 5–11; Reply Br. 5–10.

#### ANALYSIS

With respect to independent claim 11, the Examiner finds Richardson discloses a device comprising at least one processor and authentication logic that, when executed, causes the processor to detect modification of the device by way of at least the disputed limitation: “comparing the characteristics of the component to corresponding predetermined reference characteristics of the component that are measured at manufacture of the device.” Final Act. 5 (citing Richardson ¶¶ 26, 33, 42, 43).

The Examiner acknowledges Richardson does not explicitly teach “the characteristics of the component [that] are capable of modifying the behavior of the device,” but finds such features were inherent and well-known by those skilled in the art in order to support the conclusion of obviousness. *Id.* at 6 (citing Richardson ¶ 26).

Appellant disputes the Examiner’s factual findings regarding Richardson. In particular, Appellant contends Richardson does not teach “comparing the characteristics of the component to corresponding predetermined reference characteristics of the component that are measured at manufacture of the device,” as recited in claim 11. App. Br. 5–11; Reply Br. 5–10. According to Appellant, the term “at manufacture” is expressly defined in Appellant’s Specification as:

prior to sealing of the assembled device in packaging by the manufacturer for delivery.

App. Br. 5 (citing Spec. ¶ 5). Appellant argues the Examiner has not accounted for such a definition in Richardson. *Id.* at 6–7. Appellant further argues Richardson only describes:

the authentication of a remotely located device during device communications. Accordingly, the device performing the authentication would have to have received the predetermined reference characteristics from the remotely located device during some sort of registration process. The remotely located device would have to cooperate in the registration process while in the field, i.e., after manufacture as defined in the instant application.

*Id.* at 11. According to Appellant, there is “no teaching or suggestion in Richardson as to when reference characteristics of the device to be authenticated are measured or recorded.” *Id.* Appellant further asserts that “[t]he record is devoid of any assertion or any teaching or suggestion that characteristics of components of a device that are measured at manufacture

of the device can serve as reference characteristics to which subsequently measured characteristics are compared to detect tampering of the device.” Reply Br. 8 (emphasis added).

We agree with Appellant regarding the construction of the term “at manufacture” recited in claim 11. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301 (Fed. Cir. 1999) (meaning of words used in a claim is “not construed in a lexicographic vacuum, but in the context of the specification and drawings”). App. Br. 6. However, we are not persuaded the Examiner erred. As correctly recognized by the Examiner, the term “at manufacture” recited in claim 11 has been accorded the construction defined by Appellant’s Specification. Ans. 2 (citing Spec. ¶ 5). Nevertheless, Richardson still teaches Appellant’s detection of tampering or modification of a device since manufacture, including by use of “an electronic serial number” as an example of Appellant’s claimed “characteristics of components of a device that are measured at manufacture of the device.” Ans. 4–5 (citing Spec. ¶ 26). According to the Examiner,

Richardson paragraph 26 gives two examples of stored device parameters: 1) manufacturer of motherboard, and [2]) make/model of cpu. For example, a motherboard may be measured as an Intel motherboard, and a CPU may be measured as Intel 001. Such parameters are examples of measurements taken at manufacture. This is in-line with the applicant’s own specification. For example, paragraph 27 of applicant’s specification recites that measured data may be electronic serial numbers.

. . . [S]uch identifying measures, such as a make/model of a cpu, must be *measured* at manufacture. At manufacture, serial numbers are assigned during the production of the device.

Components receive its identity, or its measured value, at manufacture.

*Id.* at 4.

We agree with the Examiner. We also agree with the Examiner's findings that:

[Richardson's] Paragraph 33 teaches taking measurements of a first set of device parameters (10), comparing the measurements with a stored version, and making a determination if the device has been tampered with. Paragraph 26 teaches wherein device parameters (10) (the stored parameters) may be parameters that rarely change, such as the manufacturer of the motherboard, or the make and model parameters of a cpu.

Ans. 3 (citing Richardson ¶¶ 26, 33). As such, we adopt the Examiner's findings and explanations provided on pages 2–5 of the Examiner's Answer.

In the reply, Appellant argues the distinction between the measurement of “characteristics of a component of a device, not at manufacture of the component, but at manufacture of the device.” Reply Br. 9 (emphasis added). According to Appellant,

the characteristics of the components of the device (i) are measured at manufacture, (ii) are measured at manufacture of the device, not at manufacture of the components, and (iii) are the reference characteristics to which subsequently measured characteristics are compared to detect tampering of the device.

*Id.* at 5 (emphasis added).

We disagree. Contrary to Appellant's arguments, Richardson teaches (1) “the characteristics of the component” in the context of taking measurements of a first set of device parameters, as described in paragraph 33 of Richardson; (2) the “reference characteristics of the component that are measured at manufacture of the device” in the context of taking a stored version of the same parameters, such as the manufacturer of the

motherboard, or the make and model parameters of a CPU, as described in paragraph 26 of Richardson; and (3) then “comparing the characteristics of the component to corresponding predetermined reference characteristics of the component that are measured at manufacture of the device,” as described in paragraph 33 of Richardson.

For the reasons set forth above, Appellant has not demonstrated Examiner error. As such, we sustain the Examiner’s obviousness rejection of independent claim 1 and its dependent claims 13–15, which Appellant does not argue separately. App. Br. 7–9.

Claim 12 depends from claim 11, and further recites: “using an indicator to indicate to a human operator upon determining that the device may have been modified after manufacture.” The Examiner further relies on Wiseman for teaching the use of “an alert to a user if there has been unauthorized modification to a system’s component.” Final Act. 6–7 (citing Wiseman ¶ 15).

Appellant argues the Examiner’s proposed modification of Richardson to incorporate Wiseman would not be operable because “Richardson does not teach a device detecting unauthorized modification of itself, but rather whether a remotely located device with which communications is ongoing is authentic.” App. Br. 12.

We disagree and adopt the Examiner’s explanation on page 6 of the Examiner’s Answer. Accordingly, we also sustain the Examiner’s obviousness rejection of claim 12.

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Application 14/201,612

**DECISION**

As such, we AFFIRM the Examiner's final rejection of claims 11–15 under 35 U.S.C. § 103(a).

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**