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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVE CLARK

Appeal 2016-000942
Application 12/288,276
Technology Center 2600

Before JOHNNY A. KUMAR, CATHERINE SHIANG, and
KAMRAN JIVANI, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 6–9 and 21–45, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

The present invention relates to telecommunications. *See generally* Spec. 1. Claim 21 is exemplary:

21. A system for determining positional, alignment and operating parameters of a telecommunications antenna, comprising:

a direction measuring device which provides an absolute measurement of compass azimuth of said antenna, wherein said direction measuring device is attached to said antenna;

an inclinometer attached to said antenna; and

a camera attached to said antenna, the camera is configured to register an image of a visual field into which said antenna radiates, or from which it receives signal radiation; and

wherein said direction measuring device, said inclinometer, and camera are adapted to transmit said alignment and visual data to a base station of said antenna and to a remote location.

References and Rejections

Claims 6–9, 21, 33–38, 41–43, and 45 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wensink (US 7,173,570 B1; Feb. 6, 2007), Astrom (US 6,169,881 B1; Jan. 2, 2001), and Olsen (US 6,587,699 B2; July 1, 2003).

Claims 22–32, 39, 40, and 44 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Wensink, Astrom, Olsen, and Naidu (US 2005/0003873 A1; Jan. 6, 2005).

ANALYSIS

On this record, the Examiner did not err in rejecting claim 21.

We disagree with Appellant’s arguments, and agree with and adopt the Examiner’s findings and conclusions in (i) the action from which this appeal is taken and (ii) the Answer to the extent they are consistent with our analysis below.¹

Appellant contends the Examiner improperly modifies Wensink’s teachings to incorporate the features of Astrom and Olsen. *See* App. Br. 8–14. In particular, Appellant argues the proposed modification to Wensink contradicts conventional wisdom. *See* App. Br. 13–14. Appellant contends “Astrom discloses using a camera for ground-to-satellite antennas, not cell phone tower antennas. One of ordinary skill in the art would recognize that the Wensink cell phone tower antennas are designed to be installed at much higher locations than the ground antennas of Astrom.” App. Br. 9; *see also* App. Br. 9–11. Appellant argues “Wensink’s cell phone tower antenna systems are fundamentally different from the point-to-point wireless millimeter wave communications links of Olsen.” App. Br. 11–12.

In response to Appellant’s arguments, the Examiner provides comprehensive findings showing why one skilled in the art would have modified Wensink’s teachings to incorporate the specific features of Astrom and Olsen. *See* Ans. 10–13. Appellant fails to persuasively respond to such findings and, therefore, fail to show error in the Examiner’s findings. *See In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court [or this Board] to examine the claims in greater detail

¹ To the extent Appellant advances new arguments in the Reply Brief without showing good cause, Appellant has waived such arguments. *See* 37 C.F.R. § 41.41(b)(2).

than argued by an appellant, looking for [patentable] distinctions over the prior art.”).

Further, we have examined the Examiner’s findings, and such findings are reasonable. The U.S. Supreme Court has held “[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 Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007). Contrary to Appellant’s argument, “[i]f the claim extends to what is obvious, it is invalid under § 103” and “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418–19.

The Examiner has provided articulated reasoning with a rational underpinning as to why one skilled in the art would have found it obvious to combine the teachings of Wensink, Astrom, and Olsen. *See* Ans. 3, 10–13. In particular, the Examiner cites Astrom’s teachings that “obstructions 52 could represent atmospheric conditions such as, for example, rain cells or the like which impair the communication pathway” and finds “the cell phone tower antenna in Wensink. . . will be also affected by atmospheric conditions such as, for example, rain cells or the like as the antenna in Astrom.” Ans. 10 (citing Astrom 6:37–47) (emphasis omitted). Therefore, the Examiner determines one skilled in the art would have seen the benefit of modifying Wensink’s teachings to incorporate Astrom’s camera to monitor obstructions. *See* Ans. 10. Similarly, the Examiner determines one skilled in the art would have seen the benefit of modifying Wensink’s teachings to incorporate Olsen’s feature of attaching the camera with the antenna, so that

“the line-of-sight coverage of the antenna would be more accurately monitored by the camera.” Ans. 11–12. Appellant does not persuasively show why such reasoning is incorrect.

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” since the skilled artisan is “a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 420–21. Appellant does not present adequate evidence that the resulting arrangements would have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418–19).

Accordingly, we agree with the Examiner that applying the Astrom and Olsen techniques in the Wensink system would have predictably used prior art elements according to their established functions—an obvious improvement. *See KSR*, 550 U.S. at 417.

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner’s rejection of claim 21.

For similar reasons, we sustain the Examiner’s rejection of independent claims 27 and 33.

Regarding independent claim 37, as pointed out by the Examiner (Ans. 13), Appellant has not shown all of the arguments associated with claim 21 are applicable to claim 37, because Appellant has not shown claim 37 recites the disputed claim limitation “a camera . . . configured to register an image of a visual field into which said antenna radiates, or from which it receives signal radiation” of claim 21. Therefore, and for similar reasons

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discussed above with respect to claim 21, we sustain the Examiner's rejection of independent claim 37.

We also sustain the Examiner's rejection of corresponding dependent claims 6–9, 22–26, 28–32, 34–36, and 38–45, which Appellant does not separately argue with substantive contentions.

DECISION

We affirm the Examiner's decision rejecting claims 6–9 and 21–45.

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