



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.
13/769,054	02/15/2013	Victor Chu	4123-045	2764
24112	7590	11/29/2016	EXAMINER	
COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			KHAN, OMER S	
			ART UNIT	PAPER NUMBER
			2683	
			MAIL DATE	DELIVERY MODE
			11/29/2016	PAPER

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VICTOR CHU

Appeal 2016-001323
Application 13/769,054
Technology Center 2600

Before LARRY J. HUME, CATHERINE SHIANG, and
SCOTT B. HOWARD, *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 1–5, 7–11, 13, 14, and 16–22, 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 disclosed and claimed inventions relate to digital labels and tags for products. *See generally* Spec. 1. Claim 1 is exemplary:

1. A container for containing medicine, the container comprising:

a bottle with a bottom and sidewalls that form an interior space for holding the medicine;

a weight sensor integrated with the bottle and located at the bottom of the bottle and configured to sense an amount of remaining medicine within the bottle;

a cellular wireless communications interface integrated with the bottle for communicating with a remote device; and

a processor integrated with the bottle and configured to receive the amount of the remaining medicine within the bottle and to wirelessly contact the remote device when a change is detected in the amount of remaining medicine within the bottle;

the processor configured to communicate via text messages over the cellular wireless communications interface, the communications including a refill request text message when the medicine remaining within the interior space reaches a predetermined amount determined through the weight sensor.

References and Rejections¹

Claims 1–5, 13, 14, 16–20, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yarin (US 2002/0027507 A1; Mar. 7, 2002), Huerga (US 2001/0028308 A1; Oct. 11, 2001), and Edwards (US 2005/0261864 A1; Nov. 24, 2005).

¹ The Examiner withdrew rejections under 35 U.S.C. § 112, first and second paragraphs. Ans. 17.

Claims 7–11 and 21 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yarin, Huerga, Edwards, and Upadhye (US 2003/0074903 A1; Apr. 24, 2003).

ANALYSIS

On this record, and by a preponderance of evidence, the Examiner did not err in rejecting claim 1.

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.²

Appellant argues the cited references do not teach “a cellular wireless communications interface integrated with the bottle,” as recited in claim 1. *See* App. Br. 9–13; Reply Br. 1–5. In particular, Appellant asserts none of Yarin, Huerga, and Edwards *individually* teaches the disputed claim limitation. *See* App. Br. 9–13.

Appellant has not persuaded us of error. Because the Examiner relies on the *combination* of Yarin, Huerga, and Edwards to teach the disputed claim limitation, Appellant cannot establish nonobviousness by attacking each reference individually. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); Ans. 18–21.

Further, Appellant has not persuasively shown the following argument renders the Examiner’s findings incorrect:

Huerga appears to teach against placing a communication interface on the *vial*. Huerga discloses that as many of the

² 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).

components as possible should be reused (§ 0016). Thus, positioning the various components including the communications interface in the accessory would be a beneficial design because these components can be reused. Conversely, the vial is not reusable and therefore these components would need to be replaced. Placement of a communications interface in the vial would appear to go against this teaching as the interface would have a limited life expectancy.

App. Br. 12 (emphasis added).

As pointed out by the Examiner (Ans. 21), Appellant has not shown the argument is commensurate with the scope of the claim, as Appellant has not shown the disputed claim limitation requires any “vial.” To the extent Appellant is arguing Huerga teaches away from the combination, Appellant fails to provide the requisite analysis under the case law. Appellant fails to assert—let alone show—one skilled in the art “would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006).

In the Reply Brief and for the first time, Appellant belatedly argues the Examiner’s reasoning as to why one skilled in the art would have modified Yarin’s system (as modified by Huerga) to incorporate Edwards’ teachings is insufficient, and the cited references do not suggest such modification. *See* Reply Br. 1–3. However, Appellant acknowledges the Examiner previously provided similar reasoning in the Final Office Action. *See* Reply Br. 2. Therefore, Appellant has waived such arguments because they are untimely, and Appellant has not demonstrated any “good cause” for the belated presentation. *See* 37 C.F.R. § 41.41(b)(2) (2012).

In the Reply Brief and for the first time, Appellant belatedly argues Edwards is not analogous art and as a result, it is improper to combine the teachings of Edwards, Yarin, and Huerga. *See* Reply Br. 3–5. Appellant has waived such arguments because they are untimely, and Appellant has not demonstrated any “good cause” for the belated presentation. *See* 37 C.F.R. § 41.41(b)(2) (2012).

Because Appellant has not persuaded us the Examiner erred, we sustain the Examiner’s rejection of claim 1.

For similar reasons, we sustain the Examiner’s rejection of independent claims 7 and 13.

We also sustain the Examiner’s rejection of corresponding dependent claims 2–5, 8–11, 14, and 16–22, which Appellant does not separately argue with substantive contentions.

DECISION

We affirm the Examiner’s decision rejecting claims 1–5, 7–11, 13, 14, and 16–22.

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