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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/594,258	08/24/2012	Daniel A. Tealdi	CM13309	4620
22917	7590	12/01/2016	EXAMINER	
MOTOROLA SOLUTIONS, INC.			CHAKRABORTY, RAJARSHI	
IP Law Docketing			ART UNIT	
500 W. Monroe			PAPER NUMBER	
43rd Floor			2648	
Chicago, IL 60661			NOTIFICATION DATE	
			DELIVERY MODE	
			12/01/2016	
			ELECTRONIC	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL A. TEALDI and WILLIAM R. WILLIAMS

Appeal 2016-002341¹
Application 13/594,258
Technology Center 2600

Before JEAN R. HOMERE, ERIC B. CHEN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–4, 6–9, 11–13, 15–17, and 19–25, which constitute all of the claims pending in this appeal. Claims 5, 10, 14, and 18 have been canceled. Claims App'x. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as Motorola Solutions, Inc. App. Br. 1.

Appellants' Invention

Appellants' invention is directed to a method and apparatus for controlling the receive volume of a two-way radio system being operated in push to talk (PTT) mode. Spec. ¶ 1. In particular, upon detecting the PTT switch has been actuated when the radio is in the receive mode, an audio processor changes the speaker volume level accordingly (from high to low, and vice versa). *Id.* ¶ 12, Fig. 1.

Illustrative Claim

Independent claim 1 is illustrative, and reads as follows:

1. A two-way radio device system having a transceiver, comprising:

a push to talk (PTT) switch operable to cause a two-way radio to transmit a radio signal responsive to the PTT switch being closed while the two-way radio is not in a receive mode;

an audio processor coupled to the transceiver configured to receive a demodulated audio signal from the transceiver when the two-way radio is in the receive mode and play the demodulated audio signal over a speaker at a volume level; and

the audio processor is further configured to change the volume level in response to the PTT switch being actuated when the two-way radio is in the receive mode.

Prior Art Relied upon

Tabata	US 6,876,845 B1	Apr. 5, 2005
Lim	US 2005/0250553 A1	Nov. 10, 2005
Weinberg	US 2011/0060588 A1	Mar. 10, 2011

Rejections on Appeal

Claims 1, 3, 4, 7–9, 11–13, 16, 17, 19, and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Lim.

Claims 2, 15, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lim and Tabata.

Claims 6, 21, and 23–25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Lim and Weinberg.

ANALYSIS

We consider Appellants' arguments *seriatim*, as they are presented in the Appeal Brief, pages 8–10.²

We have reviewed the Examiner's rejections in light of Appellants' arguments. We are unpersuaded by Appellants' contentions. Except as otherwise indicated hereinbelow, we adopt as our own the findings and reasons set forth in the Examiner's Answer in response to Appellants' Appeal Brief. Ans. 2–4; Final Act. 2–12. However, we highlight and address specific arguments and findings for emphasis as follows.

Anticipation Rejection

Regarding the rejection of claim 1, Appellants argue that Lim does not describe an audio processor configured to change the volume level in response to the PTT switch being actuated when the two-way radio is in the receive mode. App. Br. 8–9. In particular, Appellants argue Lim's disclosure of merely touching the PTT button including a contact sensor for sensing the user's touch does not describe pressing the PTT button in the receiving mode. That is, Lim involves actuating a contact sensor disposed on the PTT button by a simple touch to control the volume in the receive mode, as opposed to actuating the PTT button by pressing thereon. App. Br.

² Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed December 26, 2014), and the Answer (mailed April 2, 2015) for their respective details. We have considered in this Decision only those arguments Appellants actually raised in the Briefs. Any other arguments Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2012).

9 (citing Lim ¶ 36). Further, Appellants argue that Lim discloses two switches (a separate switch for the PTT, and another switch to sense if the user's finger is near the PTT switch). *Id.* According to Appellants, Lim's supplemental switch requires additional hardware, whereas the invention is achieved without an additional switch. *Id.* These arguments are not persuasive.

At the outset, we note the recitation of actuating the PTT switch does not preclude the inclusion of an additional sensor switch or hardware in the PTT two-way radio device. We further note that the actuation of the switch does not require turning on the switch by pressing the button, as opposed to simply touching it. Rather, it merely requires that the switch be turned on (in one fashion or another) when the two-way radio is in the receive mode to thereby cause the audio processor to change the speaker volume.

Consequently, because Lim's disclosure of the user touching the PTT button describes a mechanism for activating the PTT switch, thereby causing the speaker volume level of the two-way radio to be adjusted, we agree with the Examiner that Lim describes the disputed limitations. Ans. 2–3 (citing Lim ¶¶ 35–39). That is, we agree with the Examiner's finding that Lim's "speaker volume is adjusted (i.e. increased, decreased, decreased to mute etc.) based on a PTT button being activated." Ans. 3 (citing Lim ¶ 36). Therefore, we are not persuaded the Examiner erred in rejecting claim 1.

Regarding claims 3, 4, 7–9, 11–13, 16, 17, 19, and 20, because Appellants reiterate substantially the same arguments as those previously discussed for patentability of claim 1 above, claims 3, 4, 7–9, 11–13, 16, 17, 19, and 20, fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Obviousness Rejections

Because Appellants have not provided separate patentability arguments for the obviousness rejection of claims 2, 6, 15, and 21–25 over Lim in combination with Tabata or Weinberg, those arguments are waived. Consequently, we sustain the Examiner’s rejection of the cited claims.

DECISION

For the above reasons, we affirm the Examiner’s rejections of claims 1–4, 6–9, 11–13, 15–17, and 19–25.

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