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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT BRUCE KLEVE,
JOHN ROBERT VAN WIEMEERSCH,
and RITESH PANDYA

Appeal 2016-002715
Application 13/775,697
Technology Center 2600

Before CARL W. WHITEHEAD JR., WILLIAM M. FINK, and
JOHN R. KENNY, *Administrative Patent Judges*.

FINK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse. Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter new grounds of rejection for claims 1, 15, and 18.

¹ The real party in interest is identified as Ford Global Technologies, LLC. App. Br. 2.

STATEMENT OF THE CASE

Appellants' invention relates to a system for detecting activation of an alarm trigger and, based on the trigger, provide a subtle feedback response designed to avoid detection by an assailant. Abstract.²

Claims 1, 15, and 18 are the independent claims on appeal. Claim 1 is illustrative of Appellants' invention and is reproduced below with its disputed limitation emphasized:

1. A system comprising:

a processor configured to:

detect occupant-initiated activation of an alarm trigger in communication with the processor;

determine an alarm trigger type and provide a subtle feedback response to an activating occupant, the response varying based on the trigger type, designed to avoid detection by an unauthorized vehicle occupant;

wirelessly contact an emergency responder; and

provide data usable in determining a vehicle location and a vehicle identification.

App. Br., Appendix 1 (emphasis added).

Claims 1–3, 5, 11, and 14–16 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Garrett (US 5,515,285; May 7, 1996).

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett and Ricci (US 2013/135118 A1; May 30, 2013).

² Our decision refers to Appellants' Appeal Brief filed July 1, 2015 ("App. Br."); the Examiner's Answer mailed November 3, 2015 ("Ans."); Appellants' Reply Brief filed December 29, 2015; the Final Office Action mailed April 3, 2015 ("Final Act."); and the original Specification filed February 25, 2015 ("Spec.").

Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett and any of Ramos (US 7,245,204 B2; July 17, 2007), Spark (US 2006/132294 A1; June 22, 2006), and O’Kere (US 2008/129472 A1; June 5, 2008).

Claims 7, 9, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett and Anthony (US 2003/137246 A1; July 24, 2003).

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett, Anthony, and Tenorio-Fox (US 2009/0289780 A1; November 26, 2009).

Claims 12 and 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett and Ramos.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Garrett, O’Kere, and Anthony.³

Based on Appellants’ arguments, the dispositive issue on appeal is whether Garrett discloses the above emphasized “determining” limitation of claim 1. *See* App. Br. 8–9; Reply Br. 2–3.

ANALYSIS

Appellants dispute the Examiner’s finding that Garrett discloses “determine an alarm trigger type and provide a subtle feedback response to an activating occupant, the response varying based on the trigger type, designed to avoid detection by an unauthorized vehicle occupant.” App. Br. 8. Specifically, Appellants concede a single press of the alarm trigger in

³ The Examiner indicates that dependent claim 8 is allowable if rewritten in independent form to include all of the limitations of claim 1. Final Act. 8.

Garrett results in a subtle feedback response of two “inconspicuously situated LEDs viewable only to the driver,” but argue that a second press of the trigger causes both a change in the LED status and activation of strobe and siren, which are explicitly described as “conspicuous.” *Id.* (citing Garrett, 14:6–10). Appellants conclude, therefore, that there is only one feedback response that is both subtle and does not vary based on trigger type in accordance with the claim requirement. *Id.*

The Examiner finds the inconspicuous LEDs varies from solid to blinking based on alarm state and this is sufficient to disclose the claimed subtle feedback response, which varies based on the trigger type (i.e., one push or two), and this is sufficient to disclose the disputed limitation. Ans. 5. The Examiner does not disagree that the additional, *conspicuous* feedback in the form of strobe and siren are also activated, but notes the open-ended preamble term “comprising” does not preclude additional elements, “i.e., the claim encompasses providing ‘non-subtle’ feedback responses in addition to the ‘subtle’ feedback responses.” *Id.*

On this record, we are constrained to agree with Appellants. The disputed limitation not only requires a “subtle feedback response” that varies, it also recites that it is “designed to avoid detection by an unauthorized vehicle occupant.” Although we give claims their broadest reasonable interpretation, “the construction cannot be divorced from the specification and the record evidence.” *In re Man Machine Interface Technologies LLC*, 822 F.3d 1282, 1286 (Fed. Cir. 2016) (quoting *In re NTP, Inc.*, 654 F.3d 1279, 1288 (Fed. Cir. 2011)). A construction that is unreasonably broad and does not reasonably reflect the plain language and

disclosure in the specification will not pass muster. *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015).

Here, the point of the required varied response, designed to avoid detection, is to provide the triggering party more than one way to know that alarm activation was successful without putting that party at risk by alerting an assailant. *See* Spec. ¶ 46 and Fig. 5 (describing various subtle responses). By contrast, in *Garrett*, the second trigger of panic button 38 or 40 “will cause the alarm to enter the conspicuous state.” *Garrett*, 14:4–6. “[C]onspicuous alarm indicators, such as siren device 28a and strobe lamp 28b will [also] be actuated.” *Id.* at 14:7–10; *see also id.* at 7:7–9 (“During the conspicuous state, communication of tracking information will continue, but siren device 28a and strobe lamp 28b are also actuated.”). Thus, while the second alarm state in *Garrett* may include inconspicuous feedback, that feedback is not “designed to avoid detection by an unauthorized vehicle occupant,” as the claim requires. The presence of the open-ended “comprising” term in the preamble does not allow us to avoid the fact that *Garrett*’s second alarm state is not designed to avoid detection. *See In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010) (rejecting the use of “comprising” to expand the broadest reasonable interpretation).

For the foregoing reasons, we reverse the anticipation rejection of claim 1. For substantially the same reasons, we also reverse the anticipation rejection of independent claims 15 and 18, which recite a similar limitation, as well as the rejections of dependent claims 2–14, 16, 17, 19, and 20, as the rejections of these claims do not address the deficiency of the base rejection.

NEW GROUND OF REJECTION
UNDER 35 U.S.C. § 103(A)

We do, however, find that an ordinarily skilled artisan would have found the subject matter of claims 1, 15, and 18 obvious nonetheless, in view of Garrett’s teachings. Obviousness is a question of law based on underlying factual findings including the scope and content of the prior art, the differences between the claimed invention and the prior art, and the level of ordinary skill in the pertinent art. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 427 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). In an obviousness analysis, precise teachings directed to the specific subject matter claimed need not be identified because the inferences and creative steps that a person of ordinary skill in the art would employ can be taken into account. *See KSR*, 550 U.S. at 418; *see also In re Preda*, 401 F.2d 825, 826 (CCPA 1968) (“[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.”). In this regard, “[a] person of ordinary skill is also a person of ordinary creativity, not an automaton.” *KSR*, 550 U.S. at 421.

In this case, as noted above, the difference between the cited portions of Garrett and the claimed subject matter is that Garrett’s second panic button state activates both subtle (i.e., LEDs visible to the driver) and conspicuous alarm indicators (i.e., siren and strobe). However, similar to Appellants’ invention, one of Garrett’s objectives is to avoid “aggravat[ing] the assailant . . . [by using an] unobstrusive and inobvious means of denoting occurrence of the crisis situation.” Garrett, 5:22–26. To this end, in addition

to the cited, multiple subtle LED states, Garrett notes “[m]ore sophisticated displays may also be included, such as alphanumeric display 146 . . . configured to provide . . . *alarm state in cryptic form.*” *Id.* at 12:36–39 (emphasis added). We find that this description of displaying alarm state in cryptic form discloses yet another subtle feedback response that can be seen but not understood by an unauthorized occupant (as otherwise there is no need to be “cryptic”). Indeed, such a subtle feedback response is similar to Appellants’ example of providing feedback in the form of an uncommon radio station setting or other instrument cluster message. Spec. ¶ 74.

In addition, because Garrett contemplates other forms of subtle feedback messages, as well as multiple trigger mechanisms, including concealed panic button 40 and separate key chain panic button 38, we determine it would have been obvious to a person of ordinary skill in the art to modify the state machine in Figure 8 of Garrett to vary subtle feedback response in response to the triggering mechanism. For example, because the disclosed LEDs are only viewable to the driver (*see* Garrett, 12:28), a person of ordinary skill would have understood the desirability of permitting an occupant not in the driver seat to trigger the key chain panic button and display cryptic alphanumeric display. A person of ordinary skill would have appreciated, therefore, that one variation on Garrett is to have different display feedback in response to the key chain trigger device. Yet another variation would have been to modify Garrett’s disclosure of a silent first alarm state with LEDs to include a second silent trigger state with a cryptic display message, in the event the driver could not observe the LED state, before finally proceeding to a disclosed “conspicuous” alarm state (*id.*, 13:64–14:6) on the third trigger of the panic button. In either case, we

determine that the present invention claims no more than a combination of familiar elements with predictable results. *See KSR*, 550 U.S. at 416; *DyStar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1360 (Fed. Cir. 2006) (holding that common sense can provide the suggestion or motivation to modify a prior art reference).

Accordingly, using our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection for independent claims 1, 15, and 18 as being directed to obvious subject matter over Garrett, based on the foregoing teachings. Although we decline to enter this new ground of rejection to the dependent claims, including claim 8, which the Examiner has indicated would be allowable if rewritten independent form (*see* Final Act. 8), and which are not separately challenged in this Appeal (*see* App. Br. 8–11), we emphasize that our decision does not mean that the remaining claims are patentable. Rather, we merely leave the patentability determination with respect to the remaining claims to the Examiner. *See* MPEP § 1213.02.

DECISION

On the record before us, we reverse the final rejection of claims 1–20. However, pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a NEW GROUND of rejection for claims 1, 15, and 18 under 35 U.S.C. § 103(a) as directed to obvious subject matter over Garrett.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (2010). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

Rule 37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise

one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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).

REVERSED
37 C.F.R. § 41.50(b)