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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAVI PALANKI, NAGA BHUSHAN,
and DURGA PRASAD MALLADI

Appeal 2016-002727
Application 13/163,499
Technology Center 2400

Before JEAN R. HOMERE, JOHN F. HORVATH, and
WILLIAM M. FINK, *Administrative Patent Judges*.

FINK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants[1] seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1–25, 40, 42, 44, and 46. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] The real party in interest is identified as Qualcomm Incorporated. App. Br. 3.

STATEMENT OF THE CASE

Appellants' invention relates to techniques for supporting peer-to-peer communications, including performing peer discovery based on "trigger events." Abstract.[2]

Claims 1, 17, 21, and 25 are the independent claims on appeal. Claim 1 is illustrative of Appellants' invention and is reproduced below with the disputed limitation emphasized:

> 1. A method for wireless communication, comprising:
>
> *deciding whether or not to perform event-triggered peer discovery based on information broadcast by a wireless network;*
>
> detecting an event triggering peer discovery by a device if the decision is made to perform event-triggered peer discovery; and
>
> performing peer discovery by the device based on detection of the event triggering peer discovery.

App. Br. 13 (emphasis added).

Claims 1, 2, 5–10, 13, 17–19, 21–23, 25, 40, 42, 44, and 46 stand rejected under 35 U.S.C. § 102(b) as anticipated by Strittmatter (EP 1450517 A1; August 25, 2004).

Claims 3, 4, 11, 12, 14–16, 20, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Strittmatter and Larsson (WO 2005/064863 A1; July 14, 2005).

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[2] Our decision refers to Appellants' Appeal Brief filed June 25, 2015 ("App. Br."); the Examiner's Answer mailed November 9, 2015 ("Ans."); Appellants' Reply Brief filed January 11, 2016 ("Reply Br."); the Final Office Action mailed January 14, 2015 ("Final Act."); the Advisory Action mailed March 23, 2015 ("Adv. Act."); and the original Specification filed November 5, 2010 ("Spec.").

Based on Appellants' arguments, the issues on appeal are (1) whether Stritt[3] discloses "deciding whether or not to perform event-triggered peer discovery based on information broadcast by a wireless network," as recited in independent claim 1, and (2) whether the combination of Stritt and Larsson teaches or suggests "detecting the event triggering peer discovery comprises detecting a change in position of the device" as recited by dependent claim 3.

ANALYSIS

Claims 1, 2, 5–25, 40, 42, 44, and 46

In disputing the Examiner's rejection of independent claim 1, Appellants argue that "while *Stritt* may teach *somehow* deciding to perform discovery, i.e., an event that triggers discovery, this decision to perform discovery ***is not based on information broadcast by a wireless network***," as claim 1 requires. App. Br. 8–9. Appellants contend this claim requirement is found in paragraph 27 of the Specification, which states "'a wireless network *may broadcast information indicating certain devices and/or services being available within the coverage area. The device may use this information to decide whether to perform event-triggered peer discovery' (emphasis added).*" App. Br. 9. By contrast, Appellants argue, Stritt merely teaches performing discovery based on a user opening an application, but not based on information broadcast by a network. *Id.* We are not persuaded by this argument.

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[3] For consistency, we hereinafter follow the Examiner's and Appellants' practice of referring to the Strittmatter reference as "Stritt." *See* Final Act. 4, App. Br. 7.

The Examiner points out that in paragraph 37 of Stritt "asynchronous logic causes the wireless transceiver logic to broadcast one or more signals that inquire as to the presence of other wireless enabled devices that are within range of the signals" and receiving an acknowledgement signal from "devices [that] are compatible" within range. Ans. 3. We agree. For example, paragraph 38 of Stritt also describes the asynchronous search logic being executed as a *background task* by the operating system at timed intervals or upon power up. *See also* Stritt ¶ 41; Final Act 4 (citing Stritt ¶ 55). In contrast to Appellants' assertion (App. Br. 9), this process does not require a "user opening an application", but is explicitly described as an "automatic" or "non-user initiated event" (Stritt ¶ 41). Appellants do not direct us to any evidence or explanation as to why the initial background task searching for compatible devices and storing them for later searching (*see* Final Act 2 (citing Stritt ¶¶ 37, 55)), which can only happen upon connecting to a network, does not disclose the required deciding to perform discovery based on information broadcast by a network.

In the Reply, Appellants acknowledge that "*Stritt* discusses that a search process may be based on a user-initiated event or a non-user-initiated event," but argue "*Stritt* does not disclose that the search process is triggered based on information broadcast by a wireless network." Reply Br. 3. We decline to address this argument. Arguments which were "not raised in the appeal brief, [and are] not responsive to an argument raised in the examiner's answer . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown." 37 C.F.R. § 41.41(b)(2); *see also Ex Parte Borden*, 93 USPQ2d 1473 (BPAI 2010) (informative)

(declining to consider arguments with a "new thrust" that could have been raised in the Appeal Brief).

In this case, there is no argument in the Appeal Brief that the *non-user* initiated search in Stritt does not disclose the required discovery based on information broadcast by the network. For example, the term "non-user" is not mentioned in the Appeal Brief, which instead relies on the *twice* repeated argument that the decision to "perform discovery ***based on a user opening an application***" does not disclose the disputed limitation. App. Br. 9. The Examiner's Answer responds to this argument by stating that the asynchronous or background (i.e., non-user) searching discloses the disputed limitation. This is not a new position first raised in the Answer that might justify Appellants' belated response, but has been the Examiner's position since prior to the Appeal. *See* Final Act. 2 (citing background search discovery in paragraph 55); Adv. Act. 2 (same). Because the Reply raises a belated argument, we do not have the benefit of the Examiner's response to that argument. Accordingly, we determine good cause does not exist for considering this argument for the first time.

For the foregoing reasons, we are persuaded Stritt discloses the limitations of independent claim 1, and we therefore sustain the Examiner's 35 U.S.C. § 102(b) rejection of claim 1, as well as claims 2, 5–10, 13, 17–19, 21–23, 25, 40, 42, 44, and 46 which are not separately argued.[4] *See* 37 C.F.R. § 41.37(c)(1)(iv). Regarding the 35 U.S.C. § 103(a) rejection of claims 11, 12, 14–16, 20, and 24 over Stritt and Larsson, Appellants present no separate patentability arguments aside from the argument that the

[4] Appellants rely on their claim 1 arguments for "similar features recited in claims 17, 21, and 25." App. Br. 7, 9.

additional references do not disclose the disputed limitation of claim 1 (*see* App. Br. 10), which we do not find persuasive. Accordingly, we also sustain the rejection of claims 11, 12, 14–16, 20, and 24 for the foregoing reasons.

Claims 3 and 4

Claim 3 requires "detecting the event triggering peer discovery comprises detecting a change in position of the device." App. Br. 13. Appellants argue that "*Larsson* teaches that a mobile node may store beacon parameters such as measures of distance or position of a sending node. However, *Larsson* is completely silent regarding the measuring of distance or position of the sending node being a *triggering event of peer discovery*." App. Br. 11. Appellants also argue that the distance discussed in Larsson is the distance to another device, not the device performing peer discovery. *Id.* Thus, Appellants argue, "a person of [ordinary] skill in the art would not learn that measures of distance or position of the sending node could be used as triggers for event-triggered peer discovery," since neither reference teaches distance or position used as a trigger. *Id.* We are not persuaded.

As an initial matter, we point out that "[t]he test for obviousness is not . . . that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.3d 413, 425 (CCPA 1981).

Here, the Examiner does not suggest that either Stritt or Larsson individually teach the "measuring of distance or position of the sending node being a *triggering event of peer discovery*." App. Br. 11. Instead, as the Examiner finds (Ans. 4), Stritt teaches detecting an event triggering peer

discovery based on a timed interval, power up or *other automatic event* (Stritt ¶ 41). As the Examiner further finds (Ans. 4–5), Larsson teaches performing neighbor discovery in ad-hoc wireless networks based in part on proximity (i.e., closest radio nodes) using beacons or "other forms of measures of distance . . ., e.g., by the use of GPS" (Larrson 3:23–4:2, 8:24–9:23).

Based on these teachings, we agree with the Examiner's finding that person of ordinary skill would have used Larsson's distance measure capability as one of the peer discovery triggers in Stritt to improve efficiency. *See* Final Act. 15. For example, this rationale is supported by Larsson's statement that "[i]t is often not feasible to take all radio nodes in the network under consideration," and therefore only those nodes within a predetermined distance are considered. Larsson, 8:25–30. As such, consistent with the Examiner's findings, a person of ordinary skill in the art would have been motivated to use position change as one of the triggering events (similar to the others disclosed in Stritt) to perform peer discovery to obtain a new group of neighboring peers.

We have also considered Appellants' argument that the distance measure in Larsson is based on the position of another device (i.e., the beacon) (App. Br. 11; Reply Br. 4–5), but we are not persuaded. Larsson makes clear that a beacon distance is one way to measure distance, but, as noted above, other measures such as GPS may be used. Larsson, 8:30–9:2.

Accordingly, for the foregoing reasons, we sustain the Examiner's obviousness rejection of claim 3 and claim 4, which depends from claim 3.

DECISION

We affirm the Examiner's final rejection of claims 1–25, 40, 42, 44, and 46.

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