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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/622,733	09/19/2012	Francis M. Sherwin	PRAZ 200047US01	3100

27885 7590 02/08/2018

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ART UNIT	PAPER NUMBER
3685	

MAIL DATE	DELIVERY MODE
02/08/2018	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte FRANCIS M. SHERWIN

Appeal 2016-007759
Application 13/622,733[1]
Technology Center 3600

Before ST. JOHN COURTENAY III, JASON J. CHUNG, and JASON M. REPKO, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–8 and 10–22.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention is directed to methods and/or systems for mobile and/or electronic commerce. Spec. ¶ 2. Claim 1 is illustrative of the invention and is reproduced below:

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[1] According to Appellant, the real party in interest is Cardinal Commerce Corporation. App. Br. 1.
[2] Claim 9 was cancelled. App. Br. 20.

> 1. A system for completing a transaction between a first party and a second party, said system comprising:
>
> at least one processor; and
>
> at least one program memory coupled to the at least one processor, the at least one program memory including processor executable instructions, the processor executable instructions, when executed by the at least one processor, causing the at least one processor to perform the steps of:
>
> receiving one or more banking applications and/or wallets including personal data, or access to the personal data, to complete a transaction between a first party and a second party;
>
> receiving a request for the personal data from the second party using an open commerce wallet exchange (OCWE) protocol;
>
> receiving a selection of one of the banking applications and/or wallets from the first party;
>
> authenticating the first party using built-in authentication of the selected banking application and/or wallet;
>
> receiving the personal data from the selected banking application and/or wallet; and,
>
> providing the merchant with the personal data using the OCWE protocol to complete the transaction.

REJECTION AT ISSUE

Claims 1–8 and 10–22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Dryer (US 2012/0290376 A1; filed May 9, 2011) (hereinafter, "Dryer"), Kramer (US 2003/0140007 A1; published July 24, 2003) (hereinafter, "Kramer"), and Graylin (US 2012/0036042 A1; published Feb. 9, 2012) (hereinafter, "Graylin"). Final Act. 5–10.

ANALYSIS

The Examiner finds Dryer's secret or transaction specific authorization token teaches "personal data" (claims 1, 14, and 22) because

the Specification describes "personal data" as "payment and fulfillment data," in a non-limiting context. Ans. 2 (citing Dryer ¶ 41). The Examiner finds because Dryer teaches "personal data," there is no frustration of purpose, and no changing of a principle operation of Dryer. Ans. 2. In addition, the Examiner finds Dryer's data 122 transmitted from electronic payment device 120 to mobile communication device 110 teaches "receiving a request for the personal data from a second party, the personal data being data of the banking applications and/or wallets" as recited in claim 1 (and similarly recited in claims 14 and 22). *Id.* at 3.

Additionally, the Examiner finds Dryer's mobile wallet application 113 displays payment options to the consumer who selects a payment option and then generating an authorization token teaches "receiving a selection of the banking applications and/or wallets from the first party; authenticating the first party using built-in authentication of the selected banking application and/or wallet" as recited in claim 1 (and similarly recited in claims 14 and 22). *Id.* at 4–5. And the Examiner finds Kramer's payment protocol teaches "an open commerce wallet exchange (OCWE) protocol" as recited in claims 1, 14, and 22 because it is neither defined internally in the Specification nor referenced in any extrinsic material, not commonly known in the art, and is a generic placeholder term created by Appellant. *Id.* at 5–6.

Moreover, the Examiner finds Graylin's secure fastpay 180 allows previously used payment instruments to be stored in user accounts or e-wallets 182, and then to be used again quickly with a user authentication teaches the limitation "built-in authentication" recited in claims 1 and 14. *Id.* at 7–8. The Examiner finds Graylin's teaching of providing a transaction token to Roambuy Server 110 and subsequently providing ResponseCode,

ResponseMessage, TransactionId to merchant server 270 teaches the limitation "providing the merchant with the personal data to complete the transaction" recited in claim 1 (and similarly recited in claim 14 and 22). *Id.* at 8–9 (citing Graylin, Fig. 3). The Examiner finds a person having ordinary skill in the art at the time of the invention would combine Dryer, Kramer, and Graylin by ascertaining from Graylin that some benefits combining the references include creating a more efficient checkout process designed for mobile devices that reduces the number of steps that a consumer has to complete a transaction, increases consumer security, and provides useful information about customers to merchants. *Id.* at 9–10 (citing Graylin ¶ 6).

Appellant argues because Dryer does not provide the merchant with personal data, the changes that result in Dryer are substantial resulting in a change in the principle operation of Dryer and frustrates the purpose of Dryer. App. Br. 6–7. In addition, Appellant argues Dryer does not teach "personal data" as recited in claims 1, 14, and 22. *Id.* at 7–8. Appellant also argues Dryer teaches ID verification is performed before any payment option is selected, which fails to teach the chronological order requirement of: (1) "receiving a selection of the banking applications and/or wallets from the first party" and then (2) "authenticating the first party using built-in authentication of the selected banking application and/or wallet" as recited in claim 1 (and similarly recited in claims 14 and 22). *Id.* at 8. And Appellant argues the rejection is flawed because Dryer's payment protocol is a protocol for payment, whereas "OCWE" (claims 1, 14, and 22) pertains to an exchange of information from a wallet or business application. *Id.* at 8–9.

Moreover, Appellant argues Graylin's customer ID information and password fail to teach "built-in authentication" recited in claims 1 and 14

because "built-in authentication" pertains to the system retrieving information from the banking application and/or wallet, whereas Graylin pertains to stores of previously used payment instruments. *Id.* at 10. And Appellant argues Graylin's secure webpage hosted on commerce gateway server 110 captures customer ID information, password, and the payment information providing fails to teach "providing the merchant with the personal data" as recited in claim 1 (and similarly recited in claims 14 and 22) because commerce gateway server 110 is not a merchant. *Id.* at 10–11. Appellant argues the motivation to combine is flawed because the Examiner did not find the motivation from the cited references and fails to provide an affidavit saying the motivation is based on personal knowledge. *Id.* at 9–10. Based upon a preponderance of the evidence, and our review of the record, we disagree with Appellant's contentions. We address Appellant's arguments seriatim.

At the outset, the Specification describes "personal data" as "payment and fulfillment data," in a non-limiting context. Spec. ¶ 13. The cited portions of Dryer relied upon by the Examiner teach a secret or transaction specific authorization token, which teaches "personal data" (claims 1, 14, and 22). Ans. 2 (citing Dryer ¶ 41). Because Dryer teaches "personal data" as described in the Specification, we agree with the Examiner's finding that there is no frustration of purpose of Dryer, and no changing of a principle operation of Dryer. Ans. 2. In addition, the cited portions of Dryer relied upon by the Examiner teaches data 122 transmitted from electronic payment device 120 to mobile communication device 110, which teaches the limitation "receiving a request for the personal data from a second party, the personal data being data of the banking applications and/or wallets" as

recited in claim 1 (and similarly recited in claims 14 and 22). *Id.* at 3 (citing Dryer ¶¶ 22, 73–75).

The cited portions of Dryer relied upon by the Examiner teach mobile wallet application 113 displays payment options to the consumer who selects a payment option and then generating an authorization token, which we find teach or suggest the chronological order requirement of the limitation "receiving a selection of the banking applications and/or wallets from the first party; authenticating the first party using built-in authentication of the selected banking application and/or wallet" as recited in claim 1 (and similarly recited in claims 14 and 22). *Id.* at 4–5 (citing Dryer ¶¶ 73–74, Fig. 10).

In addition, we agree with the Examiner that OCWE is not defined in the Specification nor referenced in any extrinsic material, not commonly known in the art, and is a generic placeholder term created by Appellant. Spec. ¶¶ 13, 22, 30. Put another way, the Specification describes OCWE using non-limiting, exemplary language, such as "[i]n a preferred embodiment," "for example," "can," "[i]n one embodiment," etc., which falls short of a limiting definition. As such, the cited portions of Kramer relied upon by the Examiner teach a payment protocol used when conducting transactions with a merchant, which we find teach or suggest "an open commerce wallet exchange (OCWE) protocol" as recited in claims 1, 14, and 22. Ans. 5–6 (citing Kramer ¶¶ 666, 123, 232, Figs. 15A and 27).

Moreover, the Specification discloses the "[b]uilt in security of banking applications and/or wallets 26 prevents unauthorized access to the personal data." Therefore, the cited portions of Graylin relied upon by the Examiner teach secure fastpay 180 allows previously used payment

instruments to be stored in user accounts or e-wallets 182, and then to be used again quickly with a user authentication, which we find teach or suggest the limitation "built-in authentication" recited in claims 1 and 14 when interpreting the claim using a broadest reasonable construction. *Id.* at 7–8 (citing Graylin ¶ 24, Figs. 1A and 1B). The cited portions of Graylin relied upon by the Examiner teach providing a transaction token to Roambuy Server 110 and subsequently providing ResponseCode, ResponseMessage, TransactionId to merchant server 270, which we find teach or suggest the limitation "providing the merchant with the personal data to complete the transaction providing merchant with personal data" recited in claim 1 (and similarly recited in claim 14 and 22). *Id.* at 8–9 (citing Graylin, Fig. 3).

Appellant's arguments pertaining to a lack of motivation to combine are unpersuasive. We are not persuaded by Appellant's hindsight argument, because Appellant has not provided any objective evidence of record that shows that combining the respective teachings of the cited references would have been "uniquely challenging or difficult for one of ordinary skill in the art," or that the Examiner's proffered combination would have "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Furthermore, we find the Examiner has set forth sufficient "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (quoting Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006). (Final Act. 10, 12, 13, and 14). That is, the Examiner finds one having ordinary skill in the art at the time of the invention would ascertain from Graylin that some benefits combining the references include creating a more efficient checkout process designed for mobile devices that

reduces the number of steps that a consumer has to complete a transaction, increases consumer security, and provides useful information about customers to merchants. *Id.* at 9–10 (citing Graylin ¶ 6).

Additionally, Appellant has not provided any objective evidence of secondary considerations (e.g., unexpected results), which our reviewing court guides, "operates as a beneficial check on hindsight." *Cheese Sys., Inc. v. Tetra Pak Cheese and Powder Syss., Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

Accordingly, for the reasons set forth *supra*, we sustain the Examiner's rejection of: (1) independent claims 1, 14, and 22; and (2) dependent claims 2–8, 10–13, and 15–21. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

The Examiner's decision rejecting claims 1–8 and 10–22 under 35 U.S.C. § 103(a) is affirmed.

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