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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD C. BREMER

Appeal 2017-004635
Application 13/901,106[1]
Technology Center 2600

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and JESSICA C. KAISER, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Introduction

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's Final Rejection of claims 1–12. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.[2]

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[1] According to Appellant, the real party in interest is Hand Held Products, Inc. App. Br. 1.

[2] Our Decision refers to Appellant's Supplemental Appeal Brief filed August 23, 2016 ("App. Br."); Appellant's Reply Brief filed January 23, 2017 ("Reply Br."); Examiner's Answer mailed November 23, 2016 ("Ans."); and Final Office Action mailed November 17, 2015 ("Final Act.").

STATEMENT OF THE CASE

Claims on Appeal

Claims 1, 6, and 12 are independent claims. Claim 1 is reproduced below:

> 1. A method of processing transponder signals received from transponders to identify the transponders, the method comprising:
>
> receiving, from a reference transponder, a first signal having a first signal strength;
>
> determining a reference signal strength based on the first signal strength;
>
> receiving, from a first transponder, a second signal having a second signal strength;
>
> comparing the reference signal strength with the second signal strength; and
>
> determining that that [sic] the first transponder is within a predefined area in response to the second signal strength being greater than the reference signal strength.

References

McKee	US 6,915,135 B1	July 5, 2005
Wild	US 2009/0212921 A1	Aug. 27, 2009

Examiner's Rejection

Claims 1–12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McKee and Wild. Final Act. 3–6.

ANALYSIS

We disagree with Appellant's contentions and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from

which this appeal is taken; and (2) the reasons set forth by the Examiner in the Answer in response to the Appeal Brief. With respect to the claims argued by Appellant, we highlight and address specific findings and arguments for emphasis as follows.

Claims 1, 2, 5–7, 10, and 12

Appellant contends the Examiner erred in finding the combination of McKee and Wild teaches "comparing the reference signal strength with the second signal strength; and determining that that the first transponder is within a predefined area in response to the second signal strength being greater than the reference signal strength," as recited in claim 1 and similarly recited in claims 6 and 12. App. Br. 8–12; Reply Br. 2–8. Specifically, Appellant argues "there is no teaching in McKee of comparing the signal strengths of **two transponders**." App. Br. 10; Reply Br. 3–4. Appellant further argues Wild does not teach a "comparison of the signal strength of the asset tag 140B with the marker tag 120A." App. Br. 12; Reply Br. 6–7. Moreover, Appellant argues the Examiner's "motivation is improper and deficient." App. Br. 13. Additionally, Appellant argues "it is difficult for Appellant to know what parts of the cited prior art the Examiner asserts correspond to claimed limitations." App. Br. 9; Reply Br. 2.

We are not persuaded. Initially, we note the Examiner has set forth detailed findings and reasoning (Final Act. 2–4; Ans. 3–5); therefore, Appellant's assertion that the Examiner has not clearly detailed the teachings for each limitation is not persuasive.

Specifically, the Examiner finds (Final Act. 2–4; Ans. 3), and we agree, McKee teaches "compar[ing] a signal strength of a received beacon

signal to a reference signal strength . . . in order to determine the presence of a mobile transmitter 12 at a node 14" (McKee 3:66–4:3), i.e., McKee receives a signal strength from a first transponder and compares that received signal strength to a reference signal strength to determine whether the transponder is in a certain area. The Examiner further finds, and we agree, Wild teaches using "the signal strength measurement from the signal of a marker tag ([i.e., a] reference transponder)" to determine the location of another transponder. Final Act. 2 (citing Wild ¶¶ 25–26), 4; Ans. 4–5. The Examiner modifies McKee, based on Wild's teachings, such that McKee "use[s] [a] transponder as the reference device" to determine McKee's reference signal strength. Ans. 4–5; Final Act. 2.

Appellant's arguments that McKee does not "compar[e] the signal strengths of **two transponders**" (App. Br. 10; Reply Br. 3–4) and that Wild does not compare signal strengths (App. Br. 12; Reply Br. 6–7) inappropriately attack McKee and Wild individually when the rejection is based on a combination of McKee and Wild. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). As discussed above, McKee teaches the comparison of a transponder's signal strength to a reference signal strength (McKee 3:60–4:3); the Examiner relies on McKee's teaching in combination with Wild's teaching that a reference transponder can provide a reference signal strength (Wild ¶¶ 25–26) such that the reference signal strength in McKee is determined from a reference transponder (Ans. 4–6; Final Act. 2). Appellant does not present persuasive evidence or argument addressing the combined teachings of McKee and Wild.

Further, Appellant's argument that "[p]roviding an 'alternate means' is not a reason why one would combine one reference with another . . .

because the references already have a framework and there is no motivation to create an 'alternate means' of doing so" (App. Br. 13) is not persuasive because the Examiner's articulated reasoning is supported by rational underpinning, i.e., "substitution of a known step for another to obtain a predictable result" by using Wild's reference transponders to "obtain the reference signal strength" for McKee's reference signal. Ans. 6; *see* Final Act. 4. McKee discloses a reference signal strength, but McKee does not explicitly disclose how it determines its reference signal strength; nonetheless, we agree with the Examiner that it would have been obvious to incorporate Wild's reference transponder and corresponding reference signal strength into McKee to provide a manner of determining a reference signal strength. Appellant has not persuaded us of error in the Examiner's reasoning.

Accordingly, we are not persuaded the Examiner erred in concluding the subject matter of independent claims 1 and 6 would have been obvious over the combination of McKee and Wild. Therefore, we sustain the rejection of claims 1 and 6 under 35 U.S.C. § 103(a). We likewise sustain the rejection under 35 U.S.C. § 103(a) of claims 2, 5, 7, and 10, for which Appellant offers no additional persuasive arguments for patentability. *See* App. Br. 12–13.

Claims 3 and 12

Appellant contends the Examiner erred in finding the combination of McKee and Wild teaches "receiving, from a second reference transponder, a second signal having a second signal strength; determining a second position of the second reference transponder . . . [and] receiving, from a first

transponder, a third signal having a third signal strength," as recited in claim 12 and similarly recited in claim 3. Reply Br. 8–9; *see* App. Br. 12–13. Specifically, Appellant argues the "Examiner merely listed these as rejected claims but nowhere in the Office Action are the limitations of these claims discussed" (App. Br. 12) and the Examiner "has completely ignored [the] features" of "**two** reference transponders and **three** signal strengths" (Reply Br. 8–9).

We are not persuaded. As discussed *supra*, we agree with the Examiner's finding that Wild "teaches the use of the signal strength measurement from the signal of a marker tag." Final Act. 2. We further agree with the Examiner's finding, specifically identified in the rejection of claims 3 and 12, that Wild "teaches multiple marker tag[s] (120)" and, thus, teaches multiple reference transponders. Final Act. 3–4 (citing Wild ¶¶ 25–26) (emphasis added), 5; Ans. 5; *see* Wild Fig. 1 (depicting three marker tags – 120A, 120B, and 120C), ¶ 25 (marker tags 120). Because there are multiple marker tags, there are multiple reference transponders with respective signal strengths. As such, we determine an ordinarily skilled artisan would understand Wild as teaching these limitations of claims 3 and 12.

Appellant further argues "the Examiner has still not addressed 'the determining the reference signal strength comprises one of the third signal strength or the first signal strength,' of claim 3." Reply Br. 9. Claim 3 recites, in relevant part: "wherein the determining the reference signal strength comprises one of the third signal strength or the first signal strength." This wherein clause of claim 3, therefore, appears to refer to claim 1's recitation of "determining a reference signal strength based on the

first signal strength," which the Examiner finds is taught by the combination of McKee and Wild. Final Act. 3–4 (citing McKee, col. 3 line 66 – col. 4 line 1, col. 4 lines 62–65; Wild ¶¶ 25–26). Thus, we are not persuaded the Examiner failed to address this limitation as to the alternatively recited "first signal strength."[3]

Accordingly, we are not persuaded the Examiner erred in concluding the subject matter of claims 3 and 12 would have been obvious over the combination of McKee and Wild. Therefore, we sustain the rejection of claims 3 and 12 under 35 U.S.C. § 103(a).

Claim 4

Appellant contends the Examiner erred in finding the combination of McKee and Wild teaches "the reference signal strength comprises the first signal strength," as recited in claim 4. Reply Br. 9–10; *see* App. Br. 12–13. Specifically, Appellant argues the Examiner finds "the reference signal strength **is based on** the first signal strength, but not that the reference signal strength **is** the first signal strength." Reply Br. 9–10.

We are not persuaded. The Examiner finds Wild "teaches the use of the signal strength measurement from the signal of a marker tag (reference transponder)." Final Act. 2 (citing Wild ¶¶ 25–26). Wild discloses that "[a]n estimated parameter may include . . . a signal strength of the

[3] In the event of further prosecution, the Examiner may wish to consider whether the phrase "wherein the determining the reference signal strength comprises one of the third signal strength or the first signal strength" satisfies the requirements of 35 U.S.C. § 112(b). In particular, the Examiner may wish to determine whether it is sufficiently clear how a method step ("determining") may "comprise" a "signal strength."

modulated backscatter signal received from a marker tag 120." Wild ¶ 26. In the Examiner's combination, McKee teaches a reference signal strength (McKee 3:66–4:3), and Wild teaches that marker tags (i.e., the claimed "reference transponders") provide a reference signal strength (Wild ¶¶ 25–26). Final Act. 2–4. Accordingly, we are not persuaded the Examiner erred in concluding the subject matter of claim 4 would have been obvious over the combination of McKee and Wild. Therefore, we sustain the rejection of claim 4 under 35 U.S.C. § 103(a).

Furthermore, claim 4 recites that the reference signal strength *comprises* the first signal strength, not that the reference signal strength *is* the first signal strength. Appellant's argument that the claim requires the reference signal strength to be the first signal strength, is, therefore, not commensurate with the scope of the claim.

Claims 8, 9, and 11

Appellant contends the Examiner erred in finding the combination of McKee and Wild teaches the limitations recited in claims 8, 9, and 11. App. Br. 12–13; Reply Br. 8, 10. Specifically, Appellant argues the "Examiner merely listed these as rejected claims but nowhere in the Office Action are the limitations of these claims discussed" and "it appears that the Examiner has either overlooked or not properly addressed *all* of the limitations." App. Br. 12–13; Reply Br. 8, 10. We are not persuaded. We find the Examiner has set forth detailed findings as to where the references teach the claim limitations. Ans. 5–6. Appellant does not provide any elaboration explaining why the Examiner's citations do not adequately teach the claimed limitations, and, accordingly, those arguments do not persuade us of

Examiner error. Furthermore, claims 8 and 9 recite similar limitations to claims 3 and 4, respectively, as to which we do not find error in the Examiner's rejection, as discussed *supra*. Accordingly, we are not persuaded the Examiner erred in concluding the subject matter of claims 8, 9, and 11 would have been obvious over the combination of McKee and Wild. Therefore, we sustain the rejection of claim 8, 9, and 11 under 35 U.S.C. § 103(a).

DECISION

We affirm the Examiner's decision to reject claims 1–12 under 35 U.S.C. § 103(a) as being unpatentable over McKee and Wild.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED