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SIEMENS CORPORATION INTELLECTUAL PROPERTY DEPARTMENT 3501 Quadrangle Blvd Ste 230 Orlando, FL 32817			HUNTLEY, MICHAEL J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* CHIRS CASILLI, DAVID A. HINGOS, MARTIN OTTO,  
SAMUEL NEGRON, and MITHUN VAIDHYANATHAN

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Appeal 2017-008322  
Application 13/890,898<sup>1</sup>  
Technology Center 2100

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Before ROBERT E. NAPPI, ERIC S. FRAHM, and JOHN D. HAMANN,  
*Administrative Patent Judges.*

NAPPI, *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 through 21.

We affirm.

INVENTION

The invention is directed to a configuration of a building automation system controller where the system is accessed without a network connection. Abstract and paragraphs 12 through 14 of Appellants’

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<sup>1</sup> According to Appellants, the real party in interest is Siemens Industry Inc. App. Br. 1.

Specification. Claim 1 is illustrative of the invention and is reproduced below:

1. A device for configuration of a mobile device for controlling a building automation system, comprising:

a memory;

a display; and

a processor coupled to the memory executing a first building synergistic interface system (BSIS) mobile application for controlling a building automation system, where the first BSIS mobile application generates a non-network dependent code that contains data for configuration of a second BSIS mobile application and authentication data.

#### REJECTIONS AT ISSUE

The Examiner provisionally rejected claims 2, 9, and 16 under non-statutory obviousness-type double patenting over claims 1, 8, and 17 of co-pending Application No. 13/890,898. Final Act. 4–5.<sup>2</sup>

The Examiner rejected claims 1, 2, 7 through 9, 14 through 16, and 21 under 35 U.S.C. §102 (a)(2) as anticipated by Hilbrink et al. (US 8,918,719 B2, issued Dec. 23, 2014). Final Act 8–13.

The Examiner rejected claims 3 through 6, 10 through 13, and 17 through 20 under 35 U.S.C. §103(a) as unpatentable over Hilbrink in view of Jayaprakash et al. (US 2014/0061293 A1, published Mar. 6, 2014). Final Act. 14–20.

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<sup>2</sup> Throughout this Opinion, we refer to the Appeal Brief, filed July 25, 2016 (“App. Br.”); the Examiner’s Answer, mailed November 28, 2017 (“Answer”); the Final Office Action, mailed December 10, 2015 (“Final Act.”); and Appellants’ Specification filed May 9, 2013

## ANALYSIS

We have reviewed Appellants' arguments in the Brief, the Examiner's rejections and the Examiner's response to Appellants' arguments.

Appellants' arguments have not persuaded us of error in the Examiner's a) provisional double patenting rejection of claims 2, 9, and 16, b) rejection of claims 1, 2, 7 through 9, 14 through 16, and 21 under 35 U.S.C. §102(a)(2); or c) rejection of claims 3 through 6, 10 through 13, and 17 through 20 under 35 U.S.C. § 103(a).

Initially, we note Appellants have not addressed the Examiner's provisional double patenting rejection. Thus, Appellants have not identified an error in this rejection, and we sustain it *pro-forma*.

Appellants argue, on pages 8 and 9 of the Appeal Brief, that the application on appeal is a continuation-in-part of application no. 13/218,132 (published as application US 2013/0054033) and as such should be afforded the priority date of that application (August 25, 2011). Further, the Appellants argue that provisional application no. 61/694,436 (filed August 29, 2012), which also is incorporated by reference into the application on appeal, makes use of codes containing authentication data and configuration data. *Id*

The Examiner determined that the claims of the application on appeal are not entitled to the priority of Application no. 13/218,132, as that application does not demonstrate the Appellants had possession of the current claims when the priority application was filed. Specifically, the Examiner finds that the recitation directed to code that contains data for configuration of a second BSIS mobile application and authentication data is not disclosed in the 13/218,132 application. Final Act. 10; Answer 3.

The Examiner has provided a comprehensive response to Appellants' arguments on pages 3 through 5 of the Answer comparing the relevant disclosures of application no. 13/218,132 and of the Specification in the application on appeal. 35 USC § 120 "expressly requires an earlier application to disclose the claimed subject matter in compliance with 35 USC §112, first paragraph [35 USC §112(a)]." *In Re Scheiber* 587 F.2d 59, 61 (CCPA 1978). We have reviewed the specification of application no. 13/218,132, Appellants' arguments, the Examiner's findings, and the Examiner's response to Appellants' arguments. We find that the Examiner has shown that the disclosure of the 13/218,132 application does not demonstrate Appellants had possession of the claimed code that contains data for configuring a building synergistic interface mobile application and authentication data, as recited in representative claim 1. We note that Appellants' arguments do not cite specific paragraphs in either application no. 13/218,132 (from which priority is asserted) or the provisional application no. 61/694,436. Notably, Appellants identify that support for the disputed limitation is in Figure 14 (App. Br. 5) and paragraphs 104–105 (Appeal Br. 9–10) of the application under appeal, which portions are not present in either the 13/218,132 application or provisional application no. 61/694,436. We note that the provisional application does discuss authentication using a QR code key, but we do not find it contains any discussion of using these codes for configuration of a mobile application of a building synergistic interface system as claimed. Accordingly, we find no error in the Examiner's failure to grant the claims of this case the August 25, 2011, priority date of the 13/218,132 Application.

With respect to the anticipation rejection, Appellants argue that Hilbrink's teaching of "device specific information that can identify the device such as brand, type, model number, serial number" does not meet the claimed authentication code. App. Br. 10. Specifically, Appellants argue that the authentication data is discussed in paragraphs 104–105 of the Application, that the plain meaning of authentication is "to provide that something is real, true, or genuine: to provide something is authentic," and that the data in Hilbrink does not meet this definition. App Br. 10 (citing Merriam-Webster dictionary).

These arguments have not persuaded us of error. The Examiner has provided a comprehensive response to Appellants' arguments finding that Hilbrink teaches using data in a QR code, containing authentication information, to configure a device to provide direct access to an appliance control system. Answer 5–6. We concur with the Examiner. We note that Hilbrink teaches in Figure 6 and column 6, lines 2–12, that the QR code can contain several pieces of information, including a serial number field. As is commonly known, a serial number is a unique identifier. Paragraph 105 of Appellants' Specification identifies that authentication data may contain a unique identifier. We further note that the act of proving that something is real, true, or genuine are functions for using of the data that are not claimed, rather the representative claim which merely requires that the data contains authentication data. Thus, we find that the Examiner's interpretation of the data in Hilbrink containing authentication data is consistent with Appellants' Specification and we are not persuaded of error by Appellants' arguments. Accordingly, we sustain the Examiner's rejection of claim 1 and claims 2, 7 through 9, 14 through 16, and 21, which are grouped with claim 1.

With respect to the obviousness rejection, Appellants argue:

The Hilbrink, et al. patent fails to teach or describe authentication data being included in the code as discussed above. Furthermore, Jayaprakash, et al. publication has a filing date of September 4, 2012 that is well after the priority date of August 25, 2011.

App. Br 11.

This argument has not persuaded us of error in the Examiner's obviousness rejection. As discussed above, we agree with the Examiner's determination that the claims are not entitled to the August 25, 2011, priority date and with the Examiner's determination that Hilbrink teaches the claimed authentication data. Thus, Appellants have not persuaded us of error in the Examiner's obviousness rejection of claims 3 through 6, 10 through 13, and 17 through 20. Accordingly, we sustain the Examiner's rejection of claims 3 through 6, 10 through 13, and 17 through 20.

#### DECISION

The decision of the Examiner to reject claims 1 through 21 is affirmed.

AFFIRMED