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OSTROLENK FABER LLP 845 THIRD AVENUE NEW YORK, NY 10022			BARRETT, SUZANNE LALE DINO	
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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* MEIR AVGANIM

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Appeal 2017-010129<sup>1</sup>  
Application 14/267,064<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, KENNETH G. SCHOPFER, and  
AMEE A. SHAH, *Administrative Patent Judges*.

SCHOPFER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the rejection of claims 2–8, 13–20, and 22–25. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

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<sup>1</sup> Our decision references the Appeal Brief (“Br.,” filed Apr. 28, 2016), the Examiner’s Answer (“Ans.,” mailed Dec. 20, 2016), and the Final Office Action (“Final Act.,” mailed Nov. 24, 2015).

<sup>2</sup> According to Appellant, the real party in interest is Meir Avganim. Br. 1.

## BACKGROUND

According to Appellant, “[t]he present invention is generally directed to locking devices and, more particularly, to locks that are electronically operable and controllable by mobile devices such as telephones, PCs, tablets and the like.” Spec. ¶ 2.

## ILLUSTRATIVE CLAIM

Claim 17 is the only independent claim on appeal and recites:

17. A locking system for a device or structure requiring locking, comprising:

a lock body including a locking element and said locking body being configured to be physically attached to said device or structure with said locking element penetrating into a portion of said device or structure,

a moving mechanism coupled to and configured to operate the locking element,

an electrical controller configured to control the moving mechanism,

the lock body further comprising a facility for receiving electrical commands for the electrical controller;

a separate mobile cell phone device, physically separated from said device or structure and configured to communicate directly with said electrical controller and to provide to said electrical controller said electrical commands to direct the electrical controller to at least control the moving mechanism to move the locking element into an unlocked position, based solely on said electrical commands from said mobile device, and

wherein said lock body is without any internal electrical power source to operate said moving mechanism and without any connection to an external DC and/or AC power source and is configured to receive electrical power to temporarily power and operate said electrical controller and said moving mechanism solely from said mobile cell phone device.

Br. 9.

REJECTIONS<sup>3</sup>

1. The Examiner rejects claims 2–8, 13–20, and 22–25 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement.
2. The Examiner rejects claims 3, 8, 17, 18, and 22–24 under 35 U.S.C. § 102(a)(1) as anticipated by Buzhardt.<sup>4</sup>
3. The Examiner rejects claims 2, 3, 5–8, 14, 17, 18, and 22–24 under 35 U.S.C. § 103 as unpatentable over Tamura<sup>5</sup> in view of Buzhardt.
4. The Examiner rejects claims 2, 3, 5–8, 14, 17, 18, and 22–24 under 35 U.S.C. § 103 as unpatentable over Tamura in view of Buzhardt.
5. The Examiner rejects claims 4, 19, and 25 under 35 U.S.C. § 103 as unpatentable over Tamura in view of Buzhardt and Mette<sup>6</sup> or over Buzhardt in view of Mette.
6. The Examiner reject claims 13 under 35 U.S.C. § 103 as unpatentable over Tamura in view of Buzhardt and Lu.<sup>7</sup>
7. The Examiner rejects claims 15 and 16 under 35 U.S.C. § 103 as unpatentable over Tamura in view of Buzhardt and Koshimizu<sup>8</sup> or over Buzhardt in view of Koshimizu.

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<sup>3</sup> The Examiner has withdrawn the rejection of claim 20 under 35 U.S.C. § 112(a). *See* Ans. 13. Rejections of claims 21 and 26 are moot because those claims have been cancelled. *Id.*

<sup>4</sup> Buzhardt, US 2014/0250954 A1, pub. Sept. 11, 2014.

<sup>5</sup> Tamura, US 2007/0144225 A1, pub. June 28, 2007.

<sup>6</sup> Mette et al., US 8,534,101 B2, iss. Sept. 17, 2013.

<sup>7</sup> Lu, US 2008/0034816 A1, pub. Feb. 14, 2008.

<sup>8</sup> Koshimizu et al., US 5,566,012, iss. Oct. 15, 1996.

## DISCUSSION

### *New Ground of Rejection under 35 U.S.C. § 112(b)*

Claims 2–8, 13–20, and 22–25 are rejected under 35 U.S.C. § 112(b).

The text of 35 U.S.C. § 112(b), requires “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the inventor or a joint inventor regards as the invention.” “As the statutory language of ‘particular[ity]’ and ‘distinct[ness]’ indicates, claims are required to be cast in clear – as opposed to ambiguous, vague, indefinite-terms.” *In re Packard*, 751 F.3d 1307, 1313 (Fed. Cir. 2014). Claims are in compliance with 35 U.S.C. § 112(b) if “the claims, read in light of the specification, reasonably apprise those skilled in the art both of the utilization and scope of the invention, and if the language is as precise as the subject matter permits.” *Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1385 (Fed. Cir. 1986) (citing *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624 (Fed. Cir. 1985)). Thus, the test for determining the question of indefiniteness may be formulated as whether the claims “set out and circumscribe a particular area with a reasonable degree of precision and particularity.” *In re Moore*, 439 F.2d 1232, 1235 (CCPA 1971). With regard to the reasonableness standard, one must consider the language in the context of the circumstances. *Packard*, 751 F.3d at 1313. Language is an imprecise method of drawing boundaries delineating patent rights, thus unreasonable precision cannot be demanded. *Id.* On the other hand, the claims must notify the public of what they are excluded from making and using. *Id.* For this reason, while exact precision is not required, an applicant is required to use language as precise as the subject matter reasonably permits. *Id.*

Independent claim 17 requires a lock body that “is without any internal electrical power source to operate said moving mechanism and without any connection to an external DC and/or AC power source and is configured to receive electrical power to temporarily power and operate said electrical controller and said moving mechanisms from said mobile cell phone device.” When read in light of the Specification, we determine that there is a lack of clarity in this phrase such that one of ordinary skill in the art is not reasonably apprised of both the utilization and scope of the invention in a manner that is as precise as the subject matter permits.

Regarding the claim language by itself, we find the claimed phrase confusing in scope insofar as it excludes *any* connection between the lock body and an external power source and yet requires that the mobile cell phone device provide power to the lock body. Although one might interpret the claim such that the claim language merely excludes a physical connection, the Specification specifically indicates that connections may be wired or wireless. *See, e.g.*, Spec. 8. We also find a lack of clarity in the claim language, when read in light of the Specification, regarding the requirement that the lock body is without any internal electric power source. Appellant argues that the claim language does not preclude the use of a temporary power source in the form of a capacitor. *See* Appeal Br. 4. However, the Specification unequivocally describes such a capacitor as a power source. *See* Spec. ¶ 26 (describing the lock body as including “an internal power storage device 56 that may be a battery or a capacitor that can hold power for an extended period, or even a short period on the order of a minute or two. The power is then provided to a controller 58.”). Thus, we determine that the claim phrase at issue is internally inconsistent when read

in light of the Specification. Specifically, the claim requires that the lock body is not connected to *any* internal or external power source, and yet the lock body is powered temporarily by a mobile cell phone device, which would necessarily require some form of connection between the cell phone and the lock body and/or must necessarily include an internal means to temporarily power the lock. In short, the claim lacks the degree of precision required to determine the full scope of what is and what is not included within the lock body and how it is connected to any power source to operate the claimed moving mechanism.

For the foregoing reasons, the scope of the claimed invention cannot be determined. Accordingly, on this record, claims 2–8, 13–20, and 22–25 are indefinite for the reasons given above.

*Rejections 1–7*

Having determined that the subject matter of claims 2–8, 13–20, and 22–25 is indefinite, we are unable to determine the propriety of the rejections set forth by the Examiner as the propriety depends on the limitation considered indefinite. The review of these rejections would require considerable speculation as to the scope of the claims. Such speculation would not be appropriate. *In re Steele*, 305 F.2d 859, 862 (CCPA 1962).

We, therefore, reverse *pro forma* the Examiner’s rejections of claims 2–8, 13–20, and 22–25. We emphasize that this is a technical reversal of these rejections, and not a reversal based upon the merits of the rejections.

CONCLUSION

We REVERSE the rejections of claims 2–8, 13–20, and 22–25 under 35 U.S.C. §§ 102(a)(1), 103, and 112(a).

A NEW GROUND OF REJECTION has been entered for claims 2–8, 13–20, and 22–25 under 35 U.S.C. § 112, second paragraph, as indefinite.

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 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.” 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 proceeding 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)