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EXAMINER
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PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* YU JIN, CYNTHIA CAMA, ANN E. SKUDLARK,  
and LIEN K. TRAN

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Appeal 2018-000143  
Application 13/654,320<sup>1</sup>  
Technology Center 2400

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Before MICHAEL J. STRAUSS, IRVIN E. BRANCH, and  
DAVID J. CUTITTA II, *Administrative Patent Judges*.

BRANCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

*Technology*

The application relates to “providing a notification service in a wireless network.” Spec. Abstract.

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<sup>1</sup> According to Appellants, the real party in interest is AT&T Intellectual Property I, L.P. App. Br. 3.

*Illustrative Claim*

Claim 1 is illustrative and reproduced below with the limitations at issue emphasized:

1. A method for providing a notification service in a wireless network, the method comprising:

registering, by a hardware processor deployed in the wireless network, a mobile device associated with a customer for the notification service, wherein the registering is performed in response to receiving a request from the customer, wherein the request comprises a preference for the notification service, wherein the preference indicates a severity level of a particular type of anomaly from a plurality of different types of anomalies for which the customer is to receive a notification, wherein the particular type of anomaly constitutes an action taken by the mobile device;

collecting, by the hardware processor, traffic data of the mobile device of the customer;

determining, by the hardware processor, whether the particular type of anomaly is detected for the traffic data that is collected for the mobile device, wherein the particular type of anomaly constitutes the action taken by the mobile device; and

providing, by the hardware processor, the notification to the mobile device of the customer, when the particular type of anomaly is detected for the traffic data that is collected for the mobile device and when the particular type of anomaly reaches the severity level as defined by the customer in the preference for the particular type of anomaly.

*Rejections<sup>2</sup>*

Claims 1–3, 5, 6, 9, 11–14, and 16–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott (US 2013/0031191

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<sup>2</sup> Rather than repeat the Examiner's positions and Appellants' arguments in their entirety, we refer to the above mentioned Appeal Brief filed May 2,

A1, published Jan. 31, 2013), Bian (US 2007/0275741 A1, published Nov. 29, 2007), and Hammad (US 2010/0274691 A1, published Oct. 28, 2010). Final Act. 2–9.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott, Bian, Hammad, and Koller (US 8,588,764 B1, issued Nov. 19, 2013). Final Act. 9–10.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott, Bian, Hammad, and Hering (US 2011/0119765 A1, published May 19, 2011). Final Act. 10–11.

Claim 8 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott, Bian, and Hammad, and Gu (US 2009/0172815 A1, published July 2, 2009). Final Act. 11.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott, Bian, Hammad, and Shah (US 2012/0215898 A1, Aug. 23, 2012). Final Act. 11–12.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Bott, Bian, Hammad, and Aziz (US 8,561,177 B1, issued Oct. 15, 2013). Final Act. 12.

## ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence

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2017 (“App. Br.”), as well as the following documents for their respective details: the Final Action mailed December 2, 2106 (“Final Act.”), the Examiner’s Answer mailed August 1, 2017 (“Ans.”), and Appellants’ Reply Br. filed October 2, 2017 (Reply Br.”).

produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

Appellants' arguments (App. Br. 16–31; Reply Br. 2–10) alleging error in the Examiner's rejections of claims 1–20 are unpersuasive of error for the reasons stated by the Examiner (Ans. 2–16). We adopt the Examiner's findings and conclusion that claims 1–20 are unpatentable over the cited references. We highlight the following for emphasis.

*The Rejection of Claims 1–3, 5, 6, 9, 11–14, and 16–20*

Appellants argue the Examiner errs in rejecting claim 1 because “the cited portions of Hammad are silent in regards to an anomaly determined by a hardware processor deployed in a wireless network from traffic data of the mobile device collected by the hardware processor deployed in the wireless network” and “[t]he use of any telecommunication services in Hammad is merely incidental to the relevant action of a charge against a user account (i.e., ‘user account events’ and ‘historical user account events’).” App. Br. 19–20.

Appellants' arguments based on Hammad alone are unpersuasive of error because claim 1 is rejected based on the combined teachings of Hammad, Bott, and Bian. *See* Final Act. 2–6. “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Moreover, the features upon which Appellants' arguments are based are found by the Examiner to be taught by Bott and/or Bian. *See* Final Act. 2–4.

Appellants argue error in the Examiner's rejection of claim 17 based on arguments for claim 1 and also because “the account alerts based upon

the ‘account events’ described in Hammad are not reconcilable with other technologies relating to spam messages received via a short message service[, so] the alleged description in Bott is not compatible with the account alerts based upon the ‘account events’ described in Hammad.” App. Br. 21–22. Appellants argue claim 18 on a similar basis. *See id.* 22–23.

Appellants’ naked argument that Bott is not “compatible” with Hammad’s account alerts based on account events is not convincing because it lacks evidentiary support. Arguments of counsel cannot take the place of evidence in the record. *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

Accordingly, we sustain the Examiner’s rejection of claims 1, 17, and 18, and of claims 2, 3, 5, 6, 9, 11–14, 16, 19, and 20, which Appellants do not argue separately with particularity.

#### *The Remaining Rejections*

Appellants’ arguments alleging error in the Examiner’s rejections of the remaining claims (App. Br. 23–32; Reply Br. 8–10) are unpersuasive of error for the reasons stated by the Examiner (Ans. 11–16).

#### DECISION

For the reasons above, we affirm the Examiner’s decision rejecting claims 1–20.

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. § 41.50(f).

AFFIRMED