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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* FRANCESCO ATTANASIO

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Appeal 2018-001369  
Application 13/266,412  
Technology Center 2600

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BEFORE MICHAEL J. STRAUSS, HUNG H. BUI, and  
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 20–38. Appeal Br. 2.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Telefonaktiebolaget L M Ericsson (publ). Appeal Brief (“Appeal Br.,” filed June 5, 2017) 2.

<sup>2</sup> This Decision refers to Appellant's Appeal Brief and Reply Brief (“Reply Br.,” filed November 29, 2017), the Examiner's Final Office Action (“Final Act.,” mailed February 2, 2017) and Answer (“Ans.,” mailed September 28, 2017), and the original Specification (“Spec.,” filed October 26, 2011).

We affirm the rejection of claims 20–37, reverse the rejection of claim 38, and enter a NEW GROUND OF REJECTION for obviousness of claim 38 pursuant to our authority under 37 C.F.R. § 41.50(b).

#### CLAIMED SUBJECT MATTER

The claims are directed to providing an entity with data collected from radio-frequency identification data (RFID) devices. Spec. 1:4–18, Abstract. Claims 20 and 38, reproduced below, are illustrative of the claimed subject matter:

20. A method for providing a Law Enforcement Agency with things data related to one or more target identities using a Radio-Frequency Identification (RFID) Data Manager, which manages RFID data traffic comprising things data in a Radio-Frequency Data system, wherein said RFID manager is provided with an Intercepting Control Element (ICE), the method comprising:

receiving, at the ICE, a request to intercept dynamic and optionally static things data related to one or more target identities from a Law Enforcement Management Function (LEMF) unit;

collecting, in the ICE, the dynamic and optionally static things data related to the one or more of the target identities for which things data has been requested;  
and

forwarding the collected data to the LEMF unit.

38. A computer program product comprising non-transient computer program code loadable into a processor, wherein when executed in the processor the computer program code is configured to execute a method for providing a Law Enforcement Agency with things data related to one or more target identities using a Radio-Frequency Identification (RFID) Data Manager, which manages RFID data traffic comprising things data in a Radio-Frequency Data system, wherein said RFID manager is provided with an Intercepting Control

Element (ICE), wherein the method executed by the processor comprises:

receiving, at the ICE, a request to intercept dynamic and optionally static things data related to one or more target identities from a Law Enforcement Management Function (LEMF) unit;

collecting, in the ICE, the dynamic and optionally static things data related to the one or more of the target identities for which things data has been requested;  
and

forwarding the collected data to the LEMF unit.

#### REFERENCES

The Examiner relies upon the following prior art:

Name	Reference	Date
Wang et al. (“Wang”)	US 2006/0124738 A1	June 15, 2006
Powell	US 2008/0100557 A1	May 1, 2008

#### REJECTIONS

Claim 38 is rejected under 35 U.S.C. § 102 as being anticipated by Wang. Final Act. 2–3.

Claims 20–37 are rejected under 35 U.S.C. § 103 as being unpatentable over Wang and Powell. Final Act. 4–9.

#### OPINION

##### *35 U.S.C. § 102 Rejection*

The Examiner rejects claim 38 as anticipated by Wang. Final Act. 2–3. Wang describes system 18000 which includes two RFID readers (18200 and 18300). Wang ¶ 209, Fig. 18. RFID readers 18200 and 18300 read RFID information from objects having an Electronic Product Code (EPC)

tag. *Id.* ¶¶ 115, 209–211, 214. RFID readers 18200 and 18300 are disclosed to be communicatively coupled to RFID data server 18700, which includes event manager 18760 and RFID data manager 18780. *Id.* ¶¶ 213–214. “Event manager 18760 can be adapted to obtain RFID information from one or more RFID tags.” *Id.* ¶ 214.

The Examiner finds the RFID readers that read RFID information in Wang disclose the ICE of claim 38. Final Act. 3 (citing Wang ¶¶ 209, 210, Fig. 18 (elements 18200, 18300, 18400, 18500)). For example, the Examiner quotes the claim language “wherein said RFID manager is provided with an Intercepting Control Element (ICE)” and notes that Wang discloses reader devices reading RFID information. *Id.* Additionally, the Examiner, when addressing the claim limitation “collecting, in the ICE, the dynamic and optionally static things data . . .” again cites Wang’s reader devices for reading RFID information. *Id.*

Appellant argues that the Examiner’s rejection is internally inconsistent, because the Examiner also equates the event manager to claim 38’s ICE and the reader devices to claim 38’s LEMF unit. Appeal Br. 8. With respect to the limitation that the method executed by the processor comprises “receiving, at the ICE, a request to intercept dynamic and optionally static things data related to one or more target identities *from a Law Enforcement Management Function (LEMF) unit*” (emphasis added), the Examiner addresses only the first portion of the limitation, i.e., “receiving, at the ICE, a request to intercept dynamic and optionally static things data.” Final Act. 3. In support, the Examiner cites Wang’s disclosure of “event manager obtaining RFID data . . . from reader devices.” *Id.* Thus, Appellant argues, the Examiner is equating Wang’s readers to the LEMF

unit, and determining that the request is received from the readers. Appeal Br. 6–7.

In response, the Examiner explains that the disclosure in Wang relied upon is reader devices forwarding data to the event manager – the interception of things data by the RFID readers, and not a request sent by the RFID readers. Answer 4. The Examiner finds that “Wang discloses an event manager obtaining RFID data (paragraph 0214) from reader devices (figure 18, items 18200 and 18300) – synonymous with the claimed request to intercept data related to one or more target identities and forwarding data. The receipt of the data infers that a request or command has been sent to the RFID readers to send the requested data.” *Id.*

Appellant argues that no such request appears in Wang, and that Wang does not disclose any element of Wang receiving a request to intercept thing data related to one or more target identities from another element of Wang. Appeal Br. 6–7. With respect to the Examiner’s determination that “[t]he receipt of [such] data infers that a request or command has been sent to the RFID readers to send the requested data” (Answer 4), Appellant contends that “Wang is simply a form of data collection, not the result of a specific request to intercept specific (i.e., dynamic and optionally static things) data.” Reply Br. 2. Appellant additionally argues that the Examiner’s obviousness rejection specifically concedes that Wang does not disclose a request to intercept originating from the event manager. Appeal Br. 6 (citing Final Act. 5).

We agree with Appellant. Anticipation under 35 U.S.C. § 102 requires “the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” *Therasense, Inc. v. Becton,*

*Dickinson & Co.*, 593 F.3d 1325, 1332 (Fed. Cir. 2010) (internal quotation marks omitted). A prior art reference may anticipate without disclosing a feature of the claimed invention if that missing characteristic is necessarily present in the single anticipating reference. *Cont'l Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268 (Fed. Cir. 1991). In this case, we agree with Appellant that the cited portions of Wang do not disclose a request from Wang's event manager to Wang's reader devices is necessarily present. For example, the devices may act to always send data to the event manager, even in the absence of any request.

Therefore, we do not sustain the anticipation rejection of claim 38.  
*35 U.S.C. § 103 Rejection – claims 20–24, 28, 29, 33, 36, and 37*

The Examiner rejects claim 20, applying a combination of Wang and Powell. Final Act. 6. Powell discloses a request by a master RFID reader which commands the operations of other RFID readers to coordinate frequency utilization. Powell ¶ 38, Fig. 3. The Examiner finds that the combination of the teachings of Powell and Wang would have taught or suggested to one of ordinary skill in the art a system with a system controller directing the RFID readers to read RFID data and transmit the data to a data manager for analysis. Final Act. 6.

Appellant argues that Powell does not teach the reception of a request to intercept provided by another node in the system. Appeal Br. 9–10. However, Appellant does not address the reception of a request to intercept provided by the RFID reader in Powell which commands operations of other RFID readers to read data. Appellant argues that “simply because it is generally known for a master device to command the operation of a slave device does not mean it is known or obvious for a master device to

command a slave device as claimed.” Reply Br. 3. However, we agree with the Examiner that Wang’s teaching of a RFID reader receiving a request to send certain things data, in combination with Powell’s teachings regarding an event manager and RFID readers, teaches or suggests the limitation of “receiving, at the ICE, a request to intercept dynamic and optionally static things data related to one or more target identities from a Law Enforcement Management Function (LEMF) unit.”

Appellant argues that, for a 103 rejection to be proper, every limitation must be present in one and only one reference, and that no one reference discloses the “receiving” limitation. Appeal Br. 9–11. However, the correct test is whether one of ordinary skill in the art would have been led by the combination of the references to the claimed arrangement. *See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007) (“As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”). Herein the Examiner finds, and we agree, the combination of Wang and Powell teaches or suggests the disputed receiving limitation. Thus, Appellant’s argument is an improper attack on the references individually where the rejection is based on the combination of references. *See Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Therefore, Appellant’s argument is unpersuasive of reversible Examiner error.

We do not agree with Appellant that Examiner has erred in the rejection of claim 20. Independent claims 28, 33, and 36 are argued on the same basis as claim 20, and no additional arguments are presented for

dependent claims 21–24, 29, and 37. For the same reasons, we do not agree with Appellant that Examiner has erred in the rejection of claims 21–24, 28, 29, 33, 36, and 37.

*35 U.S.C. § 103 Rejection – claims 25–27, 30–32, 34, and 35*

Claims 25–27, 30–32, 34, and 35 add limitations relating to named interfaces between certain claimed units. The Examiner finds the recited interfaces are taught or suggested by the figures of Wang which show the communicative coupling of the LEMF unit and ICE unit. In applying Wang’s interfaces, the Examiner interprets the recited labelling of these interfaces between these devices as merely “renaming . . . such that they are more appropriate for operation in a law environment.” Final Act. 7–8, 18–19. Appellant argues that “the Office must find art that teaches or suggests the claimed HI1 interface, HI2 interface, and/or HI3 interface.” Appeal Br. 15.

We do not agree. During prosecution, claim terms are given their broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, (Fed. Cir. 2004). Under the rule of broadest reasonable interpretation, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). The plain language of Appellant’s claims does not appear to be limited to specific interfaces. The Specification labels a first interface as “first Handover Interface HI1” but does not provide any definition of what an HI1 interface is other than by describing the general operation of the interface. *See Spec.* 3:11–16, 16:12–16, 23:19–22, 25:18–24. The Specification also notes that “In

reference 3, the interfaces HI1 and HI2 [are] specified in more detail.” *Id.* 3:26–27. However, Appellant has not provided any evidence distinguishing the claimed “first Handover Interface HI1” from an interface between two “units” which a request can be received through, as claimed in, e.g., the limitation in claim 25 that “receiving the request comprises receiving the request through a first Handover Interface (HI1) located between the LEMF unit and an Intercept Mediation and Delivery Unit.” Similarly, evidence regarding the additional distinguishing features of interfaces HI2 and HI3 are not provided. The broadest reasonable interpretation of the claims in light of the Specification is not constrained, as Appellant urges, to a specific interface.

For these reasons, we are not persuaded of Examiner error. Accordingly, we sustain the Examiner’s rejection of claims 25, 26, 30, 31, 34, and 35.

*35 U.S.C. § 103 Rejection – claim 38*

While Appellant presents an argument relating to the patentability of claim 38 over the combination of Wang and Powell, as presented in the § 103 rejection of claims 20–37, the Examiner does not appear to have rejected claim 38 over Wang and Powell.

For the reasons discussed above, we maintain the Examiner’s § 103 rejection of claims 20–37. Claim 38 recites a computer program product which, when executed in a processor, executes a method substantially similar to that set forth in claim 20. For the same reasons set forth with respect to claim 20 we find that claim 38 is unpatentable as obvious over the combination of Wang and Powell. Because this rejection was not made in the Final Action, we designate this a new ground of rejection.

### CONCLUSION

The Examiner's § 102 rejection of claim 38 is reversed; the Examiner's § 103 rejection of claims 20–37 is affirmed. Pursuant to our authority under 37 C.F.R. § 41.50(b), we newly reject claim 38 under 35 U.S.C. § 103(a) as unpatentable over Wang and Powell.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>	<b>New Ground</b>
38	102	Wang		38	
20–37	103	Wang, Powell	20–37		38
<b>Overall Outcome</b>			20–37		38

### TIME PERIOD FOR RESPONSE

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 the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground 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 prosecution will be remanded to the examiner. . . .

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(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

AFFIRMED; 37 C.F.R. 41.50(b)