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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HOLGER ELIAS<sup>1</sup>

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Appeal 2018-002367  
Application 14/350,649  
Technology Center 2600

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Before CARL W. WHITEHEAD JR, MICHAEL J. STRAUSS  
and SHARON FENICK, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant is appealing the final rejection of claims 50–55, 58–78, 81–89, and 91–98 under 35 U.S.C. § 134(a).<sup>2</sup> Claims Appendix, filed June 28, 2017. 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(a). Appellant identifies Nokia Solutions and Networks Oy, as the real party in interest. Appeal Brief 1.

<sup>2</sup> Appellant states, “Of the rejections, claims 56, 57, 79, 80, and 90–96 have been canceled, thus leaving claims 50–55, 58–78, 81–89 and 97–98 under appeal.” Appeal Brief 1. This is not a correct status of the claims; the pending claims are 50–55, 58–78, 81–89, and 91–98. *See* Amendment dated December 14, 2015.

We affirm.

*Introduction*

According to Appellant, the invention is directed to a method for providing metering information or metering equipment. Specification 2.

*Representative Claim*

50. A method for providing metering information of metering equipment, which comprises the steps of:

detecting a communication request input at the metering equipment, the communication request input being provided by a manually operable switching device, a switch, or a push button of the metering equipment;

responsive to activating a communication interface of the metering equipment the communication request input detected;

establishing a communication link via the activated communication interface;

wherein after establishing the communication link the metering equipment enters a status, in which it is ready for receiving instruction information via the activated communication interface and the established communication link;

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providing via the activated communication interface the metering information responsive to the instruction information received; and

deactivating the activated communication interface at a latest after a time period since the activating step is performed, the time period being sufficient to complete said receiving and said providing under normal operating conditions.

*References*

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Kiser et al.	US 6,954,144 B1	October 11, 2005
Phatak	US 2010/0306533 A1	December 2, 2010
Forbes, Jr. et al.	US 2011/0029655 A1	February 03, 2011
Duncan et al.	US 2011/0208371 A1	August 25, 2011
Casey et al.	US 2011/0254697 A1	October 20, 2011

*Rejections on Appeal*

Claims 73–78, 81–89, and 91–98 stand rejected under 35 U.S.C. §112 (b), as failing to particularly point out and distinctly claim the subject matter which the applicant regards as his invention. Answer 6–9.

Claims 91–96 stand rejected under 35 U.S.C. §112(d) as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends.

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Claims 50, 51, 53, 55, 61–66, 73, 74, 76, 78, 84–89, 91–94<sup>3</sup> and 96–98 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiser and Casey. Final Action 9–25.

Claims 52, 54, 58, 60, 75, 77, 81 and 83 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiser, Casey and Phatak. Final Action 25–27.

Claims 59 and 82 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiser and Duncan. Final Action 28–29.

Claims 67–72 and 95 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kiser, Casey and Forbes, Jr. Final Action 29–34.

## ANALYSIS

Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Briefs (filed July 29, 2016; June 28, 2017), the Final Action (mailed March 17, 2016) and the Answer (mailed October 25, 2017), for the respective details.

### 35 U.S.C. §112 (b) Rejection

The Examiner finds:

**Claims 73–98** use the word “means” or a generic placeholder (in this case “device” and “interface”) as a substitute for “means” and are preceded by the word(s) “activating device for activating the interface responsive”, “establishing device for establishing a link”, “authenticating device for activating the interface responsive”, “providing device for providing communication interface”, “deactivating device for shutting

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<sup>3</sup> While the heading of this portion of the Final Action does not list claims 92 and 93, rejections of these claims appear in the body of this rejection. Final Action 14–15

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down the interface after time period”, “verifying device for verifying key information”, and “authenticating device for authenticating credentials.” It is unclear whether these words convey function or structure.

Answer 6 (*emphasis added*).

Appellant contends, “[T]he term before the word means or device in each of the relevant claims in the pending application does in fact recite a functional limitation; i.e., detecting, displaying, storing, sending, deactivating, activating, etc.” Appeal Brief 9–10. Appellant further contends, “The claims in the pending application are additionally coupled with true means plus function language; i.e. a detecting device for detecting a communication request input at the metering equipment (claim 73).” Appeal Brief 10. We find Appellant’s arguments persuasive; there is no uncertainty as to whether the words in the claim convey function or structure. We disagree with the Examiner’s findings. We reverse the 35 U.S.C. §112 (b) rejection of claims 73–78, 81–89, and 91–98.

35 U.S.C. §112(d) rejection

The Examiner finds, “**Claims 91–96** do not refer to a preceding claim.” Answer 9. Appellant contends, “Claims 91– 96 have been rewritten as new claims 99–104. Appellant believes the rejection has been overcome and that there is no issue for review here.” Appeal Brief 11. The Examiner finds that the Appeal Brief filed June 28, 2017 still includes claims 91–96 in improper dependent form. Answer 35. We do not agree with the Examiner’s determination because the claims have been amended to depend upon independent claim 97. *See* Claim Appendix 12–14. It is noted that claims were not rewritten as new claims 99–104 as Appellant states. *See* Appeal Brief 11; Claim Appendix 12–14.

35 U.S.C. §103 (a) Rejection

Appellant contends, “Claim 50 includes a step of: detecting a communication request input at the metering equipment” and “Claims 73 and 97 each include: ‘a detecting device for detecting a communication request input at the metering equipment.’” Appeal Brief 11. Appellant argues, “The Examiner has not explicitly identified the alleged communication request in Kiser et al. Appellant believes the Examiner is alleging that the periodic activation signal from the controller 72 is a communication request.” Appeal Brief 11. Appellant contends, “[Kiser’s] activation signal from the controller 72 is a command that activates the communication interface for a predetermined period in order to detect whether a communication request is received from a remote unit 74 during the predetermined period in which the communication interface is activated (see column 6, lines 16--22).” Appeal Brief 12.

The Examiner finds that Kiser states, “This invention relates to an assembly attached to a water meter capable of receiving meter readings, encoding them, and transmitting the encoded meter readings to a remote mobile location.” Answer 35 (*citing* Kiser, column 1, lines 5–8) (*emphasis added*). The Examiner further finds, that Kiser discloses, “transmit and receive antennas, a circuit board transponder connected to the antennas to transmit meter readings to a remote location and receive interrogation signals.” Answer 35 (*citing* Kiser, column 1, lines 36–38) (*emphasis added*). The Examiner finds that Kiser’s controller 72 activates the receiver to check for RF signals from a remote unit. *See* Answer 11. The claimed communication request reads upon Kiser’s RF signals. Accordingly, we do not find Appellant’s argument that the Examiner is “alleging that the

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periodic activation signal from the controller 72 is a communication request”  
persuasive. *See* Appeal Brief 11.

Appellant contends:

The established function of the activation signal issued by the controller in Kiser et al. is to activate the communication interface for a predetermined period of time in order to detect whether a communication request is received from a remote unit 74 during the predetermined period of time in which the communication interface is activated (see column 6, lines 16 – 22).

The established function of the switch in Casey et al. is to trigger a remote utility monitoring device 110-aand/or base receiver 110-n to exchange public or private keys in order to carry out an encryption process (see paragraph 87).

Appeal Brief 15–16.

Appellant concludes:

Kiser et al. require an automatic, cyclic, high-frequency (1.5s), short-term (2ms) reactivation mechanism (see column 4, lines 31 – 40 of Kiser). The person of ordinary skill in the art would simply never have been motivated to have used a pushbutton [as taught by Casey] to perform the automatic, Cyclic, high-frequency (1.5s), short-term (2ms) reactivation mechanism of Kiser et al.

Appeal Brief 19.

We do not find Appellant’s arguments persuasive. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). We agree with the Examiner’s determination that, “One of ordinary skill in the art at the time the invention was made

would have been motivated to modify Kiser's method to include Casey's switch for secure data transmission (Casey, [0061])." Answer 12. Doing so would have suggested the disputed limitation to one of ordinary skill in the art.

Appellant argues that claim 50 requires the following limitations:

"deactivating the activated communication interface at a latest after a time period since the activating step is performed, the time period being sufficient to complete said receiving and said providing under normal operating conditions" (underlining added).

Claims 73 and 97 include limitations corresponding to those of claim 50.

Appeal Brief 19.

Appellant argues, "There is no teaching or suggestion that the 2 ms time period of Kiser et al. would be sufficient to complete receiving the instruction information and providing metering information." Appeal Brief 20.

We do not find Appellant's arguments persuasive. Kiser discloses, "The controller 72 periodically activates the receive state to check for RF signals from a remote unit. If no valid signal is received within a 2 millisecond period, the controller reverts to sleep mode." Kiser, column 6, lines 16–19; *see* Answer 38. Kiser's 2 millisecond period is associated with maintaining battery life of the device and is not associated with receiving instruction information as Appellant contends. *See* Kiser, column 6, lines 10-12. We do not find Appellant's arguments persuasive and agree with the Examiner's findings and determination. We sustain the Examiner's obviousness rejection of independent claims 50, 73 and 97 argued together. *See* Appeal Brief 24.

*Claims 61 and 84*

Claim 50 recites, “[T]he time period being sufficient to complete said receiving and said providing under normal operating conditions.” Appellant contends that, “Claims 61 and 84 specify that the time period [recited in claims 50 and 73] is configurable” and that “[t]he Examiner has merely referred to global statements on configurable hardware and software components in Kiser et al.” Appeal Brief 24. Appellant further contends that, “Those global statements on configurable hardware and software components do not disclose nor suggest a configurable time period” and “Casey et al. do not disclose or suggest a configurable time period either. Thus, combing Kiser et al. and Casey et al. would not have suggested the invention as defined by claims 61 and 84.” Appeal Brief 24–25.

We do not find Appellant’s arguments persuasive. Claims 61 and 84 merely require the time period to be configurable without any specificity as to the configurability of the time period. Kiser discloses, “If a valid signal is received, the controller processes any encoded message received from the remote transmitter/receiver 74 via the circuit board transponder receiver 68.” Kiser column 6, lines 19–22. (*emphasis added*). “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.” *KSR Int’l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Kiser will process any encoded message and does not impose a time constraint for processing the encoded messages. Accordingly, we find both claims 61 and 84 to be obvious in view of Kiser and Casey.

We also sustain the Examiner’s obviousness rejections of dependent claims 51–55, 58–60, 62–72, 74–78, 81–83, 85–89, 91–96, and 98, not

argued or argued with distinction. *See* Appeal Brief 25–26.

CONCLUSION

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
73–78, 81–89, and 91–98	112 (b)			73–78, 81–89, 91–98
91–96	112 (d)			91–96
50, 51, 53, 55, 61–66, 73, 74, 76, 78, 84–89, 91–94, 96–98	103	Kiser, Casey	50, 51, 53, 55, 61–66, 73, 74, 76, 78, 84–89, 91–94, 96–98	
52, 54, 58, 60, 75, 77, 81, 83	103	Kiser, Casey, Phatak	52, 54, 58, 60, 75, 77, 81, 83	
59, 82	103	Kiser, Duncan	59, 82	
67–72, 95	103	Kiser, Casey, Forbes Jr.	67–72, 95	
<b>Overall Outcome</b>			50–55, 58–78, 81–89, 91–98	

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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED