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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex Parte PETER ZATLOUKAL, G. ERIC ENGSTROM,
and CINDY M. SMITH

Appeal 2018-002974
Application 14/097,152
Technology Center 2800

Before ADRIENE LEPIANE HANLON, JAMES C. HOUSEL, and
AVELYN M. ROSS, *Administrative Patent Judges*.

ROSS, *Administrative Patent Judge*.

DECISION ON APPEAL¹

Appellant² appeals under 35 U.S.C. § 134(a) from a non-final rejection of claims 61–66, 68–71, 73–78, and 80–83. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ In our Decision we refer to the Specification filed February 24, 2014, as amended (“Spec.”), the Non-Final Office Action appealed from dated April 3, 2017 (“Non-Final”), the Appeal Brief filed August 3, 2017 (“Appeal Br.”), the Examiner’s Answer dated November 27, 2017 (“Ans.”), and the Reply Brief filed January 29, 2018 (“Reply”).

² 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 Varia Holdings LLC. Appeal Br. 1.

STATEMENT OF THE CASE

The subject matter on appeal relates to “an emulated radio frequency data input method.” Spec. ¶ 2. In particular, “[e]mbodiments of the present invention include[] an emulated RFID method . . . using a mobile communication device, including the device itself, and certain hardware and/or software embodied therein for the practice of the emulated RFID method.” *Id.* ¶ 16. Claim 1, reproduced below, is illustrative of the claimed subject matter:

61. A method for operating a mobile communication device comprising:

- receiving a radio frequency identification (RFID) probing signal from an RFID reader external to the mobile communication device, amplifying the RFID probing signal via an amplifier to generate an amplified RFID probing signal, and processing the amplified RFID probing signal via signal processing circuitry to generate a processed RFID probing signal;
- executing, on processing circuitry in the mobile communication device, instructions stored in a memory in the mobile communication device, the instructions configured to cause the mobile communication device to:
 - determine if an RFID communications protocol associated with the RFID probing signal matches one or more RFID communications protocols associated with RFID data based on the processed RFID probing signal, wherein the RFID data and the one or more RFID communications protocols associated with the RFID data are stored in the memory; and
 - output the RFID data upon determining that the RFID probing signal matches at least one of the one or more RFID communications protocols associated with the RFID data.

Appeal Br. 10 (Claims App’x).

REJECTIONS

The Examiner maintains the rejection of claims 61–66, 68–71, 73–78, and 80–83 under 35 U.S.C. § 103 as unpatentable over Zalewski³ in view of Degrauwe.⁴ Non-Final 3.

Appellant seeks our review of the Examiner’s rejection. Appeal Br. 6. Appellant presents argument for independent claim 61 and does not argue any claim separate from claim 61. *See id.* at 6–8. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2013), we limit our discussion to claim 61, and all other claims stand or fall together with claim 61.

OPINION

We review the appealed rejection for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (*cited with approval* in *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011) (“[I]t has long been the Board’s practice to require an applicant to identify the alleged error in the examiner’s rejections”). After considering the evidence presented in this Appeal and each of Appellant’s arguments, we are not persuaded that Appellant identifies reversible error. Thus, we affirm the Examiner’s rejection for the reasons expressed in the Non-Final Office Action and the Answer. We add the following.

The Examiner rejects claims 61–66, 68–71, 73–78, and 80–83 as obvious over the combination of Zalewski and Degrauwe. Non-Final 3.

³ Zalewski et al., US 6,771,981 B1, issued August 3, 2004 (“Zalewski”).

⁴ Degrauwe et al., US 2001/0028302 A1, published October 11, 2001 (“Degrauwe”).

The Examiner finds that Zalewski teaches nearly all limitations of claim 61 (*id.* at 3–4). Relevant to Appellant’s arguments below, the Examiner finds that Zalewski describes a changeable cover for a mobile communication device having an RFID transponder that communicates with an RFID reader when a compatible probing signal is detected. *Id.* at 3. According to the Examiner, “as only one frequency for interrogation and one frequency for reply is taught, the determination of compatibility of the probing signal is performed by the cover either communicating or not in response to the interrogation signal.” *Id.* In the alternative, the Examiner finds that determining the communications protocol is simply determining the format of data for each different application. *Id.* at 3–4. The Examiner reasons that where a cover is used for a plurality of applications, “it would have been obvious to have different formats of data for each intended use.” *Id.* at 4. Though Zalewski “is silent to the amplifying and processing,” (*id.* at 4) the Examiner finds that Degrauwe describes an active transponder that includes different operating modes including data processing, amplifying incoming signals, and validating incoming signals. *Id.* The Examiner reasons that a person of ordinary skill in the art would have combined the teachings of Zalewski with Degrauwe to include amplifying and processing the signal in order for “better execution and for different communication modes/security levels, such as based on the different uses of the transponder.” *Id.*

Appellant contends that

[t]he fact that the RFID transponder in the changeable cover of Zalewski will either successfully communicate or not in response to different RFID probing signals does not amount to a *determination* whether an RFID communications protocol of an

RFID probing signal matches an RFID communication protocol associated with RFID data stored in memory.

Appeal Br. 7. Appellant argues that the RFID transponder of Zalewski “will attempt to transmit data in response to any RFID probing signal having sufficient energy to charge and thus operate passive circuitry within the RFID transponder” which makes the RFID transponder passive, i.e., it fails to make a determination. *Id.* A determination, according to Appellant, requires executing instructions stored in memory, that is, an active step, which is not an operating characteristic of Zalewski. *Id.* at 8. Thus, because the passive RFID transponder of Zalewski does not analyze the probing signal to determine what RFID communications protocol is being used and whether that protocol matches one of the RFID communications protocols associated with the data stored on the communications device, Zalewski fails to meet the requirements of claim 61. *Id.*

In the Answer, the Examiner explains that it would have been obvious for the system of Zalewski to determine whether the RFID communication protocol of the probing signal matches the communications protocol of data stored in memory “in order to make sense of the electromagnetic signal applied to it . . . and determine if the interrogation/probing signal it receives is one that it can communicate with.” Ans. 2; *see also* Non-Final 4 (“As the RFID communicates in a given protocol it would have been obvious . . . to have one stored in data in order to be able to recognize and communicate in it as required by the system.”).

On this record, we are not persuaded by Appellant’s arguments. We agree with the Examiner that it would have been obvious “to have a communication protocol to allow communication, such protocol for example

dictating a frequency of communication” for operation of the door lock, *see e.g.*, Figure 5A, for security, among other reasons. Non-Final 3.

Further, that the Zalewski device may be a “dumb” or passive device that does not require the device to determine the communication protocol of the probing signal in order for communication to take place (*see e.g.*, Reply Br. 3) does not mean that a transponder that *does* determine whether a probing signal matches the communications protocol of the stored data would not have been obvious. As Appellant acknowledges, Zalewski is limited such that “each changeable cover has a unique RFID transponder” and “each changeable cover is suited for a specific application, and thus different changeable covers must be physically swapped for different applications.” Appeal Br. 7. The Examiner’s alternate position modifies the transponder/cover of Zalewski to determine the communications protocol to allow for communication based on the format of the stored data and to account for use of multiple applications. Non-Final 3–4. As the Examiner explains, “for different applications (such as hotels, fast food, car, parking meters, gas, etc.), it would have been obvious to have different formats of data for each intended use, based upon the desired identification information and security for a specific operation mode of the mobile device with the system.” *Id.* at 4. Therefore, the Examiner reasons that “[a]s the RFID communicates in a given protocol it would have been obvious to one of ordinary skill in the art to have one stored in data in order to be able to recognize and communicate in it as required by the system.” *Id.* Notably, Appellant does not challenge the Examiner’s alternate argument and thus, fails to identify any error in the Examiner’s rejection.

We find no error in the Examiner's findings or reasoning. We therefore sustain the Examiner's rejection.

CONCLUSION

Appellant failed to identify a reversible error in the Examiner's rejection of claims 61–66, 68–71, 73–78, and 80–83 under 35 U.S.C. § 103 as unpatentable over Zalewski and Degrauwe.

DECISION

For the above reasons, the Examiner's rejection of claims 61–66, 68–71, 73–78, and 80–83 is affirmed as summarized below.

Claims Rejected	Basis	Affirmed	Reversed
61–66, 68–71, 73–78, 79–83	§ 103 Zalewski, Degrauwe	61–66, 68–71, 73–78, 80–83	
Overall Outcome		61–66, 68–71, 73–78, 80–83	

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).

AFFIRMED