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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* JAMES ASHLEY JR., PATRICK MOONEY, PATRICK  
BLATTNER, and JAMES ASHLEY SR.

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Appeal 2018-003103  
Application 14/014,071<sup>1</sup>  
Technology Center 3600

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Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and  
JOHN P. PINKERTON, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 51–53, 57, 58, and 60–69, which constitute all the claims pending in this application. Claims 1–50, 54–56, and 59 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> The real party in interest identified by Appellants is Wirelesswerx International, Inc. App. Br. 2.

## STATEMENT OF THE CASE

### *Introduction*

Appellants' described and claimed invention relates generally to monitoring wireless devices, messaging by wireless communication between wireless devices, and facilitating the movement of entities in, out, and/or through a specific geographic location. *See Spec.* ¶ 2.<sup>2</sup>

Claim 51 is representative and reads as follows:

51. An airport facility comprising a physical door for entry into the airport facility from an outside position from the airport facility, a first zone between the door and a security checking location within the airport facility and the security checking location, a second zone beyond the security checking location, and a system providing a location-based service to an operator of the airport facility comprising:

a physical location node in the airport facility, the physical location node including a transceiver of wireless signals for transmitting the signals received to a central hub wherein the wireless signals are processed;

the physical location node being located at a specific location in the airport facility, the physical location node being capable of communicating wirelessly with human entities in the airport facility thereby establishing the location and movement of the human entities in the airport facility, the human entities having wireless communicating units transmitting and receiving signals wirelessly to or from the physical location node, each of the wireless communicating units being unique for one of the human entities;

the physical location node including a physical detection device, the physical device including a radio transmitter/receiver,

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<sup>2</sup> Our Decision refers to the Final Office Action mailed March 29, 2017 ("Final Act."), Appellants' Appeal Brief filed November 30, 2017 ("App. Br.") and Reply Brief filed January 29, 2018 ("Reply Br."), the Examiner's Answer mailed January 12, 2018, and the original Specification filed August 29, 2013 ("Spec.").

the physical detection device being capable of detecting entry to the first or second zone, dwell and exit events of the human entities, and wireless communicating units of human entities;

the wireless communicating units being mobile phones equipped with a Bluetooth and WI-FI radio;

the transceiver of the physical location node transmitting through the Bluetooth and WI-FI radio data about the movement of the human entities in the airport facility relative to the security checking location, the data including the entry into the security checking location, the departure from the security checking location, and the amount of time spent in the vicinity of the security checking location; and the data transmitted being in at least one of real time or being for storage and analysis at a later time by the operator;

an algorithm, executable by a computer processor, for processing the data; and

a physical screen displaying the first zone and the second zone as a map depicted on a pixilated image on the physical screen, and the physical screen displaying information of movement of human entities from the first zone through the security checking location and into the second zone as mapped on the pixilated image, and the pixilated image being a tool to plan operations in the airport facility and personnel assignment in the airport facility.

App. Br. 27–28 (Claims App.).

### *Rejections on Appeal*

Claims 51–53, 57, 58, and 60–69 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter.<sup>3</sup>

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<sup>3</sup> The rejection does not address claim 57 (*see e.g.*, Final Act. 5), but this appears to be an error as Appellants appear to treat claim 57 as also being rejected under 35 U.S.C. § 101. *See e.g.*, App. Br. 10 (“[c]laims 51–53, **57**, 58, and 60–69 stand rejected under 35 U.S.C. § 101,” *emphasis added*).

Claims 51, 52, 57, 58, 60–64, and 66–68 stand rejected under 35 U.S.C. §103 as being unpatentable over Lucas et al. (US 2007/0239569 A1; published Oct. 11, 2007) (“Lucas”), Ramachandra (US 2008/0189170 A1; published Aug. 7, 2008) (“Ramachandra”), Winand et al. (US 2009/0259549 A1; published Oct. 15, 2009) (“Winand”), and Nasser (US 2008/0294487 A1; published Nov. 27, 2008) (“Nasser”).

Claim 53 stands rejected under 35 U.S.C. §103 as being unpatentable over Lucas, Ramachandra, Winand, Nasser, and Frey et al. (US 5,557,513 A; issued Sept. 17, 1996) (“Frey”).

Claims 65 and 69 stand rejected under 35 U.S.C. §103 as being unpatentable over Lucas, Ramachandra, Winard, Nasser, and Fitzpatrick et al. (US 8,209,219 B2; issued June 26, 2012) (“Fitzpatrick”).

## ANALYSIS

### *Rejection of Claims 51–53, 57, 58, and 60–69 under § 101*

#### Applicable Law

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” is patent eligible. 35 U.S.C. § 101. But the Supreme Court has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible

concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of [the] claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 573 U.S. at 217 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claim for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Office published revised guidance on the application of 35 U.S.C. § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance*, Federal Register Vol. 84, No. 4, 50–57 (“Revised Guidance”). Under the Revised Guidance, we first look to whether the claim recites: any judicial exceptions, including certain groupings of abstract ideas (*i.e.*, mathematical concepts, certain methods of organizing human activity such as fundamental economic practices, or mental processes); and additional elements that integrate the judicial exception into a practical application. *See* Revised Guidance 54–55. Only if a claim recites a judicial exception and does not integrate that exception into a practical application, do we then look to whether the claim adds a specific limitation beyond the judicial exception that are not “well-understood, routine, conventional” in the field. *See* Revised Guidance 56.

#### Appellants’ Arguments

Appellants contend the claims are directed to a specific non-abstract physical interrelated structure (*e.g.*, airport facility), rather than an abstract

idea. *See* App. Br. 10; *see also* Reply Br. 4. According to Appellants, the claims do not recite a basic concept similar to any abstract idea previously identified by the courts, such as a concept relating to the economy and commerce, an idea of itself, or a mental process that can be performed in the human mind or by a human using pen and paper. *See* App. Br. 20.

Appellants further argue the claims do not threaten to create problems related to preemption. *See id.* Appellants additionally argue the claims facilitate the ability to solve the problem of location and line control determined by data derived from input received from devices, and, thus, the claims amount to an inventive concept for solving the problem of location and line control. *See* App. Br. 21.

*Step One of Alice*

Prong 1: Whether Claims Are Directed to an Abstract Idea

The Examiner finds the claims recite steps for monitoring data and analyzing data received from disparate sources in a mass transit facility. *See* Final Act. 5. Thus, according to the Examiner, the claims are similar to the claims found patent-ineligible in *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016), where the court found the claims were directed toward the patent-ineligible abstract idea of monitoring and analyzing data from disparate sources. *See id.*

Upon review of the Examiner's findings in support of the rejection of the aforementioned claims under 35 U.S.C. § 101, we do not sustain the rejection because the Examiner's findings are not sufficient to establish that the claims recite an abstract idea that falls within one of the three enumerated categories of abstract ideas in the Revised Guidance (*i.e.*, mathematical concepts, certain methods of organizing human activity, or

mental processes). More specifically, the claims recite, *inter alia*, an airport facility comprising a system providing location-based services to an operator of the airport facility, where the system comprises: (a) a physical location node, including a transceiver and a physical detection device including a radio transmitter/receiver, where the physical detection device is capable of detecting movement and wireless communication units of human entities within the airport facility; (b) a computer processor capable of executing an algorithm for processing data received by the physical detection device; and (c) a physical screen displaying information of movement of the human entities. *See* App. Br. 27–28. We conclude that such claimed subject matter is neither a mathematical concept, a certain method of organizing human activity (such as a fundamental economic practice, commercial or legal interaction, or method of managing personal behavior or relationship or interactions between people), or a mental process. Accordingly, we do not sustain the rejection of claims 51–53, 57, 58, and 60–69 under 35 U.S.C. § 101.

*Rejection of Claims 51–53, 57, 58, and 60–69 under § 103*

Applicable Law

The Supreme Court has rejected the rigid requirement of demonstrating a teaching, suggestion, or motivation in the references to show obviousness. *See KSR Int’l Co., v. Teleflex Co.*, 550 U.S. 398, 415–16 (2007); *see also In re Ethicon, Inc.*, 844 F.3d 1344, 1350 (Fed. Cir. 2017) (“*KSR* directs that an explicit teaching, suggestion, or motivation in the references is not necessary to support a conclusion of obviousness.”). Further, one cannot show non-obviousness by attacking references

individually when the rejection is based on a combination of references. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *see also In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

#### Analysis

We have reviewed the Examiner’s rejection of claims 51–53, 58, and 60–69 under 35 U.S.C. § 103, and are not persuaded the Examiner has erred. Unless otherwise noted, with respect to the rejection under 35 U.S.C. § 103, we adopt as our own the findings and reasons set forth by the Examiner in the Office Action from which this appeal is taken (Final Act. 8–32), and in the Examiner’s Answer (Ans. 7–9), and we concur with the conclusions reached by the Examiner. Appellants proffer several contentions as to why the claims are not obvious in light of the cited prior art references. *See App. Br. 23–25; see also Reply Br. 5–7.* We do not find any of them persuasive for the reasons provided below.

Appellants argue none of the references teach or suggest the “claimed human tracking with communication by both Bluetooth and WI-FI radio data.” App. Br. 23; *see also Reply Br. 5–7.* This argument is not persuasive. As the Examiner correctly found, Ramachandra teaches wireless communications via both Bluetooth and WiFi protocols. *See e.g.*, Final Act. 10; *see also Ans. 7.*

Appellants further argue there is nothing in or about Lucas that relates to an airport facility. *See App. Br. 24.* This argument is not persuasive either as the Examiner relied upon Winand, rather than Lucas, for teaching the claimed “airport facility.” *See e.g.*, Final Act. 9; *see also Ans. 8.*

Appellants also argue Ramachandra teaches cell phone usage, including downloading of applications and information related to a shopping

experience, and does not teach or suggest the usage of a cell phone related to location determination of a user as a tool used by a shopping manager or facility. *See* App. Br. 24. We also are not persuaded by this argument. We agree with the Examiner that Ramachandra teaches the usage of customers' cell phones as nodes in a network to track their locations. *See* Final Act. 10; *see also* Ans. 8; Ramachandra ¶¶ 54, 133 (“a shopper locator device can be a variety of devices that can accompany a shopper on a shopping trip”; “a cell phone such as shopper cell phone can be supported as a node in a sensor network-based context-aware content delivery system”).

As further argued by Appellants, “Nasser is a retail establishment technology which has nothing remotely to do with an airport facility.” App. Br. 24. This argument is not persuasive either. Similar to Appellants' argument regarding Lucas, the Examiner relied upon Winand, rather than Nasser, for teaching the claimed “airport facility.” *See e.g.*, Final Act. 9.

As also argued by Appellants, Nasser only discloses a CAD map converter used to overlay an indicator of people detector information where detectors are located or should be located, and category zone maps to show where people detectors are located or should be located, and thus, Nasser does not disclose using a pixilated image as a tool to plan personal assignment. *See* App. Br. 24 (citing Nasser ¶ 69); *see also* Reply Br. 5. We are not persuaded by this argument. As the Examiner correctly found, Nasser teaches the claimed “pixilated image on [a] physical screen,” where the physical screen displays “information of movement of human entities.” *See e.g.*, Final Act. 11; *see also* Ans. 9. To Appellants' specific argument that Nasser's CAD map converter does not teach or suggest the claimed “pixilated image,” Nasser explicitly discloses that the CAD map converter

includes pixel recognition processes that detect types of structural elements represented by pixels in the CAD drawings. *See* Nasser ¶ 64. Thus, we agree with the Examiner’s finding that Nasser teaches or suggests the claimed “pixilated image.”

Appellants further argue Frey does not relate to security check points anywhere. *See* App. Br. 24. This argument is not persuasive because the Examiner did not rely on Frey as teaching the claimed “security checking location.” Instead, the Examiner relied on Frey for teaching a system that uses location-based tracking to collect data regarding the total number of shoppers in a store. *See e.g.*, Final Act. 20–29.

Appellants additionally argue Fitzpatrick is solely related to a commercial establishment, and as such Fitzpatrick’s camera use is “totally unrelated to the airport facility environment and the features of the claimed subject matter.” App. Br. 25. The Examiner relied on Fitzpatrick for teaching a computer system configured to monitor customer flow using security cameras with integrated video and including display interfaces, and did not rely on Fitzpatrick as teaching the claimed “airport facility.” *See e.g.*, Final Act. 30–31. Thus, this argument is not persuasive.

As also argued by Appellants, “Winand does not concern itself or disclose the systems, elements and physical system of nodes, communication devices for wireless signals, and pixilated image screen displays of maps to display information of movement, location and status; nor NFC systems . . . or visualization.” App. Br. 25. The Examiner did not rely on Winand as teaching any of the aforementioned elements. *See e.g.*, Final Act. 9. Thus, this argument is not persuasive either.

Appellants also argue that the cited references fail to disclose or suggest several elements of independent claims 51, 60, 61, 66, and dependent claims 57, 62, 65, 66, and 69. *See* App. Br. 25. Appellants' argument amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguish them from the references. *See* 37 C.F.R. § 41.37(c)(1)(vii) (noting that an argument that merely points out what a claim recites is unpersuasive); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[T]he Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”). Accordingly, for the reasons provided above, we sustain the rejection of claims 51–53, 57, 58, and 60–69 under 35 U.S.C. § 103.

#### DECISION

We reverse the Examiner's rejection of claims 51–53, 57, 58, and 60–69 under 35 U.S.C. § 101.

We affirm the Examiner's rejection of claims 51–53, 57, 58, and 60–69 under 35 U.S.C. § 103.

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).

AFFIRMED