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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* ROBERT BRUCE KLEVE, BRIAN PETERSEN,  
RITESH PANDYA, EDWARD ANDREW PLEET, and  
JOHN ROBERT VAN WIEMEERSCH

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Appeal 2018-004683  
Application 14/712,367  
Technology Center 2400

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Before ELENI MANTIS MERCADER, JASON J. CHUNG, and  
BETH Z. SHAW, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

Appellant requests rehearing under 37 C.F.R. § 41.52 of our Decision, mailed on January 28, 2019 (“Decision”), in which we affirmed the Examiner’s rejection under 35 U.S.C. § 102(e) of claims 21–40. Appellant timely filed a Request for Rehearing (“Req. Reh’g”) on March 27, 2019.

Appellant first identifies that the Examiner noted that “a system whereby a vehicle owner can use their own mobile device to approve a request from a different person using a substitute mobile device to start a vehicle” was not present in claim 21. Req. Reh’g 2. Appellant then assumes that this argument (and subsequent agreement by the Board) were founded on reasoning that the “mobile device processor” of the claims was contained in the substitute user device of the claims, making the claim interpreted as a one-device system. *Id.*

Appellant wrongly makes the assumption that our reasoning is based on the “mobile device processor” of the claims being contained in the substitute user device of the claims, making the claim interpreted as a one-device system.

As we previously stated in our opinion, we agreed with the Examiner’s finding that Takizawa discloses a mobile-device processor (i.e., vehicle biometric authentication ECU, Fig 2. Unit 21) configured to: receive an authentication request from a user (i.e., user A, Fig 1) attempting to use a substitute-user device (i.e., a device 40, Fig 1) to access a vehicle for drive-away (Fig. 2) user A with device 40. Dec. 4 (citing Ans. 3).

We also agreed with the Examiner’s finding that the identity of the user needs to be identified (i.e., authenticated), the authentication information of the user is transmitted from device 40 to ECU 21 for verification, and if verified drive-away of the vehicle is permitted. *Id.* (citing Ans. 3–4 and paras. 27, 35–37, and 40).

We concluded that Takizawa discloses receiving confirmation of the request through a mobile-device interface (i.e., vehicle control unit 28, Fig 2), approving the user to access the vehicle (i.e., when the user is verified to

access the vehicle by verification portion 27 and subsequently vehicle control unit 28 (Fig 2), and receives the confirmation (steps 7-8 of Fig. 3 and para.49)). Ans. 4.

The terms “own mobile device” do not appear in claim 21, contrary to Appellant’s argument, nor does the claim positively recite “a mobile-device.” We note that the claim 21 does not recite a processor of the mobile device but rather a “mobile-device processor,” which under the broadest but reasonable interpretation can be a processor that communicates with a mobile device. Claim 21 recites “a mobile-device processor” having a “mobile-device interface” to approve the user of “a substitute-user device.” In other words, “a mobile-device processor” (i.e., vehicle biometric authentication ECU, Fig 2. Unit 21) which is a processor able to authenticate a substitute user device (i.e., mobile device 40) request for authentication through a mobile-device interface (vehicle control portion 28 able to authenticate the mobile device’s request). Thus, in Takizawa a processor is able to authenticate the mobile device’s 40 request for authentication (i.e., “a mobile-device processor”).<sup>1</sup>

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<sup>1</sup> We note that our additional characterization to the Examiner’s finding of the vehicle’s biometric authentication unit 21 (ECU) as a mobile processor since it is a part of a mobile vehicle (Dec. 4) is a cumulative finding and is not required based on the broad language of claim 21, as clarified in this rehearing.

We further note that claim 29 also suffers from the same deficiencies as claim 21 because the pre-ambule of claim 29 reciting “a mobile device” is not relied on by the body of the claim. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. *See In re Hirao*, 535 F.2d 67 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152 (CCPA 1951).

Appellant further alleges that claims 37 and 40 were not considered by the Board's adoption of the Examiner's position that "a system whereby a vehicle owner can use their own mobile device to approve a request from a different person using a substitute mobile device to start a vehicle." Req. Reh'g 3-4.

We are persuaded by Appellant's argument. Claims 37 and 40 differ from claim 21 because they positively recite a "first mobile device" and a "second mobile device" and further recite the limitation of "send authentication data to the first mobile device, usable to access the vehicle for drive way, *in response to receiving a confirmation receipt from the second mobile device*" (emphasis added). See claims 37 and 40.

As an initial matter, the broadest reasonable interpretation differs from the broadest possible interpretation. *In re Smith Int'l, Inc.*, 871 F.3d 1375, 1383 (Fed. Cir. 2017); see also MPEP § 2111 ("The broadest reasonable interpretation does not mean the broadest possible interpretation. Rather, the meaning given to a claim term must be consistent with the ordinary and customary meaning of the term (unless the term has been given a special definition in the specification), and must be consistent with the use of the claim term in the specification and drawings."). The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is "an interpretation that corresponds with what and how the inventor describes his invention in the specification, i.e., an interpretation that is 'consistent with the specification.'" *Smith*, 871 F.3d at 1382-83 (quoting *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)). We are

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mindful, however, that limitations are not to be read into the claims from the Specification. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

We note that in Takizawa a portion of the vehicle on board unit is identified as portable (i.e., portable detection unit 25) but the remaining biometric authentication ECU is not identified as portable. *See* Fig. 2. Thus, it would seem that the ECU unit, other than the portable terminal detection unit, is part of the vehicle and as such could not be *reasonably* interpreted as a mobile device. In Appellant's Specification, the mobile application is downloaded to a personal computer and/or a nomadic device (i.e., cell phone 103 as indicated in Fig. 1), thus the mobile device itself is portable. So in light of the Specification, Takizawa's ECU unit is not portable and accordingly not mobile.

Based on the above reasons we deny the request for rehearing for claim 21 and its dependent claims 22–36, and thus, claims 21–36 stand affirmed under 35 U.S.C. § 102 (e). Additionally, we grant the request for rehearing for claims 37, 40, and dependent claims 38–39 and we hereby designate that the rejection of claims 37–40 under 35 U.S.C. § 102 (e) is reversed.

Requests for extensions of time are governed by 37 C.F.R. § 1.136. *See* 37 C.F.R. § 41.52(b).

REHEARING GRANTED-IN-PART