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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL J. LOMBARDI, JOSEPH L. ALLORE, and
PAUL FORDHAM

Appeal 2018-005391
Application 14/737,990
Technology Center 2600

Before BRYAN F. MOORE, BETH Z. SHAW, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–20. *See* Final Act. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ 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 Motorola Mobility LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

The claims are directed to an adaptive audio in a modular portable electronic device:

A modular device system includes a base device and additional functionality modules that are separately dockable to the base device to form a single device. The base device includes one or more speakers and one or more microphones. For each device, its multiple speakers and microphones are driven independently of the other device when the devices are not docked together. However, when one of the additional functionality modules is docked to the base device, a predetermined optimized audio configuration specific to the particular additional functionality module is set for the combined device.

Abstract.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of modifying an audio configuration of a combined device comprising *a first independently operable device having a plurality of available audio configurations wherein the first device emits audio in two or more of the available audio configurations, and a second independently operable device*, the method comprising:

detecting a docking of the second independently operable device to the first independently operable device;

detecting a device ID of the second independently operable device at the first independently operable device;

resolving the device ID to a predetermined audio configuration at the first independently operable device for the combined device, the predetermined audio configuration being one of the plurality of available audio configurations; and

applying the resolved predetermined audio configuration to the combined device.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Gengler	US 2013/0259283 A1	Oct. 3, 2013
Foo	US 2013/0332542 A1	Dec. 12, 2013

REJECTION

Claims 1–20 are rejected under 35 U.S.C. § 103 as being unpatentable over Foo in view of Gengler. Final Act. 3–14.

OPINION

We have reviewed the Examiner’s rejection in light of Appellant’s arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellant. We are not persuaded by Appellant’s arguments regarding claims 1–20.

Appellant argues that claim 1 proves specific functionality:

Claim 1 . . . pertains to a combined device made up of two independently operable audio devices, each one having at least two audio configurations wherein audio is emitted (i.e., *neither* of these modes is simply silence). The particular audio configuration of the first device is selected based on detecting and identifying the second device. For example, a mobile phone may have an initial audio configuration when operated alone, with the initial configuration using certain device speakers and not others. The device may then reconfigure itself to exhibit a different audio configuration after the add-on module is docked to the phone, e.g., to use speakers on the device not previously used instead of the speakers from the first configuration.

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Appeal Br. 8. Appellant further argues that “Foo does not teach or suggest this functionality or associated structures or elements.” *Id.* Specifically, Appellant argues

neither Foo nor Gengler teaches a “. . . device having a plurality of available audio configurations wherein the first device emits audio in two or more of the available audio configurations,” nor do the references, taken together or separately, teach *two independently operable* devices that may be docked together with the claimed result.

Id. at 9

Appellant argues “Foo is not even arguably at issue in this regard, since the Action concedes at page 4 that Foo fails to teach ‘. . . wherein the first device emits audio in two or more of the available audio configurations’” Appeal Br. 8–9.

Appellant further argues that “each second device (speaker) in Gengler is a speaker that has two modes: (1) emitting an audio signal and (2) not emitting an audio signal.” Appeal Br. 9. According to Appellant, because “one mode is silence . . . Gengler fails to teach a device that has multiple audio-emitting modes as expressly required in the claim.” *Id.* (emphasis omitted).

Appellant also argues that the second device identified by the Examiner in Foo is not an independently operable device:

[T]he Examiner’s host of second devices (a pile of speakers waiting to be used) are certainly not independently operable in any sense of the word. They are speakers. They must be driven by an external driver. They are never going to operate independently, and as such they plainly do not qualify as the “second independently operable device” that claim 1 requires, whether considered as separate inert speakers or as an inert speaker pile.

Id. According to Appellant, “independently operable” as recited in claim 1 means that “a device that is capable of performing its function independently of the other device.” Reply Br. 1 (emphasis omitted). Appellant argues its proposed construction is consistent with the Specification. *Id.* at 3 (citing Spec. ¶ 16).²

The Examiner finds Foo teaches “a first independently operable device and a second independently operable device (read as the docking of device 100 on accessory device 102 to change the audio output configuration.” Final Act. 3 (citing Foo ¶¶ 22–31, Fig. 1). The Examiner acknowledges that Foo does not specifically teach that “the first independently operable device having a plurality of available audio configurations wherein the first device emits audio in two or more of the available audio configurations, and the predetermined audio configuration being one of the plurality of available audio configurations.” *Id.* at 4.

The Examiner also finds Gengler teaches a multi-speaker system 330 having stationary speaker unit 302 and portable speaker unit 304. Final Act. 4 (citing Gengler Fig. 1A-1D). The Examiner further finds that “the switching circuit 318 controls the audio data to be transmitted to the stationary speaker unit 302, the portable speaker unit 304, or both (i.e. one of the two or more of the available audio configurations).” *Id.* (citing Gengler ¶¶ 53–57, Figs. 1A–1D, 5); *see also* Adv. Act. 3 (identifying emitting sound from the stationary speaker as a first audio configuration and emitting sound from the portable speaker as a second audio configuration); Ans. 19 (same).

² The Reply Brief cites paragraph 13. This appears to be a typographical error as the Reply Brief quotes from paragraph 16.

The Examiner also concludes “that claim 1 fails to define ‘independently operable’ completely.” Ans. 17. Specifically, the Examiner concludes that “[i]t is unclear what kind of operation(s) needs to be independently performed to make the first and second devices to be qualified as the ‘first independently operable device’ and the ‘second independently operable device’.” *Id.* The Examiner concludes that the broadest reasonable interpretation of “independently operable” is broad enough to encompass “any devices that would powered ON/OFF independently, or would be any devices that perform any kind of operation independently.” *Id.* at 18.

We do not need to construe the claim limitation “independently operable” to decide this appeal. The Examiner finds Foo teaches a first independently operable device and a second independently operable device (Final Act. 3) and Appellant has not argued that finding was erroneous. “If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (designated precedential). Because “we need only construe those claim limitations ‘that are in controversy, and only to the extent necessary to resolve the controversy,’” we do not have to construe “independently operable” as recited in claim 1. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Because Appellant’s arguments are directed to the references individually, we are not persuaded that the Examiner erred. Although the Examiner finds Foo teaches a first independently operable device and a second independently operable device (Final Act. 3), Appellant’s argument

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focuses on whether Gengler teaches independently operable devices. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The test for obviousness is not whether the claimed invention is expressly suggested in any one or all of the references, but whether the claimed subject matter would have been obvious to those of ordinary skill in the art in light of the *combined teachings* of those references. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981). The issue is not whether Foo or Gengler teaches the limitations recited in claim 1, but whether the combined teachings render claim 1 obvious to a person having ordinary skill in the art, and Appellant does not address that combination.

We further disagree with Appellant's argument that Gengler does not teach at least two audio configurations. To the contrary, we agree with the Examiner that Gengler teaches two audio configurations: a first audio configuration in which the stationary speaker is used when the portable speaker is connected to the stationary speaker and a second audio configuration in which the portable speaker is used when the portable speaker is not connected to the stationary speaker. Gengler ¶ 56. The enabling and disabling of the speakers in Gengler is similar to the Specification's discussion of enabling the speakers on one device while disabling the speakers on another. Spec. ¶¶ 18, 41.

We further agree with the Examiner that a person of ordinary skill in the art would have combined the teachings of Gengler (different audio configurations when devices are separate or connected) with the two independently operable devices taught by Foo for the reasons stated in the

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Final Action and Answer. *See* Final Act. 4. As discussed above, Appellant does not address the combination.

Accordingly, we sustain the rejection of independent claim 1 along with the rejections of independent claims 11 and 19, which are argued on the same grounds, and dependent claims 2–10, 12–18, and 20, which are not argued separately. *See* Appeal Br. 10.

CONCLUSION

The Examiner’s rejection of claims 1–20 is affirmed.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1–20	103(a)	Foo, Gengler	1–20	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED