



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/035,411	09/24/2013	Dieter HORST	5029-1138\339757	5467
27799	7590	02/01/2019	EXAMINER	
Cozen O'Connor 277 Park Avenue, 20th floor NEW YORK, NY 10172			TERRELL, EMILY C	
			ART UNIT	PAPER NUMBER
			2689	
			NOTIFICATION DATE	DELIVERY MODE
			02/01/2019	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentsecretary@cozen.com
patentdocket@cozen.com
patentsorter@cozen.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DIETER HORST and JOERG NEIDIG

Appeal 2018-005750
Application 14/035,411¹
Technology Center 2600

Before ROBERT E. NAPPI, ERIC S. FRAHM, and MICHAEL T. CYGAN,
Administrative Patent Judges.

CYGAN, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Introduction

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–13. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM and enter a NEW GROUND OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

¹ According to Appellants, the real party in interest is Siemens AG. App. Br. 2. We note, however, that the “applicants” listed in that section do not match either the applicant or inventors of record.

Disclosed Invention and Exemplary Claim

The disclosed invention relates to systems and methods for configuring a read/write unit in a radio frequency identification (RFID) arrangement of read/write units. Abstract. The read/write units directly exchange configuration-related messages with each other using RFID transponders. *Id.* At least one of the read/write units simulates an RFID transponder such that the read/write units are configurable without communicating via host interfaces. *Id.* The data exchanged by the read/write units can be used to decide about changes to operating parameters. Spec. ¶ 10.

Independent claim 1 is exemplary of the disclosed invention, and reads as follows (with key limitations of the claim emphasized):

1. A method for configuring a read/write unit in a radio frequency identification (RFID) arrangement having a plurality of read/write units, the method comprising:

adjusting at least one parameter for a configuration in at least one read/write unit of the plurality of read/write units, said at least one parameter comprising one of (i) a radio channel that is to be closed and (ii) a reception sensitivity of a receiver; and

performing, via a wireless interface, a direct interchange of messages including data relating to the configuration between each of the plurality of read/write units, said data relating to the configuration comprising an identification number of the at least one read/write unit and a value for a locally measured reception field strength of a radio signal emitted by the least one read/write unit;

wherein respective wireless interfaces which are set up for communication by each of the plurality of read/write units with RFID transponders and communication methods and communication protocols which are provided for the communication with RFID transponders are used for the

interchange of the messages, at least one of the read/write units simulating an RFID transponder to another RFID transponder of the plurality of read/write units.

Independent claim 12 recites a system having limitations commensurate with claim 1. All of dependent claims 2–11 and 13 recite or incorporate the above-emphasized limitation. Appellants contend that the patentability of claims 2–13 are patentable for the same reasons as contended for claim 1. Reply Br. 7. No distinct arguments are made for the patentability of any of claims 2–13. Accordingly, we select claim 1 as representative per 37 C.F.R. § 41.37(c)(iv).

Examiner's Rejection

The Examiner rejected claims 1–13 under 35 U.S.C. § 103 as being obvious over the combination of Boate et al. (US 2006/0290519 A1, published Dec. 28, 2006) (hereinafter Boate) and Ridings et al. (US 2007/0164109, published July 19, 2007) (hereinafter Ridings).

ANALYSIS

We have reviewed the Examiner's rejections (Final Act. 2–9) in light of Appellants' contentions that the Examiner has erred (App. Br. 4–12; Reply Br. 1–7). Further, we have reviewed the Examiner's response to Appellants' arguments (Ans. 7–13). Appellants' contentions have not persuaded us of error in the Examiner's determination that the claims are unpatentable.

The Examiner's grounds of rejection.

The Examiner has rejected claims 1–13 under 35 U.S.C. § 103 because, *inter alia*, the Examiner found Boate to teach or suggest “adjusting

at least one parameter for a configuration in at least one read/write unit of the plurality of read/write units, said at least one parameter comprising one of (i) a radio channel that is to be closed and (ii) a reception sensitivity of a receiver.” Final Act. 3. Since the claim recites the parameter as being either of two alternatives, the combination of Boate and Ridings must teach or suggest either of these alternatives in order to obviate the claims. We concur with the Examiner’s ultimate finding that Boate teaches or suggests at least one of these claimed parameters.

With respect to “adjusting at least one parameter . . . comprising . . . a radio channel that is to be closed,” Appellants contend that paragraphs 47 and 103 through 110 of Boate cited by the Examiner contain “no mention of the adjustment of an operating parameter.” App. Br. 6–9. Appellants contend that Boate’s teaching of “adjustment of the ‘transmission power’” is the adjustment of the transmission power of a base station, and not the adjustment of a radio channel to be closed. App. Br. 9–10. Appellants further contend that the multiplexer of Boate uses two filters, a high pass filter and a low pass filter, to separate out signals at the read/write units, but that this does not amount to “adjusting at least one parameter . . . comprising . . . a radio channel that is to be closed.” App. Br. 6–9; Reply Br. 3. Appellants argue that “‘closed’ merely means a channel that is not to be used or the channel is to be deactivated.” Reply Br. 2.

The Examiner construes “closed” as, *inter alia*, “not open, not communicating with or influenced by others.” Ans. 10–11. The Examiner points to Boate’s teaching or suggestion of a multiplexer having two channels that are isolated from each other as teaching or suggesting channels that are “closed”. *Id.* However, each channel remains open to

communication as mediated by channel-specific bandpass filters. *Id.* at 11, citing Boate ¶¶ 104–110. A channel that isolates or blocks a specific signal, but is open to communication and influence by other signals, does not meet the definition of “closed” proffered by either Examiner or Appellants. Accordingly, we disagree with the Examiner’s reasoning as to how Boate teaches or suggests “adjusting at least one parameter . . . comprising . . . a radio channel that is to be closed.”

With respect to “adjusting at least one parameter . . . comprising . . . a reception sensitivity of a receiver,” Appellants contend that Boate fails to teach or suggest any such adjustment. App. Br. 9. Appellants characterize “reception strength” as the amount of gain in the receiver, such as when one would adjust a hearing aid to amplify another’s speech. Reply Br. 2. Appellants admit that Boate discusses the use of “[l]ower power levels and lower ranges,” and the adjustment of transmission power, but that this discussion pertains to the transmission, not the reception, of the read/write units. App. Br. 7, 10. Appellants further point to teachings of Boate discussing management of data, but that these lack any teaching or suggestion to adjust the reception sensitivity. App. Br. 10.

The Examiner construes “reception sensitivity” as “reception strength.” Ans. 13. The Examiner finds that the reception sensitivity is equivalent to adjusting the transmit power level or antenna, which is taught by Boate. Ans. 11, citing Boate ¶¶ 109, 115. However, we agree with Appellants that these portions of Boate do not clearly require any adjustment of reception sensitivity.

Boate at paragraph 109 merely states that low power levels are used, not that they are adjusted or adjustable. Further, paragraph 109 is concerned

with smaller range of coverage, which necessarily implicates a lower transmission power but not necessarily reception sensitivity.

Boate at paragraph 115 states that the control unit maintains a record of the parameters that affect the beacon's signal strength such as transmit power level, antenna, etc. However, this paragraph neither addresses adjusting those parameters nor describes signal strength as relating to reception strength or reception sensitivity of a receiver. Further, paragraph 115 addresses the characteristics of beacons, not badges, and the Examiner has not explained how a beacon acts as a "receiver" as required by the claims. Accordingly, we do not agree with the Examiner's characterization of the Boate reference as teaching the adjustment (or for claim 11, the adjustability) of a reception sensitivity of a receiver.

New grounds of rejection.

The Examiner also cites to Boate for teaching or suggesting configuration of the communication between read/write units (in Boate's parlance, "badges"). Ans. 7-8, citing Boate ¶¶ 47 et seq. The Examiner further cites to Boate for teaching or suggesting handling control communications via the RF network. Boate ¶ 49. These portions of Boate's "Summary of the Invention" cited by the Examiner (Boate paras 10-68) are explained in greater detail in Boate's "Detailed Description of the Invention" (Boate paras 69-166). In this section, Boate explains the details of how the badges configure their communications network. Badges are provided with a channel mask that is "used for selectively turning the channels 'on' and 'off' to all of the RF network to minimize channel interference." Boate ¶ 149. When a badge searches for a suitable network node (base-station) to join, the badge uses the channel mask to "skip[] over those channels that are

not in use.” *Id.* The channel mask is generated to provide a list of clear channels “prior to and during installation,” and is used to check for interference problems during normal running. Boate ¶ 150.

Appellants’ specification does not define the term “closed” in any detail, mentioning only that “a radio channel that is to be used or a radio channel that is to be closed” is an example of an operating parameter that can be adjusted. Spec. ¶ 12. However, Appellants have defined a “closed” channel as one that is not to be used or the channel is to be deactivated.” Reply Br. 2. The specification does elaborate upon a channel that is not to be used, stating that channels “need to be chosen such that units do not interfere with each other . . . it is possible to decide whether or not the same channel can be used without interference.” Spec. ¶ 31.

Boate’s teaching or suggestion of turning channels off so that those channels are not in use meets the Appellants’ definition of a “closed” channel, and is consistent with Appellants’ specification as understood by one having ordinary skill in the art. Accordingly, Boate’s teaching of creating and updating the channel mask, which is used for selectively turning channels off, and which is incorporated into each badge and updated as needed, meets the claimed “adjusting . . . for a configuration in at least one read/write unit . . . a radio channel that is to be closed.” To the extent that the use of the channel mask to turn a channel on or off in a read/write unit causes the unit’s receiver to be receptive to a different frequency of RF signals, Boate further teaches the adjusting the reception sensitivity of a receiver as claimed. Accordingly, we do not find persuasive the Appellants’ contention that the combination of Boate and Ridings fails to teach or suggest the invention of independent claim 1.

In affirming the Examiner's conclusion of obviousness, we rely on portions of Boate other than the sections cited by the Examiner in the appealed rejection. To the extent that the thrust of the Examiner's rejection relied upon the operation of Boate's multiplexer to close a channel and Boate's transmission power levels to adjust reception sensitivity, our reliance on Boate's use of a channel mask to close a channel and adjust the reception sensitivity of a receiver constitutes a new ground of rejection. *See In re Wiechert*, 370 F.2d 927, 964 (CCPA 1967). Accordingly, we affirm and designate our affirmance of the rejection of claim 1, as well as claims 2–13 grouped therewith, under 35 U.S.C. § 103 as a new ground of rejection.

DECISION

For the above-described reasons, the Examiner's rejection of claims 1–13 under 35 U.S.C. § 103 is affirmed.

This Decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). This section provides that “[a] new ground of rejection . . . shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

- (1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

Appeal 2018-005750
Application 14/035,411

(2) *Request rehearing.* Request that the proceeding be reheard under §41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). 37 C.F.R. § 41.50(f).

AFFIRMED; 37 C.F.R. § 41.50(b)