# UNITED STATES PATENT AND TRADEMARK OFFICE

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 13/887,003 | 05/03/2013 | Henrik SANDSTROM | 29717-1166001 | 2673 |

94149        7590        09/25/2019
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| EXAMINER |
|---|
| SADIO, INSA |

| ART UNIT | PAPER NUMBER |
|---|---|
| 2628 | |

| NOTIFICATION DATE | DELIVERY MODE |
|---|---|
| 09/25/2019 | ELECTRONIC |

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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*Ex parte* HENRIK SANDSTROM and
CARL FREDRIK ALEXANDER BERGLUND
_____

Appeal 2018-006325
Application 13/887,003
Technology Center 2600
_____

Before ALLEN R. MacDONALD, ADAM J. PYONIN and
MICHAEL M. BARRY, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection
of claims 1–25, which constitute all the claims pending in this application.
We have jurisdiction under 35 U.S.C. § 6(b). We REVERSE.

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[1] Appellant indicates the real party in interest is BlackBerry Limited.
Appeal Br. 1.

*Representative Claim*

Representative claim 1 under appeal reads as follows (emphasis, formatting, and bracketed material added):

1. A method at an electronic device including a user input device, the method comprising:

> [A.] receiving, at the electronic device and from a sending device,
>
>> [i.] first data comprising displayable content and
>>
>> [ii.] *second data indicating a security pattern that is to be detected on the electronic device in order to display the displayable content, wherein the second data indicates touch events corresponding to the security pattern of multiple touches*,
>
> the sending device is different than the electronic device;
>
> [B.] while detecting, at the electronic device, touch events corresponding to the security pattern of multiple touches, displaying the displayable content on a display of the electronic device; and
>
> [C.] *removing* the displayable content from the display *as soon as* the touch events corresponding to the security pattern of multiple touches are *no longer detected* at the electronic device.

*References*[2]

| Zhang | US 2009/0307768 A1 | Dec. 10, 2009 |
| Song | US 2013/0040562 A1 | Feb. 14, 2013 |
| Chang | US 2013/0050150 A1 | Feb. 28, 2013 |

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[2] All citations herein to this reference are by reference to the first named inventor only.

*Rejections on Appeal*[3]

A.

The Examiner rejected claims 1–4, 7–16, and 19–25 under 35 U.S.C. § 103 as being unpatentable over the combination of Chang, Song, and Zhang. Final Act. 2–14.

We select claim 1 as the representative claim for this rejection. Appellant does not argue separate patentability for claims 2–4, 7–16, and 19–25. Except for our ultimate decision, we do not address claims 2–4, 7–16, and 19–25 further herein.

B.

The Examiner rejects claims 5, 6, 17, and 18 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Chang, Song, Zhang, and an additional reference. Final Act. 14–17.

Appellant does not present arguments for claims 5, 6, 17, and 18. Thus, the rejections of these claims turn on our decision as to claim 1. Except for our ultimate decision, we do not address the § 103 rejections of claims 5, 6, 17, and 18 further herein.

*Issue on Appeal*

Did the Examiner err in rejecting claim 1 as being obvious?

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[3] Our decision as to claim 1 is determinative as to all claims on appeal.

ANALYSIS[4]

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred.

A.

The Examiner determines that:

Zhang teaches wherein . . .

> during detection of touch events corresponding to the security pattern of multiple touches, display the displayable content on the display of the electronic device
>
>> ([0015] teaches "allow or deny a user's access to a main system by judging whether the characteristics of the line group drawn on the touch screen 10 is matched with the characteristics of the preset line group stored in the storing module 20", please note that the main system is a system of displayable content as it is a system of a touchscreen Fig.1 [10], [0012] "[0012] The touch screen 10 can be used to display words, graphics etc., and receive inputs or physical contacts from a user's finger and/or stylus"); and
>
> ***remove*** the displayable content ***as soon as*** the touch events corresponding to the security pattern of multiple touches are ***no longer detected***
>
>> ([0015] using the password to gain access to the system, therefore, the displayed content in fig. 5 [10] will be removed when the password matches with the characteristics of the preset line group stored in the storing module 20, so the user can access the system).

Final Act. 4 (Examiner's emphasis omitted; formatting and emphasis added).

_____

[4] The contentions discussed herein as to claim 1 are determinative as to this rejection.

B.

Appellant raises the following argument in contending that the

Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

> [T]he cited portions of *Zhang* fail to teach or suggest displaying
> the content *while* touch events corresponding to the security
> pattern are detected, or *removing* the content (that has already
> been displayed) *as soon as* the touch events (corresponding to
> the security pattern) *are no longer detected*. In contrast, in
> *Zhang*, if the initial user input matches the password, the access
> is granted. The user can access the device and nothing would be
> removed even after the device receives other user inputs that do
> not match the password. If user input does not match the
> password, no access is granted. The display content is never
> displayed and therefore, there is nothing to be removed. Indeed,
> the intended purpose of *Zhang* is to provide access to the device
> so that an authorized user can use the device and provide other
> inputs, not to remove displayable data as soon as different user
> inputs are provided after the initial password check succeeds.

Appeal Br. 10.

C.

The Examiner responds:

> Examiner respectfully disagrees with Appellant's
> assertion. In Zhang's teaching of security pattern to access
> information, the displayed windows in touchscreen 10 as shown
> in Figs. 4 to 6 would be removed as soon as user finishes to draw
> password pattern, which implies that user, lift finger(s) from the
> touch screen at the end of drawing the pattern.

> In addition, Song teaches data may have an expiration time
> point that is set. Therefore, it would be obvious to one ordinary
> skill in the art at the time of the effective filing date to have the
> expiration time point match with the time when user touches to
> input the security pattern are no longer detected.

> Chang also teaches performing a function according to a
> virtual gesture which is where the user fingers (TP1-TP8) contact

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the back of the display ([0026], Figs. 1, 4). Therefore, it would be obvious to one ordinary skill in the art at the time of the effective filing date to consider contacts of user's fingers TP1-TP8 as a password which only display a displayable content when all user's fingers (contacts) are in contact with the back of the display with the pattern shown in Figs. 1, 4 and remove the displayable content when the one or more fingers is/are removed from the back of the display.

Ans. 4–5.

## D.

As articulated by the Federal Circuit, the Examiner's burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) ("preponderance of the evidence is the standard that must be met by the PTO in making rejections"). "A rejection based on section 103 clearly must rest on a factual basis[.]" *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.*

In the Final Action, the Examiner determines that Zhang teaches the claimed step C of "removing the displayable content from the display as soon as the touch events corresponding to the security pattern of multiple touches are no longer detected at the electronic device." Final Act. 4. Appellant argues (reproduced *supra*) Zhang is lacking this teaching. Appeal Br. 10. We agree for the reasons set forth by Appellant. In the Answer, the Examiner responds (reproduced *supra*) by determining that each of the cited references separately provides a teaching which renders obvious claimed

step C of "removing." Ans. 4–5. Again, we disagree with the Examiner's reasoning.

As to Zhang, the Examiner correctly points out that Zhang's security pattern is "removed as soon as user finishes to draw password pattern." Ans. 4. However, we disagree with the Examiner that this alone is sufficient to imply also removing the display of displayable content received at the device as soon as the touch is no longer detected.

As to Song, similarly, the Examiner correctly points out Song's received data having "an expiration time point" (Song 275). Ans. 4. However, we disagree with the Examiner that this alone is sufficient to suggest also matching the expiration time point to the touch is no longer detected. *In re Chaganti*, 554 F. App'x 917, 922 (Fed. Cir. 2014) ("It is not enough to say that there would have been a reason to combine two references because to do so would 'have been obvious to one of ordinary skill.' Such circular reasoning is not sufficient—more is needed to sustain an obviousness rejection.")

As to Chang, we find conclusory the Examiner's determination that

> [I]t would be obvious to one ordinary skill in the art at the time of the effective filing date to consider contacts of user's fingers TP1-TP8 as a password which only display a displayable content when all user's fingers (contacts) are in contact with the back of the display with the pattern shown in Figs. 1, 4 and remove the displayable content when the one or more fingers is/are removed from the back of the display.

Ans. 4–5. There is insufficient analysis to support the Examiner's leap from the teaching of Chang to the conclusion of obviousness.

We conclude, consistent with Appellant's arguments, there is insufficient articulated reasoning to support the Examiner's finding that

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Chang, Song, and Zhang teach this limitation. Therefore, we further conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that claim 1 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

## CONCLUSION

(1)  Appellant has established that the Examiner erred in rejecting claims 1–25 as being unpatentable under 35 U.S.C. § 103(a).

(2)  On this record, the Examiner has not shown claims 1–25 to be unpatentable.

(3)  We reverse the Examiner's rejection of claims 1–25.

In summary:

| Claims Rejected | Basis | Affirmed | Reversed |
|---|---|---|---|
| 1–25 | § 103 Chang, Song, Zhang | | 1–25 |

## REVERSED