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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/774,664	09/10/2015	Nikhil M. Bhatt	P14751US1/77770000517101	8429
150004	7590	09/12/2019	EXAMINER	
DENTONS US LLP - Apple 4655 Executive Dr Suite 700 San Diego, CA 92121			YANG, JIANXUN	
			ART UNIT	PAPER NUMBER
			2664	
			NOTIFICATION DATE	DELIVERY MODE
			09/12/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NIKHIL M. BHATT

Appeal 2018-007876
Application 14/774,664
Technology Center 2600

Before JOSEPH L. DIXON, KEVIN F. TURNER, and JOHN A. EVANS,
Administrative Patent Judges.

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant¹ seeks our review under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 28–47, all pending claims. App. Br. 5. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

STATEMENT OF THE CASE

¹ Appellant states the real party in interest is Apple Inc. App. Br. 3.

² Rather than reiterate the arguments of Appellant and the Examiner, we refer to the Appeal Brief (filed April 23, 2018, "App. Br."), the Examiner's Answer (mailed May 31, 2018, "Ans."), the Final Action (mailed August 25, 2017, "Final Act."), and the Specification (filed September 10, 2015, "Spec.") for their respective details.

The claims relate to a wearable device that communicates with a host device to initiate communication functionality of the host device. *See* Abstract.

Invention

Claims 28, 37, and 45 are independent. An understanding of the invention can be derived from a reading of claim 28, which is reproduced below with some formatting added.

28. A method of sending a message, the method comprising:

receiving, by a wearable device, first user input
identifying a recipient of the message;

receiving, by the wearable device, second user input
comprising information that identifies a content of the message;

transmitting, by the wearable device, the information to a
host device over a first wireless connection; and

transmitting, by the wearable device, an instruction to the
host device to transmit the message over a second wireless
connection, the instruction comprising an identifier of the
recipient and of the information that identifies the content of the
message.

*References and Rejections*³

Chihara et al.	US 2002/0068600 A1	June 6, 2002
Cho	US 2006/0217104 A1	Sept. 28, 2006
Hutcheson	US 2009/0231960 A1	Sept. 17, 2009

³ The present application was examined under the pre-AIA first to invent provisions. Final Act. 2.

Jersa et al.	US 2012/0044062 A1	Feb. 23, 2012
Mastandrea	US 2013/0027341 A1	Jan. 31, 2013
Miller et al	US 8,624,836 B1	Jan. 7, 2014

YOUTUBE, <https://www.youtube.com/watch?v=hXG-MdlW6FA> (last visited Feb. 18, 2013) (“YouTube”).

1. Claims 28, 30, 32, 34–40, 42, and 45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho and Jersa. Final Act. 2–13.
2. Claims 29, 41, 46, and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho, Jersa, Mastandrea, and YouTube. Final Act. 13–15.
3. Claims 31 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho, Jersa, and Miller. Final Act. 15–17.
4. Claims 41 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho, Jersa, and Chihara.⁴ Final Act. 17–18.
5. Claim 44 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Cho, Jersa, and Hutcheson. Final Act. 18–19.

ANALYSIS

We have reviewed the rejections of claims 28–47 in light of Appellant’s arguments. We have considered in this decision only those arguments Appellant actually raised in the Briefs. Any other arguments which Appellant could have made but chose not to make in the Briefs are

⁴ Claim 43 is not listed in the rejection header, but is discussed along with Claim 41 in the body of the rejection. *See* Final Act. 17.

deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We adopt as our own the findings and reasons set forth in the rejection from which this Appeal is taken and in the Examiner’s Answer, to the extent consistent with our analysis below. We provide the following explanation to highlight and address specific arguments and findings primarily for emphasis. We consider Appellant’s arguments *seriatim*, as they are presented in the Appeal Brief, pages 7–24.

CLAIMS 28, 30–36, AND 45: OBVIOUSNESS OVER CHO AND JERSA.

Appellant argues “Group A,” claims 28, 30–36, and 45 as a group in view of the limitations of independent claim 28. App. Br. 7. Appellant further designates claim 28 as “[r]epresentative.” *Id.* at 9 (emphasis omitted).

Inherency.

Appellant contends the Examiner improperly relies on an inherency finding to supply a limitation allegedly missing from the prior art. *See* App. Br. 8. Appellant refers to an interview conducted with the Examiner July 13, 2017. App. Br. 15.

The Board, in its decision, may affirm or reverse the decision of the Examiner in whole or in part on the grounds and on the claims specified by the Examiner. 37 CFR § 41.50(a)(1). “Inherency” is not a ground specified by the Examiner. *See* Final Act. 2–4.

Transmitting an instruction.

Claim 28 recites, *inter alia*, “transmitting, by the wearable device, an instruction to the host device to transmit the message over a second wireless connection, the instruction comprising an identifier of the recipient and of the information that identifies the content of the message.” Appellant

contends the combination of Cho and Jersa fails to teach this disputed limitation. App. Br. 8.

Cho discloses: “Upon receiving a key for employing the SMS through the key input unit 225, the controller 230 transmits control data for operating the SMS to the mobile terminal 100 through the radio communicator 210.” Cho ¶ 44. The Examiner finds Cho teaches the SMS message is sent to the recipient over a cellular network. Final Act. 3. The Examiner finds Cho, thus, teaches the claimed “transmitting, by the wearable device, an instruction to a host device to transmit the message over a second wireless connection.” *Id.* (quoting Cho ¶ 44).

The Examiner finds Cho teaches the claimed “instruction comprising an identifier of the recipient and of the information that identifies the content of the message,” because the “sending SMS would need to provide recipient information from watch 200 by the user.” Final Act. 4 (emphasis omitted). The Examiner finds the needed information, i.e., first user input identifying a recipient of the message, is not taught by Cho, but is taught by Jersa. *Id.* (citing Jersa ¶ 17).

Appellant admits: “Cho describes a ‘mobile terminal’ that communicates with a ‘remote control device.’” App. Br. 13. Appellant further admits Cho discloses: “the user can not only create a short message in the conventional text input method, but also can employ various SMSs” and that “the controller [of the remote control] . . . transmits control data for operating the SMS to the mobile terminal.” *Id.* Appellant argues that transmission of the claimed “instruction” differed from transmission of “control data,” as taught by Cho. *Id.* at 13–14; Reply Br. 3. However,

Appellant fails to provide evidence that the Specification definition distinguishes the claimed “instruction” from the taught “control data.”

A second wireless connection.

Appellant contends Cho fails to teach transmitting a message over “a second wireless connection.” App. Br. 15.

The Examiner maps the claimed “first wireless connection” to the wireless connection between radio communicator 110 and remote control device 200 and maps the claimed “second wireless connection” to a wireless connection between controller 230 and mobile terminal 100. Ans. 22–23 (citing Cho ¶¶ 17, 24, 44) (emphasis omitted).

Appellant argues the two connections, taught by Cho, do not correspond to the claimed first and second connections because they are sent over the same wireless network. App. Br. 15; Reply Br. 4.

Appellant’s argument fails to persuade because the claims recite first and second wireless connections, not first and second wireless networks, as argued. In view of the foregoing, we sustain the rejection of claims 28, 30–36, and 45.

CLAIM 37: OBVIOUSNESS OVER CHO AND JERSA.

Appellant’s contentions with respect to claim 37 are substantially identical to those raised in favor of claim 28. *Compare* App. Br. 8–17 *against* App. Br. 17–22. In view of the foregoing, we sustain the rejection of claim 37.

CLAIMS 29, 41–44, 46, AND 47: OBVIOUSNESS OVER CHO, JERSA,
MASTANDREA, AND YOUTUBE.

Appellant contends these claims are allowable in view of their dependence from one of independent claims 28, 37, or 45. App. Br. 22. In view of the foregoing discussion, we are not persuaded of the allowability of the independent claims.

Dependent claim 29 recites, *inter alia*, “receiving, over the first wireless connection, a confirmation from the host device that the message was sent.” Appellant further contends claim 29 is allowable because neither Mastandrea, nor YouTube, teach this limitation. App. Br. 23.

Appellant admits that both Mastandrea and YouTube disclose “a message receiver that confirms receipt of the message by sending acknowledgement of the receipt back to the sender,” as found by the Examiner. Reply Br. 6. But Appellant argues receipt by the sender is not the same as “receiving . . . a confirmation from the host device that the message was sent,” as claimed because the host device of Appellant’s claims is configured to transmit the message.

We find confirmation of receipt of a message implies the message had been sent.

DECISION

The rejection under 35 U.S.C. § 103(a) of claims 28–47 is
AFFIRMED.

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. § 41.50(f).

AFFIRMED