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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* JONATHAN LENCHNER, JOHN C. NELSON, and  
TIMO JUHANI SANTALA

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Appeal 2018-008733  
Application 14/750,219  
Technology Center 2600

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Before ALLEN R. MacDONALD, SCOTT RAEVSKY, and  
IFTIKHAR AHMED, *Administrative Patent Judges*.

RAEVSKY, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–6, 8, and 9.<sup>2</sup> We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as International Business Machines Corporation. Appeal Br. 1.

<sup>2</sup> We note that the Appeal Brief asserted there are no related appeals or interferences (Appeal Br. 1), but the same counsel for the same assignee filed substantially the same appeal brief in parent Application No. 14/668,215 on the same day. Not only that, but each application stands provisionally rejected for double patenting over the other. We remind Appellant and Appellant's counsel that they have a duty to disclose prior and

We affirm.

### CLAIMED SUBJECT MATTER

The claims relate to methods and apparatus for localizing a source of a set of radio signals. *See Spec., Abstr. Claim 1*, reproduced below, is illustrative of the claimed subject matter:

1. A method for localizing a source of a set of radio signals, the method comprising the steps of:
  - obtaining a plurality of radio signals in said set by moving a signal reader to a plurality of locations in an environment, wherein each of said plurality of radio signals is transmitted by said source;
  - determining one or more signal strengths of said radio signals, a location at which said plurality of radio signals are obtained, and an identifier of said source;
  - determining a directional vector for each of said plurality of radio signals by comparing said one or more signal strengths to signal strengths of other radio signals in said set;
  - projecting said determined directional vectors; and
  - determining a location of said source of said set of radio signals using an intersection selection criterion that evaluates a number of said projected determined directional vectors that intersect for each of said plurality of radio signals, wherein at least one of said steps are performed by at least one hardware device.

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pending appeals that involve an application or patent owned by Appellant or the application's assignee, are known to Appellant, Appellant's legal representative, or assignee, "and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal." 37 C.F.R. § 41.37(c)(ii).

## REJECTIONS

Claims 1–6, 8, and 9 stand provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 10–13, 15–19, and 21–25 of copending Application No. 14/668,215. Final Act. 2–3.

Claims 1–3, 5, and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Liu (US 2012/0062381 A1, Mar. 15, 2012), Wild (US 2009/0212921 A1, Aug. 27, 2009), and John (US 2003/0122666 A1, July 3, 2003). *Id.* at 4.

Claim 4 stands rejected under 35 U.S.C. § 103 as being unpatentable over Liu, Wild, John, and Shoarinejad (US 2008/0143482 A1, June 19, 2008). *Id.* at 9.

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Liu, Wild, John, and Breed (US 2008/0250869 A1, Oct. 16, 2008). *Id.* at 10.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Liu, Wild, John, Breed, and Sternowski (US 9,316,719 B1, Apr. 19, 2016). *Id.*

## ANALYSIS

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See id.*

*Rejections under § 103*

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

Appellant[] respectfully submit[s] that Liu et al. do not teach “determining a directional vector for each of said plurality of radio signals.” Rather, Liu et al. teach a vector that describes the motion of the tag. *See, e.g.*, par. 0042, relied upon by the Examiner (“Motion-related information for the tag is then determined . . . For example, the vector V determined for the motion of RFID tag 110 from point A to point D may be used along with the reference information to estimate a path of motion of tag 110 and the direction of motion along the path.”)[.]

Appeal Br. 5 (emphasis omitted).

We agree with Appellant’s argument. We are persuaded there is insufficient articulated reasoning to support the Examiner’s determination that Liu, Wild, and John render obvious “determining a directional vector for each of said plurality of radio signals” as required by claim 1. The Examiner determines that Liu discloses “determin[ing] a directional vector for each of said plurality of radio signals.” Final Act. 5. However, in the overall context of claim 1, the directional vectors are from the signal source to the signal reader. Otherwise, it would not be possible to perform the function of “determining a location of said source of said set of radio signals using an intersection selection criterion” as required by the final operation of claim 1. As Appellant points out, Liu does not teach a directional vector (from the signal source to the signal reader), instead Liu teaches “a vector that describes the motion of the tag.” Appeal Br. 5 (emphasis omitted). We find nothing in the Examiner’s reasoning that explains why an artisan would

modify Liu to generate the type of directional vectors required by the overall operation of claim 1.

Therefore, we 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 in view of Liu, Wild, and John.

We note the Examiner has not relied on any of the other cited references to teach this element. Accordingly, we do not sustain the Examiner's rejection of claim 1 and its corresponding dependent claims. We do not reach Appellant's further allegations of error because we find the issue discussed above to be dispositive of the rejection of all the pending claims.

#### *Provisional Double Patenting Rejection*

Appellant does not present arguments for the provisional nonstatutory double patenting rejection of claim 1. Rather, "Appellant[] propose[s] to defer resolution of the provisional double patenting rejection until there is an indication of allowable subject matter in at least one of the applications." *Id.* at 4.

The Federal Circuit has stated,

When the appellant fails to contest a ground of rejection to the Board, [there is] no burden on the Board to consider the merits of that ground of rejection on the basis of a representative claim. Rather, the Board may treat any argument with respect to that ground of rejection as waived. In the event of such a waiver, the PTO may affirm the rejection of the group of claims that the examiner rejected on that ground without considering the merits of those rejections.

*Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (addressing predecessor rule to 37 C.F.R. § 41.37(c)(1)(iv)); *see also* 37 C.F.R. § 41.37(c)(1)(iv) (“Except as provided for in §§41.41, 41.47 and 41.52, any arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal.”).

In light of Appellant’s failure to present arguments as to the provisional rejection, we affirm *pro forma* the provisional rejection of claim 1 and its corresponding dependent claims.

**CONCLUSION**

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–6, 8, 9		Provisional Non-statutory Double Patenting	1–6, 8, 9	
1–3, 5, 6	103	Liu, Wild, John		1–3, 5, 6
4	103	Liu, Wild, John, Shoarinejad		4
8	103	Liu, Wild, John, Breed		8
9	103	Liu, Wild, John, Breed, Sternowski		9
<b>Overall Outcome</b>			1–6, 8, 9	

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**