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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PIETRO BUTTOLO, JAMES STEWART RANKIN II,
STEPHEN RONALD TOKISH,
and
STUART C. SALTER

Appeal 2019-000184
Application 15/076,978
Technology Center 2600

Before JOSEPH L. DIXON, HUNG H. BUI, and JON M. JURGOVAN,
Administrative Patent Judges.

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to a system and method “for wireless vehicular access device authentication” based on “an acknowledgement

¹ We use the word “Appellant” to refer to “applicant(s)” as defined in 37 C.F.R. § 1.42. The real party in interest is Ford Global Technologies, LLC. Appeal Br. 2.

following transmission of a proper recognition code [among a plurality of time-stamped recognition codes],” “a time-delay between transmission of the proper recognition code and [the] acknowledgement receipt,” a “key-code [compared] to a code exchanged with the device when the device was previously present within a vehicle,” and “verification of the key-code and [a] received signal strength of multiple wireless signals [successively received from the device] matching a predefined pattern of increasing signal strength, providing vehicle system access to the device.” (Spec. ¶ 1; Abstract.)

Claim 12, reproduced below, is illustrative of the claimed subject matter:

12. A system comprising:
 - a mobile-device processor configured to:
 - wirelessly transmit an access request to a vehicle based on the mobile device being within a predetermined proximity to the vehicle, including authentication code request;
 - wirelessly receive a series of authentication codes, including a proper code and a plurality of false, invalid codes, from the vehicle; and
 - respond with an acknowledgment to the vehicle responsive to determining the proper code has been received.

(Supp. App. Br. 3 (Claims Appendix).)²

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Khan et al. US 2014/0285319 A1 Sept. 25, 2014

² The citation is to Appellant’s Supplemental Appeal Brief dated May 8, 2018, submitting a correct copy of the claims on appeal.

Appeal 2019-000184
Application 15/076,978

(“Khan”)

Povolny	US 2015/0022314 A1	Jan. 22, 2015
Reiser	US 2014/0266594 A1	Sept. 18, 2014
Puetz	US 5,897,598	Apr. 27, 1999
Masudaya	US 2003/0001723 A1	Jan. 2, 2003
Howarter et al. (“Howarter”)	US 2010/0075656 A1	Mar. 25, 2010
Oesterling	US 2013/0271273 A1	Oct. 17, 2013
Nagai et al. (“Nagai”)	US 2004/0085189 A1	May 6, 2004

REJECTIONS

The Examiner made the following rejections:

Claims 12 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny.

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Reiser.

Claim 18 stands rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Puetz.

Claims 1–3 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Masudaya.

Claims 4 and 5 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Masudaya and Puetz.

Claims 6–8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Masudaya and Howarter.

Claims 15 and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Howarter.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Howarter and Puetz.

Claims 9–11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Povolny, and further in view of Masudaya and Oesterling.

Claims 19 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Khan in view of Nagai, and further in view of Masudaya, Puetz, and Howarter.

ANALYSIS

With respect to independent claims 1, 12, and 19, Appellant argues the claims together. (App. Br. 6–7.) Based on Appellant’s arguments and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we select independent claim 12 as the representative claim for the group and will address Appellant’s arguments presented in both Appeal Brief and Reply Brief. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017). Dependent claims 2–11, 13–18, and 20 stand or fall with claim 12. *See* 37 C.F.R. § 41.37(c)(1)(iv).

With respect to representative independent claim 12, Appellant contends that “claim 12 recites th[e] determination [of ‘measured signal strengths of the multiple wireless signals matching a predefined pattern of

increasing signal strength’] as occurring at the mobile device,” and none of the cited references teach or suggest such determination. (App. Br. 6–8.) In particular, Appellant argues although Howarter “may teach or suggest a determination using signal strength,” Howarter does not “remotely teach or suggest the claimed ‘measured signal strength . . . matching a predefined pattern of increasing signal strength’” and does not teach “this determination occurring at the mobile device.” (*Id.* at 7–8.) In the Reply Brief, Appellant additionally argues “the prior art fails to teach the claimed ‘condition vehicle system access on the time delay being below a predefined threshold.’”

(Reply Br. 2.)

Appellant’s arguments are not persuasive because the arguments are not commensurate in scope with the express language of representative claim 12, which does not recite *conditioning vehicle system access on the time delay being below a predefined threshold or measured signal strengths of multiple wireless signals matching a predefined pattern of increasing signal strength*. As the Examiner explains, Appellant’s claim set on appeal is the September 29, 2017 claim set in which claim 12 does not recite *a time delay or signal strengths matching a predefined pattern*. (Ans. 4.)³ Thus, Appellant’s arguments fail because the arguments are not commensurate with the scope of claim 12. *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”); *see also In re Hiniker*

³ On March 16, 2018, Appellant attempted to amend claim 12 to include, *inter alia*, the feature of “measured signal strength matching a predefined pattern of increasing signal strengths.” (*See* Amendment dated March 16, 2018). However, the Examiner’s Advisory Action dated March 28, 2018, did not enter Appellant’s March 16 Amendment. (*See* Advisory Act. 1–2.)

Co., 150 F.3d 1362, 1369 (Fed. Cir. 1998) (“[The] proffered facts . . . are not commensurate with the claim scope and are therefore unpersuasive.”). As a result, Appellant’s arguments do not show error in the Examiner’s factual findings or conclusion of obviousness of representative independent claim 12.

We therefore sustain the Examiner’s § 103 rejection of representative independent claim 12, grouped independent claims 1 and 19, and grouped dependent claims 2–11, 13–18, and 20.

CONCLUSIONS

The Examiner did not err in rejecting claims 1–20 based upon obviousness.

DECISION

For the above reasons, we AFFIRM the Examiner’s obviousness rejections of claims 1–20 under 35 U.S.C. § 103.

In summary:

Claims Rejected	35 U.S.C.§	Basis	Affirmed	Reversed
12, 14	103	Khan, Povolny	12, 14	
13	103	Khan, Povolny, Reiser	13	
18	103	Khan, Povolny, Puetz	18	
1–3	103	Khan, Povolny, Masudaya	1–3	

Claims Rejected	35 U.S.C.§	Basis	Affirmed	Reversed
4, 5	103	Khan, Povolny, Masudaya, Puetz	4, 5	
6–8	103	Khan, Povolny, Masudaya, Howarter	6–8	
15, 16	103	Khan, Povolny, Howarter	15, 16	
17	103	Khan, Povolny, Howarter, Puetz	17	
9–11	103	Khan, Povolny, Masudaya, Oesterling	9–11	
19, 20	103	Khan, Nagai, Masudaya, Puetz, Howarter	19, 20	
Overall Outcome			1–20	

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2016).

AFFIRMED