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SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202			SPRINGER, JAMES E	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MILOS PUJIC, GEOFF BASKWILL, MING HOU, and JOSHUA
BERTOULIN

Appeal 2019-000783
Application 14/691,264
Technology Center 2400

Before BRADLEY W. BAUMEISTER, MICHAEL J. STRAUSS, and
NABEEL U. KHAN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the
Examiner’s decision to reject claims 1–6 and 8–20. *See* Final Act. 1. We
have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ We refer to the Specification, filed April 20, 2015 (“Spec.”); Final Office
Action, mailed January 16, 2018 (“Final Act.”); Appeal Brief, filed May 16,
2018 (“Appeal Br.”); Examiner’s Answer, mailed September 7, 2018
 (“Ans.”); and Reply Brief, filed November 5, 2018 (“Reply Br.”).

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R.
 § 1.42. Appellant identifies the real party in interest as Avaya Inc. Appeal
 Br. 2.

CLAIMED SUBJECT MATTER

The claims are directed to trigger-based subscription to users' presence information (i.e., user status such as availability to communicate).

See generally Abstract. Claim 1, reproduced below with a disputed limitation emphasized in *italics*, illustrates the claimed subject matter:

1. A system, comprising:

a presence server;

an input interface of the presence server configured to receive a triggering event from a triggering device, and wherein the triggering event is an email and the first user and second users are identified from at least one of a sending email address of the email or a receiving email address of the email;

wherein the triggering device notifies the presence server, via the input interface, of the triggering event associating the first user with the second user;

wherein the presence server, in response to the triggering event, automatically and without human intervention, subscribes the first user to presence data for the second user;

an output interface of the presence server configured to provide presence information of the second user to a first endpoint associated with the first user while the first user is subscribed to the presence data of the second user; and

wherein the presence server is configured to subscribe the first user to the presence of the second user, comprising a first set of presence data, and in response to the triggering event, the presence server is further configured to subscribe the first user to a second set of presence data comprising at least one additional subscription event not enabled by the first set of presence data.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Wu	US 2006/0143646 A1	June 29, 2006
Blohm	US 2006/0190600 A1	Aug. 24, 2006
Vemulapelli	US 2007/0083675 A1	Apr. 12, 2007
Galvin	US 2008/0288572 A1	Nov. 20, 2008
Kuhlke	US 2010/0125636 A1	May 20, 2010

REJECTIONS

Claims 1–5, 8, 10–14, and 17–20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wu, Blohm, and Kuhlke. Final Act. 2–9.

Claim 6 stands rejected under 35 U.S.C. § 103 as being unpatentable over Wu, Blohm, Kuhlke, and Galvin. Final Act. 10–11.

Claims 9, 15, and 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wu, Blohm, Kuhlke, and Vemulapelli. Final Act. 11–12.

STANDARD OF REVIEW

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).

OPINION

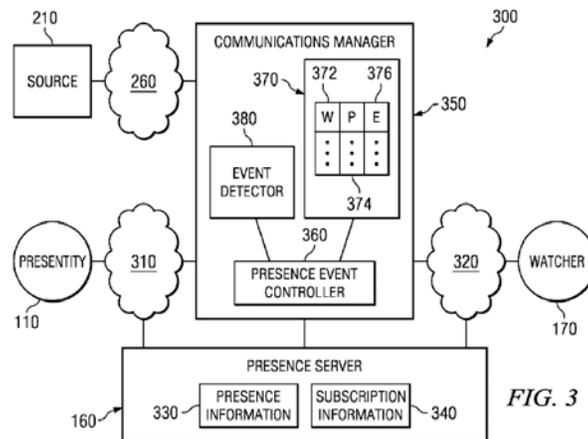
The Examiner finds Wu teaches the limitations of claim 1 except for the limitations of (1) the triggering event being an email with the first and second users identified by the email addresse(s); and (2) the presence server being configured to subscribe a user to a second set of presence data. Final Act. 3. The Examiner finds Kuhlke remedies the first noted deficiency and

Blohm the second. Final Act. 3–6. In particular, the Examiner finds Wu’s disclosure of the triggering of a presence subscription by presence services communications manager 350 in response to detection of an event to trigger teaches receiving a triggering event from a triggering device. Final Act. 2.

The Examiner further finds Kuhlke’s disclosure of an email originator electing to receive current activity updates or user interaction based presence information from recipients of an email teaches or suggests a triggering event that is an email wherein first and second users are identified from the email addresses. Final Act. 5 (citing Kuhlke Fig. 3, steps 309 and 313; ¶¶ 39, 40).

The Examiner concludes that it would have been obvious to incorporate Kuhlke’s email trigger into the presence system taught by the combination of Wu and Blohm “in order to provide e-mail senders the benefit of additional presence information with respect to recipients’ reaction to a sent email.” *Id.*

Wu’s Figure 3 is depicted below³:



Wu’s Figure 3 depicting a presence system incorporating event services to provide event-driven presence subscription. Wu ¶ 15.

³ Although omitted from the Wu application as published, Figure 3 can be found in the subsequently issued patent US 8,280,957 B2.

Appellant contends “[w]hile Kuhlke may enable the originator of an email to make a selection to receive presence information, the email is merely a document containing ‘each recipient’ and not an event triggering a subscription.” Appeal Br. 6. According to Appellant, Kuhlke’s email “has no effect on whether or not presence information is to be requested by an originating user’s selection.” *Id.* at 7.

The Examiner responds, finding “[Kuhlke’s] transmission of the email (317) is a necessary precondition for receiving presence information (325). As a consequence of transmitting the email, the originator of the email receives presence information from the recipients.” Ans. 6. The Examiner further finds Kuhlke discloses “that the originator begins monitoring for presence upon transmitting the email.” *Id.* (citing Kuhlke ¶ 30). According to the Examiner, “transmitting the email is an event of the type that the technique of Wu would be applicable as Wu is adapted to create presence subscriptions upon the occurrence of any of a variety of events.” *Id.*

Appellant’s argument is unpersuasive of reversible Examiner error. The disputed limitation is taught or suggested by the combination of Wu’s triggering of presence information and Kuhlke’s description of an email resulting in a user subscribing to presence information, not either reference standing alone. “Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.” *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)).

In particular, we agree with the Examiner in finding Wu teaches an input interface configured to receive a triggering event including a variety of events that trigger the initiation or cessation of acquiring presence

information. Ans. 4 (citing Wu ¶¶ 22, 25). Kuhlke discloses that, after sending an email, “the email originator awaits the receipt of at least one presence notification which contains activity information.” Kuhlke ¶ 30. Thus, we agree with the Examiner that, according to Kuhlke, “transmission of the email (317) is a necessary precondition for receiving presence information (325)” and, therefore, teaches or suggests the use of an email as a triggering event to acquire presence information. Ans. 6. Accordingly, we further agree the combination of Wu and Kuhlke teaches or suggests the disputed limitation.

Appellant further argues the Examiner’s reason for modifying Wu to incorporate the email-triggering event of Kuhlke is improper. Appeal Br. 7. In particular, Appellant emphasizes “[o]ne benefit of the invention claimed is to automatically subscribe a party to the presence information of another party, such as via receiving an email to or from the other party.” *Id.*

Appellant argues the Examiner’s reasoning that limiting the provision of presence information to certain recipients to improve productivity and avoid wasteful interactions “assumes presence information is presently provided and, such as due to a party’s importance, should now be blocked.” *Id.* Appellant urges that “this is not what is claimed nor is there motivation to make that which is claimed.” *Id.*

Appellant’s argument is unpersuasive of reversible Examiner error. The motivation to combine references need not derive from the same problem identified in the patent as argued by Appellant, as any articulated reason to combine the related prior art that is supported by sufficient factual underpinnings is sufficient. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 420 (2007) (holding it was error to “assum[e] that a person of ordinary skill

attempting to solve a problem will be led only to those elements of prior art designed to solve the same problem”); *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992) (“As long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor.”).

Herein the Examiner finds “[o]ne would be motivated to make the combination in order to provide e-mail senders the benefit of additional presence information with respect to recipients’ reaction to a sent email.” Final Act. 5. In light of the absence of persuasive evidence to rebut the Examiner’s findings and conclusion, we find the Examiner has articulated reasoning with rational underpinnings sufficient to justify the legal conclusion of obviousness.

For the reasons discussed above, we sustain the rejection of independent claim 1 under 35 U.S.C. § 103 as being unpatentable over Wu, Blohm, and Kuhlke. We further sustain the rejection of independent claims 11 and 17 that are argued on the basis of claim 1 (Appeal Br. 7) together with the rejections of dependent claims 2–6, 8–10, 12–16, and 14–20, which are not argued separately with particularity.

CONCLUSION

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-5, 8, 10, 10-14, 17-20	103	Wu, Blohm, Kuhlke	1-5, 8, 10, 10-14, 17-20	
6	103	Wu, Blohm, Kuhlke, Galvin	6	
9, 15, 16	103	Wu, Blohm, Kuhlke, Vemulapelli	9, 15, 16	
Overall Outcome			1-6, 8-20	

TIME PERIOD FOR RESPONSE

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED