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Vincent E. Duffy THOMSON Licensing 19868 Collins Road CANYON COUNTRY, CA 91351			KUMAR, SHAILENDRA	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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Patricia.Verlangieri@InterDigital.com  
mike.pugel@eurekovation.com  
vincent.duffy@technicolor.com

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ALI LOUZIR, JEAN-YVES LE NAOUR,  
DOMINIQUE LO HINE TONG, PHILIPPE MINARD, and  
JEAN-LUC ROBERT

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Appeal 2019-001188  
Application 14/405,592  
Technology Center 2400

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Before MICHAEL J. STRAUSS, ADAM J. PYONIN, and  
SCOTT RAEVSKY, *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 1–10. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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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 Thomson Licensing. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

The claims are directed to a signal transmission and reception device in a MIMO (Multiple Input Multiple Output) system. *See Spec.*, Abstract, pg. 1, line 6. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A device for the transmission and/or reception of signals in a MIMO system comprising:
  - a MIMO module comprising N inputs/outputs to deliver or receive N signals, N being greater than or equal to 2;
  - an antenna system to transmit or receive said N signals, wherein the antenna system comprises at least one multi-sector antenna, with M angular sectors in a horizontal plane capable of selectively receiving and/or transmitting said N signals in one or more of said M angular sectors, said M angular sectors not overlapping each other and together forming a global angular sector of 360 degrees, where  $M > N$ ,
  - wherein the device further comprises a switching device, mounted between the MIMO module and the antenna system, to connect P angular sectors of the at least one multi-sector antenna, with  $1 \leq P < M$ , with each of the N inputs/outputs of the MIMO module according to a switching diagram determined using a controller in accordance with a criteria representing the quality of the reception of signals by said device or another device, and
  - wherein the device transmits and/or receives the N signals in a reduced number of angular sectors from the M angular sectors of the multi-sector antenna.

### REJECTION

Claims 1–10 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Ofek (WO 2004/093416 A1, Oct. 28, 2004) and Lastinger (US 2007/0202809 A1, Aug. 30, 2007). Final Act. 2.

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).

### ANALYSIS

Appellant first contends, without analysis, that Ofek fails to disclose certain claim limitations. Appeal Br. 8–9. Appellant merely quotes the claim, for example, as follows:

Ofek does not disclose the features of the MIMO module 10 and the switching device 20. Additionally, Ofek does not describe or suggest one or more multi-sector antenna having M angular sectors . . . . Since Ofek does not disclose the features of MIMO module and the switching device, as well as the one or more multi-sector antenna having M angular sectors . . . , claim 1 is patentable over Ofek.

*Id.* These assertions do not constitute an argument on the merits, because “[a] statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.” 37 C.F.R. § 41.37(c)(1)(iv).

Appellant next contends that Lastinger teaches away from claim 1. Appeal Br. 9. Specifically, Appellant contends, “Lastinger is directed to MIMO antennas with overlapping sectors,” and “Lastinger teaches away from claim 1, which recites . . . where the M angular sectors **do not overlap each other.**” *Id.* (citing Lastinger ¶¶ 35, 37). Appellant’s argument appears to be that because Lastinger is directed to overlapping sectors, Lastinger teaches away from claim 1’s non-overlapping sectors.

Such argument is unpersuasive at least because it overlooks other teachings of Lastinger. Lastinger discloses, “MIMO physical sectors may be overlapping *or non-overlapping.*” Lastinger ¶ 61 (emphasis added).

Lastinger’s mere disclosure of overlapping in one embodiment does not teach away from non-overlapping in Ofek (or claim 1) because disclosed examples do not constitute a teaching away from a broader disclosure. *See In re Susi*, 440 F.2d 442, 446 n.3 (CCPA 1971) (explaining that preferred embodiments do not constitute a teaching away from a broader disclosure or non-preferred embodiments).

Appellant also contends, “the combination of Ofek and Lastinger neither teaches nor suggests each feature of the present claimed arrangement recited in claim 1.” Appeal Br. 9. Appellant then quotes limitations from claim 1 but provides no reasons why the combination of Ofek and Lastinger fails to teach or suggest those limitations. This argument suffers from the same deficiency as Appellant’s first argument, as it does not constitute an argument on the merits. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Accordingly, we sustain the Examiner’s rejection of claim 1, the sole independent claim. Appellant does not argue separate patentability for the dependent claims. *See* Appeal Br. 10. We, therefore, also sustain the Examiner’s rejection of claims 2–10. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–10	103	Ofek, Lastinger	1–10	

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).

Appeal 2019-001188  
Application 14/405,592

AFFIRMED