



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/895,321	09/30/2010	Ephraim D. Starr	RPS920100040-US-NP	7580
109808	7590	02/04/2020	EXAMINER	
LENOVO/PANGRLE Pangrle Patent, Brand & Design Law, P.C. 3500 W Olive Ave 3rd Floor Burbank, CA 91505			SATTI, HUMAM M	
			ART UNIT	PAPER NUMBER
			2422	
			NOTIFICATION DATE	DELIVERY MODE
			02/04/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

brian@ppbdlaw.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EPHRAIM D. STARR, HOWARD J. LOCKER,
JAMES S. RUTLEDGE, and JUSTIN T. DUBS

Appeal 2019-001479
Application 12/895,321
Technology Center 2400

Before ADAM J. PYONIN, DAVID J. CUTITTA II, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ 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 Lenovo
Singapore Pte. Ltd. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to a “graphical remote control” (Spec. ¶ 3) that “is able to identify the type of television unit and hence control instructions, algorithms, etc., to facilitate control of the television unit” (Spec. ¶ 17). Claims 1–3, 6–9, 11–13, 15–18, and 20–24 are pending; claims 1, 12, and 18 are independent. Appeal Br. 4. Claims 1, 11, 23, and 24 are reproduced below for reference (some formatting and emphases added):

1. An apparatus comprising:
 - a display;
 - a wireless communication interface;
 - circuitry that receives information via the wireless communication interface via a handshake process initiated automatically by proximity of the apparatus to a television unit in an environment
 - wherein the information comprises identifying information of the television unit for operation of the apparatus as a remote control for the television unit and
 - wherein the apparatus is functionally configurable to operate as different types of remote controls that correspond to different types of television units in different types of environments;*
 - circuitry that renders a graphical remote control to the display based at least in part on received identifying information of the television unit; and
 - circuitry that associates logical rules for a plurality of communication functions of the apparatus with selectable actions for remote control of the television unit
 - wherein the logical rules comprise logical rules for a phone function based at least in part on a type of the environment and an entity associated with a phone call received by the apparatus.*

11. The apparatus of claim 1 wherein the logical rules enable an interrupt mode, the interrupt mode configured to transmit at least one instruction to a television unit responsive to receipt of a phone call or an email by the apparatus.

23. The apparatus of claim 1 wherein the logical rules comprise logical rules for a type of environment that is a home environment and for a type of environment that is an office environment.

24. The apparatus of claim 1 wherein the logical rules comprise logical rules for a type of environment that is a hotel environment.

References and Rejections

The Examiner relies on the following prior art:

Name	Reference	Date
Pierre	US 2003/0070182 A1	Apr. 10, 2003
Krzyzanowski-1	US 2004/0133704 A1	July 8, 2004
Dresti	US 2004/0210933 A1	Oct. 21, 2004
Arling	US 2005/0097618 A1	May 5, 2005
Krzyzanowski	US 2006/0053447 A1	Mar. 9, 2006
Paryani	US 2009/0023389 A1	Jan. 22, 2009
Tsern	US 2010/0060549 A1	Mar. 11, 2010
Huang	US 2010/0313169 A1	Dec. 9, 2010
Xiong	US 2011/0191516 A1	Aug. 4, 2011

The Examiner rejects claims 1, 12, 13, 15, 18, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski, Arling, Ansari, and Pierre. Final Act. 2.

The Examiner rejects claims 2, 3, 5, 10, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski, Arling, Ansari, Pierre, and Rosenblatt. Final Act. 6.²

The Examiner rejects claims 6, 7, 8, 16, and 20 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, and Dresti. Final Act. 10, 11.

The Examiner rejects claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski-1, Arling, Ansari, Krzyzanowski-1, and Paryani. Final Act. 11.

The Examiner rejects claim 11 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, and Xiong. Final Act. 14.

The Examiner rejects claim 9 under 35 U.S.C. § 103(a) as being unpatentable over Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, Dresti, and Huang. Final Act. 15.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Arguments Appellant could have made but chose not to make are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellant that the Examiner erred and adopt as our own the findings and reasons set forth by the Examiner, to the extent consistent with our analysis below. We add the following primarily for emphasis.

² We note the Examiner lists claim 19 as rejected. *See* Final Act. 9. Claim 19, however, is canceled and not before us. *See* Appeal Br. 34.

A. *Independent Claim 1*

Appellant argues the Examiner’s rejection is in error for two reasons: “Reason 1: Ansari does not Support Fact Finding,” and “Reason 2: Arling is Environment Agnostic.” Appeal Br. 7 (emphasis omitted). We discuss each of these reasons, in turn.

Reason 1

In the Final Action, the Examiner cites paragraph 85 of Ansari for teaching “logical rules with . . . selectable actions for remote control of the television unit wherein the logical rules comprise logical rules for a phone function.” Final Act. 5. In the Answer, the Examiner “admits that Ansari discloses [the] limitation [] in (Para. [0058]) not (Para. [0085]),” and “[t]he [E]xaminer inadvertently cited (Para. [0085])” in the Final Action. Ans. 17.

Appellant challenges the Examiner’s new citation to paragraph 58 of Ansari, and “requests that the Board formally designate the rejection as a ‘new ground.’” Reply Br. 3.³ Appellant also contends Ansari fails to teach or suggest the claimed logical rules of a “phone function [that] is a function of the apparatus itself” (Reply Br. 13):

Ansari requires deliberate configuration of endpoint devices [such as televisions]; otherwise, the gateway device cannot transmit “incoming presence and networking messages” to an endpoint device. In that regard, Ansari does not disclose, teach or suggest “mimicking” remote control capabilities that already exist in a television unit. The “gateway” device of Ansari is just that, i.e., a gateway for various types of endpoint devices. Where

³ Even if the Examiner presents a new ground of rejection in the Answer—as opposed to fixing a typographical error—Appellant’s recourse was to petition the Director. See 37 C.F.R. § 41.40(a); MPEP § 1207.03. Such petitionable matters are not considered by the Board on appeal. See MPEP § 1201.

a ‘phone’ is mentioned in Ansari, it is an endpoint device and not the gateway.

Reply Br. 4 (emphasis omitted).

Appellant’s arguments regarding the configuration of a television endpoint device do not persuade us the Examiner’s rejection is in error. Claim 1 recites a “television” but provides no restrictions on any potential configuration or programming of the television. Thus, the arguments are not commensurate with the claim scope. Additionally, the arguments do not reflect the teachings of Ansari as a whole, as cited by Appellant (Reply Br. 8, 9, citing Ansari ¶¶ 157–159): Ansari teaches or suggests that television configuration is not necessary. *See* Ansari ¶ 159 (“determine *if* the detected endpoint device needs to be configured.”) (emphasis added).

We are not persuaded the Examiner errs in relying on Ansari, even assuming “[t]he apparatus of claim 1 configures itself, it does not configure the television unit in the manner required by Ansari.” Reply Br. 14. Appellant’s argument requires the bodily incorporation of Ansari’s television configuration, whereas “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference.” *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) (citations omitted). The Examiner cites Ansari for teaching an apparatus for controlling a television having “logical rules for a phone function,”⁴ not for teachings relating to television configuration requirements. Final Act. 5; Ans. 17, 18. We find the Examiner’s reliance on

⁴ We note claim 1 recites the logical rules are *associated* by the apparatus circuitry. We agree with the Examiner, and Appellant does not dispute, that Krzyzanowski teaches or suggests circuitry that associates logical rules, within the meaning of the claim. Final Act. 4; *see also* Appeal Br. 13.

Ansari for phone logic functions to be reasonable, because Ansari teaches “logic . . . may enable user . . . of gateway device . . . to define the notices and/or alerts provided by gateway device,” including “notices [which] may be displayed on the TV [in] a particular room when a phone call is received.” Ansari ¶ 58.

Further, Appellant has not persuasively shown the Examiner’s combination of cited references fails to teach or suggest the disputed claim limitations. “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). Appellant attacks the teachings of Ansari individually, and fails to explain why the Examiner errs in finding one of ordinary skill would have used the gateway phone functionality of Ansari (i.e., to control a television based on a received call) in the remote control apparatus provided by the combined teachings of the other cited references. *See* Final Act. 2–5; Ans. 18; Tsern Fig. 7 (depicting a handheld device, such as a phone, usable with secondary displays); Krzyzanowski⁵ ¶¶ 175, 202 (teaching a remote control that provides a user with different interfaces and command functionality based on its environment); Arling ¶ 4, 31 (“data indicative of a location change [] present on remote control . . . may trigger the process of

⁵ We note Appellant argues Ansari does not teach the “type of the environment” claim limitation, but does not challenge the Examiner’s reliance on Krzyzanowski for this claimed feature. *See* Reply Br. 4, 5; Final Act. 4. Any arguments Appellant could have made, but failed to make, are waived. *See* Reply Br. 4; Final Act. 3, 4; *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008).

converting [a] data set . . . to [a] data set . . . for application to a different set of destination appliances.”); Pierre ¶ 25 (“[I]ncoming events, that is, phone calls, emails, reminders, etc. are handled differently depending on who is calling.”). Accordingly, we are not persuaded the Examiner errs in finding Ansari combines with Tsern, Krzyzanowski, Arling, and Pierre, in the manner claimed. *See* Final Act. 2; Ans. 18.

Based on the record before us, we are not persuaded the Examiner’s fact finding with respect to Ansari is in error.

Reason 2

Appellant argues “Arling explicitly aims to allow a user to play ‘the same desired media (i.e., television broadcast, video, music, images, etc.) using different appliances in each location,’” whereas “claim 1 recites in part . . . different types of environments . . . [and] logical rules for a phone function based at least in part on a type of the environment and an entity associated with a phone call received by the apparatus.” Appeal Br. 22 (emphasis omitted; quoting Arling ¶ 4), 23 (emphasis omitted). Appellant contends, therefore, “Arling, as a whole, teaches an environment agnostic experience,” such that “Arling does not further direct the teachings of Tsern and Krzy[z]anowski toward the ‘logical rules for a phone function based at least in part on a type of the environment and an entity associated with a phone call received by the apparatus.’” Appeal Br. 23.

We are not persuaded of Examiner error. Appellant’s arguments require incorporation of teachings of Arling not relied upon by the Examiner; we see no reason, however, one of skill in the art would be compelled to adopt these teachings. *See Lear Siegler, Inc. v. Aeroquip*

Corp., 733 F.2d 881, 889 (Fed. Cir. 1984) (“Neither is the practitioner in reading the [cited] patent disclosure compelled to adopt every single aspect of its teaching without the exercise of independent judgment.”). Arling, as correctly cited by the Examiner, teaches an “apparatus is functionally configurable to operate as different types of remote controls that correspond to different types of television units in different types of environments.” Final Act. 4; Arling ¶ 4, 31. We disagree with Appellant’s conclusion that the combination of Arling with the other cited references would necessarily lead to all “operation[s] occur in a location agnostic manner” merely because Arling teaches a method to transfer media among various home appliances without having to restart playback. Appeal Br. 23; Arling ¶ 4; *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007)) (“[A] person of ordinary skill is also a person of ordinary creativity, not an automaton.”).

Separately, we note Arling teaches the remote control “can be used not only to cause the transmission of command codes and/or data to the appliances [] but also to perform local operations.” Arling ¶ 27; Ans. 19. Arling’s local operations will “modify[] command and state data for transmission to appliances other than the appliances from which the original command and state data was captured,” and include “displaying information/data, favorite channel setup, macro button setup, function key relocation, remote location sensing, etc.” Arling ¶ 27. Thus, contrary to Appellant’s arguments, Arling teaches location-specific functionality.

Accordingly, we are not persuaded the Examiner errs in finding Arling combines with Tsern, Krzyzanowski, Ansari, and Pierre, in the manner claimed. *See* Final Act. 2, 4; Ans. 19.

B. Dependent Claims 23 and 24

Appellant argues “the Examiner’s grounds of rejection for dependent claims 23 and 24 includes the statement ‘Krzy[z]anowski discloses the logical rules,’” but “what Krzy[z]anowski discloses is contrary to the Examiner’s explicit admission.” Appeal Br. 25. Appellant identifies “the explicit admission by the Examiner” as the portion of “the Final Office Action [that] states: The combination [of Tsern, Krzy[z]anowski and Arling] does not explicitly disclose selectable actions for remote control of the television unit wherein the logical ru[l]es comprise logical rules for a phone function and an entity associated with phone call received by the apparatus.” *Id.* (quoting Final Act. 4).

We are not persuaded the Examiner’s rejection is in error. In rejecting independent claim 1, the Examiner correctly finds Krzyzanowski teaches “logical rules for a plurality of communication functions of the apparatus based at least in part on a type of the environment.” Final Act. 4⁶; Krzyzanowski ¶¶ 175, 202. The Examiner’s statement regarding Krzyzanowski “not” teaching logical rules was with respect to a phone function and an entity associated with phone call received by the apparatus; the Examiner, as discussed above, relies on the other cited references for phone functionality.⁷ *See* Final Act. 4, 5; Ans. 20. Thus, we discern no inconsistency between the Examiner’s rejection of independent claim 1 and the Examiner’s citation to Krzyzanowski’s teachings of various

⁶ As discussed above, Appellant does not challenge this finding.

⁷ Separately, we note Krzyzanowski teaches the remote control may be a phone containing phone functions. *See* Krzyzanowski ¶ 67 (“Controller client 110 can be a portable or non-portable . . . PDA, enhanced telephone, or other device linked to communications network.”).

environments in the rejection of dependent claims 23 and 24. *See* Final Act. 6; Krzyzanowski ¶ 53 (“residential environment”), 54 (“A non-residential environment includes, but is not limited to, an office complex, . . . [or] hotel.”).

In the Reply Brief, Appellant presents new arguments regarding Krzyzanowski, such as by arguing Krzyzanowski teaches away from the subject matter of claims 23 and 24. *See* Reply Br. 18. These arguments could have been raised in the opening brief and are therefore waived. *See In re Hyatt*, 211 F.3d 1367, 1373 (Fed. Cir. 2000) (noting that an argument not first raised in the brief to the Board is waived on appeal); *see also* 37 C.F.R. § 41.41(b)(2) (“Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner’s answer, . . . will not be considered by the Board for purposes of the present appeal, unless good cause is shown.”).

Accordingly, we are not persuaded the Examiner’s rejection of dependent claims 23 and 24 is in error.

C. Dependent Claim 11

Appellant argues “Xiong fails to disclose the subject matter of dependent claim 11.” Appeal Br. 28. Particularly, Appellant contends “Arling is location agnostic (through converting a data set) while in Xiong the TV could respond by muting the system, which, in combination with Arling, would mean that the same response would occur in a location agnostic manner (i.e., through Arling’s converting a data set).” *Id.*

We are not persuaded the Examiner errs. Appellant’s argument for dependent claim 11 relies on the same argument against Arling proffered for

claim 1: that Arling is location agnostic. *See* Appeal Br. 23, 28. As discussed above with respect to Reason 2, we disagree with Appellant’s analysis of Arling. Thus, for the same reasons, we are not persuaded the Examiner’s rejection of dependent claim 11 is in error.

CONCLUSION

We are not persuaded the Examiner errs in finding claims 1, 11, 23, and 24 to be obvious in view of the cited references. Appellant does not present separate substantive arguments for the remaining claims. *See* Appeal Br. 25–27, 29. Accordingly, we sustain the Examiner’s obviousness rejection of claims 1–3, 6–9, 11–13, 15–18, 20–24.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1, 12, 13, 15, 18, 23, 24	103(a)	Tsern, Krzyzanowski, Arling, Ansari, Pierre	1, 12, 13, 15, 18, 23, 24	
2, 3, 5, 10, 21	103(a)	Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt	2, 3, 5, 10, 21	
6, 7, 8, 16, 20	103(a)	Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, Dresti	6, 7, 8, 16, 20	
17	103(a)	Tsern, Krzyzanowski-1, Arling, Ansari, Krzyzanowski-1, Paryani	17	
11	103(a)	Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, Xiong	11	

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
9	103(a)	Tsern, Krzyzanowski, Arling, Ansari, Pierre, Rosenblatt, Dresti, Huang	9	
Overall Outcome			1-3, 6-9, 11-13, 15-18, 20-24	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED