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PETERS, LISA E

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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* FRITZ FRANCIS EBNER and YVES HOPPENOT

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Appeal 2019-002595  
Application 14/084,947  
Technology Center 2800

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Before JEFFREY B. ROBERTSON, DONNA M. PRAISS, and  
JANE E. INGLESE, *Administrative Patent Judges*.

ROBERTSON, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner's decision to reject claims 1–5, 7–14, and 16–18. *See* Appeal Br. 7. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> This Decision includes citations to the following documents: Specification filed November 20, 2013 (“Spec.”); Final Office Action mailed February 22, 2018 (“Final Act.”); Appeal Brief filed September 4, 2018 (“Appeal Br.”); Examiner's Answer mailed December 12, 2018 (“Ans.”); and Reply Brief filed February 12, 2019 (“Reply Br.”).

<sup>2</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 Xerox Corporation. Appeal Br. 3.

### CLAIMED SUBJECT MATTER

Appellant states the invention relates to estimating power consumption, such as power consumption for a print device. Spec. ¶ 1. Claim 1, reproduced below, is illustrative of the claimed subject matter (Appeal Br. 23, Claims Appendix):

1. A method of polling a device comprising:

    sending, by a processing device, a first polling request to a device to be polled after an elapsed first period of time;

    receiving, at the processing device, a first polling response from the device to be polled;

    determining, by the processing device, a mode the device to be polled is currently operating in based upon the first polling response;

    determining whether the mode corresponds to a high power state by accessing a power model associated with the device to be polled, wherein the power model identifies a power consumption level for the mode;

    in response to determining that the mode corresponds to a high power state, sending, by the processing device, a second polling request to the device to be polled after an elapsed second period of time, wherein the second period of time is shorter than the first period of time and is determined based upon historic information related to operation of the device to be polled.

Claim 10 is also independent and recites a system for polling a device, and includes a non-transitory computer medium including programming instructions, that similar to claim 1, includes a first and second polling request, where the second polling request is shorter than the first period of time and is determined based upon historic information related to operation of the device to be polled. *Id.* at 25–26.

## REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Agnetta et al. hereinafter “Agnetta”	US 2008/0079989 A1	April 3, 2008
Ishizuka	US 2009/0110427 A1	April 30, 2009
Seeber et al. hereinafter “Seeber”	US 2012/0065802 A1	March 15, 2012

## REJECTIONS

1. The Examiner rejected claims 1–5, 7, 9–14, 16, and 18 under 35 U.S.C. § 103 as obvious over Seeber and Agnetta. Final Act. 3–7.
2. The Examiner rejected claims 8 and 17 under 35 U.S.C. § 103 as obvious over Seeber, Agnetta, and Ishizuka. *Id.* at 8.

## OPINION

### *Rejection 1*

Appellant presents the same or similar arguments with respect to the claims subject to this rejection. *See* Appeal Br. 7–20. We select claim 1 as representative for disposition of this rejection. 37 C.F.R. § 41.37(c)(1)(iv).

### *The Examiner’s Rejection*

The Examiner found Seeber discloses a non-transitory computer readable medium including programmable instructions for causing a processing device to send a first polling request to a device to be polled after an elapsed first period of time, where power information is used to

determine the power state of an asset, and accessing a power model that identifies a power consumption level. Final Act. 3–4. The Examiner found Seeber does not explicitly disclose a second polling request where the second period of time is shorter than a first period of time determined based on historic information related to operation of the device to be polled. *Id.* at 4. The Examiner found Agnetta discloses in response to determining that a condition occurs, sending a second polling request, where the second polling request occurs after an elapsed second period of time, where the second period of time is shorter than the first period of time and is determined based on historical information related to the operation of the device to be polled. *Id.* at 4–5. The Examiner determined it would have been obvious to have utilized the method of determining a second polling request time disclosed in Agnetta in combination with Seeber to achieve the expected benefit of minimizing network traffic and allowing for more printers on the network. *Id.* at 5. The Examiner determined that Agnetta is relied upon to teach an automated polling interval adjustment technique as opposed to Seeber’s menu selection polling interval adjustment technique. Ans. 4.

*Appellant’s Contentions*

Appellant argues Seeber does not adjust the polling rate of the device, and Agnetta, although disclosing adjusting the polling rate based on the consumption of consumables such as paper toner and ink, is silent with respect to adjusting polling rates based on the power state of the device. Appeal Br. 8–9. Thus, Appellant contends the Examiner did not provide sufficient reasoning to support the combination of prior art in the manner set forth in the rejection. *Id.* at 9–11, 13–15. Appellant contends the

Examiner's combination would render Agnetta unsuitable for its intended purpose. *Id.* at 11–13.

*Issue*

The dispositive issue is:

Has Appellant identified reversible error in the Examiner's determination that it would have been obvious in view of Agnetta, to have modified the polling method disclosed in Seeber, in response to determining that the operating mode of the device is in a high power state, to incorporate a second polling request after an elapsed second period of time, wherein the second period of time is determined based upon historic information related to the operation of the device to be polled?

*Discussion*

We are not persuaded by Appellant's arguments that the Examiner's rejection is not sufficiently supported by the record. That is, we agree with the Examiner that Appellant's arguments focus on the references individually rather than the combination of references as whole. Ans. 4, citing *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

In particular, Seeber discloses polling devices including printers in order to determine power consumption and energy efficient management of the devices. Seeber ¶¶ 2, 65, 67, 75, 90; Figs. 2, 6A, 6B. Seeber discloses power information is retrieved to determine whether a device is turned off or on, or is in some other power state, leading to a power profile that is stored in a database for subsequent processing and use. *Id.* ¶ 142. Seeber discloses

further that polling times may be set based upon system capabilities of the energy management system and the desires of the system user via buttons to set the time intervals. *Id.* ¶¶ 147, 214, Fig. 15D.

Agetta discloses polling printers on a network for supply levels of consumables, where historic rates of use of a consumable are used to access current rates of use of the consumable and can be used to increase polling intervals of subsequent polls. Agetta ¶¶ 8, 22, 28. In other words, Agetta discloses that a second elapsed period of time before polling may be shorter based on historical information regarding the consumable polled after a first period of time. Agetta discloses also that “consumables” broadly includes “anything that is used or consumed by a printer in producing a hardcopy document” (Agetta ¶ 10), which would include the power “consumed” by the printer in order to complete the printing job.

Thus, we are not persuaded by Appellant’s argument that merely because Agetta does not mention power as a consumable, Seeber and Agetta are directed to different problems such that one of ordinary skill in the art would not have modified Seeber in view of Agetta in order to obtain the benefits of automatic and efficient consumption rate monitoring disclosed in Agetta for the power monitoring in Seeber. *See* Agetta ¶ 43.

Therefore, we are of the view that the Examiner’s rationale of modifying the manual process of Seeber with the automatic process in Agetta is sufficiently supported by the record. Indeed, in *KSR*, the Supreme Court explained, “[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, §103 likely bars its patentability.” *KSR*

*Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). “A person of ordinary skill is also a person of ordinary creativity, not an automaton.” *Id.* at 421. *See also In re Venner*, 262 F.2d 91, 95 (CCPA 1958) (“It is well settled that it is not ‘invention’ to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result.”).

Moreover, in view of Seeber’s disclosure discussed above, that times between polls may be adjusted and that the power profile data collected as a result of polling is stored in a database for future use, we are of the view that one of ordinary skill in the art would have had a reasonable expectation of success in combining Seeber and Agnetta as explained by the Examiner. Further, we are of the view that the Examiner’s combination would not render Agnetta unsatisfactory for its intended purpose. As the Examiner points out, Seeber is being modified with Agnetta (Ans. 6), and although the methods disclosed in Agnetta may need to be modified to provide for polling based on power states of a device, we are not persuaded that such modifications would rise to the level of rendering Agnetta unsatisfactory for its intended purpose of reducing network traffic, because the monitoring technique would provide the benefit of automatic power state monitoring in Seeber.

As a result, we affirm the Examiner’s rejection of claim 1, as well as claims 2–5, 7, 9–14, 16, and 18.

### *Rejection 2*

Claims 8 and 17 depend from claims 1 and 10, respectively, and both recite that the high power state “comprises a print mode.” Appeal Br. 25, 27, Claims Appendix. The Examiner found Seeber and Agnetta do not

explicitly disclose a high power state that comprises a print mode. Final Act. 8. The Examiner found Ishizuka discloses a print mode, and by also disclosing a stand-by mode and a power saving mode, one of ordinary skill in the art would have understood from Ishizuka that printing is a high power mode. *Id.* citing Ishizuka ¶ 24.

Appellant argues Ishizuka does not disclose the printing mode is a high energy state, rather Ishizuka discloses all modes, including the printing mode, are energy saving modes. Appeal Br. 21.

We are not persuaded by Appellant's argument because it is not supported by the express disclosure in Ishizuka. Ishizuka discloses (¶ 24):

Printing apparatus **100** includes several operational modes for energy-saving. The operational modes include a printing mode in which printing is being performed, a standby mode in which the printing apparatus is out of the printing mode and a heater is driven to keep a fixing device inside in a heat-generating state in order to prepare for a subsequent printing operation, and a power-saving mode in which the heater is stopped in order to reduce power consumption if printing demand is absent for a predetermined period after the last printing operation, and the like.

We understand from this disclosure that Ishizuka discloses operational modes including a standby mode and a power-saving mode, which provide energy-saving capabilities when the printer is not in a printing mode. Moreover, Appellant's reliance on Ishizuka's Figure 3 as showing that the printing mode consumes less power is misplaced, as Figure 3 refers to the estimated power values for each week as a cumulative total rather than the power used in each individual state. *See* Ishizuka ¶¶ 25–30. As a result, we are not persuaded by Appellant's arguments.

Accordingly, we affirm the Examiner's rejection of claims 8 and 17.

### CONCLUSION

The Examiner's rejections of claims 1–5, 7–14, and 16–18 under 35 U.S.C. § 103 are affirmed.

### DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–5, 7, 9–14, 16, 18	103	Seeber, Agnetta	1–5, 7, 9–14, 16, 18	
8, 17	103	Seeber, Agnetta, Ishizuka	8, 17	
<b>Overall Outcome</b>			1–5, 7–14, 16–18	

### 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**