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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RANDOLPH G. TOWNSEND

Appeal 2019-002934
Application 13/432,171
Technology Center 2600

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
JESSICA C. KAISER, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's decision to reject claims 1, 3–14, and 16–38 (*See* Final Act. 1).
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. Appellant identifies the real party in interest as Air Heater Seal Company, Inc. (Appeal Br. 1).

CLAIMED SUBJECT MATTER

The claims are directed to a range and notification system, and associated method, for use with a cooking range (Spec. Abstract, ¶ 1).

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of providing an indication regarding an apparatus that is structured to be switched between one state and an operated state, the method comprising:

detecting at least one of: that the apparatus has been switched to the operated state, and that the apparatus is in the operated state; and

periodically outputting an audible notification representative of at least a first spoken word whose literal content includes a duration of time that the apparatus has remained in the operated state;

the periodically outputting of an audible notification comprising outputting a first audible notification that is representative of at least a first spoken word whose literal content includes the amount of time that has elapsed since the apparatus was placed in the operated state; and

the periodically outputting of an audible notification further comprising outputting a number of further audible notifications subsequent to the outputting of the first audible notification, each further audible notification of the number of further audible notifications being representative of at least a first spoken word whose literal content includes an updated total amount of time that has elapsed since the apparatus was placed in the operated state.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ueda	US 4,517,431	May 14, 1985
Thiessen	US 6,552,647 B1	Apr. 22, 2003
Volodarsky	US 2006/0202848 A1	Sept. 14, 2006
Heilman	US 2008/0136581 A1	June 12, 2008
White	US 2009/0017404 A1	Jan. 15, 2009
Noguchi	US 2012/0056745 A1	Mar. 8, 2012

REJECTIONS

Claims Rejected	35 U.S.C. §	Reference(s)/Basis
1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, 38	103(a)	Volodarsky, Ueda, Noguchi
3, 4, 16–17, 24–26, 30, 31	103(a)	Volodarsky, Ueda, Noguchi, White
6, 7, 9, 12, 13, 19, 21, 35, 36	103(a)	Volodarsky, Ueda, Noguchi, Thiessen
27	103(a)	Volodarsky, Ueda, Noguchi, White, Thiessen
28, 29	103(a)	Volodarsky, Ueda, Noguchi, White, Heilman

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant did not make in the Briefs are deemed to be waived (*See* 37 C.F.R. § 41.37(c)(1)(iv)).

ANALYSIS

Non-Functional Descriptive Matter

Initially, we note Appellant is arguing the content of output data, i.e., whether the output represents a particular elapsed time. The claim does not recite determining the recited elapsed times. Nor do the Specification or claims disclose any details about how the elapsed times are calculated or how the elapsed times are converted into spoken words (*see generally* Spec.). Indeed, the content of the output does not affect the recited process of “periodically outputting an audible notification . . . comprising outputting a first audible notification . . . and further comprising outputting a number of further audible notifications subsequent to the outputting of the first audible notification,” as recited in the independent claims 1, 14, 37, and 38. The content of the output constitutes non-functional descriptive material (NFDM) intended for human perception.

On this claim construction issue, we are bound by a PTAB precedential decision: *Ex parte Nehls*, 88 USPQ2d 1883, 1889 (BPAI 2008) (precedential) (“[T]he nature of the information being manipulated does not lend patentability to an otherwise unpatentable computer implemented product or process.”). Further guidance regarding NFDM is found in the MPEP: “[W]here the claim as a whole is directed to conveying a message or meaning to a human reader independent of the intended computer system, and/or the computer-readable medium merely serves as a support for information or data, no functional relationship exists” (MPEP § 2111.05 (III.)).

Moreover, “[t]o be given patentable weight, the printed matter and associated product must be in a functional relationship. A functional

relationship can be found where the printed matter performs some function with respect to the product to which it is associated” (MPEP § 2111.05).

Here, the particular information content of the claimed “spoken word” (i.e., printed matter in audible format) does not functionally change or otherwise affect how the step of “periodically outputting” is performed or how the apparatus functions. Indeed, the function of “outputting an audible notification” is the same whether the “audible notification is representative of at least a first spoken word whose literal content includes a duration of time that the apparatus has remained in the operated state” or whether the audible notification includes the current time. Thus, the claim limitation is directed to printed matter because “it claims the content of information” (*In re DiStefano*, 808 F.3d 845,848 (Fed. Cir. 2015)). Given the lack of sufficient evidence that the content of the audible notification affects the function of the apparatus or step of outputting, we determine it is reasonable to characterize the claimed content of the audible notification as nonfunctional descriptive material; that is, akin to printed matter. Just as printed matter is not given patentable weight, similarly the content of the “audible notification” recited in claims 1, 14, 37, and 38 as a distinction over Voldarsky’s audible warning of operating time, is not patentably consequential. “[N]onfunctional descriptive material, being useful and intelligible only to the human mind, is given no patentable weight” (*Ex parte Graf*, Appeal 2012-003941, 2013 WL 3873066, at *4 (PTAB July 23, 2013) (non-precedential), *aff’d*, *In re Graf*, 585 F. App’x 1012 (Fed. Cir. 2014) (non-precedential); *cf In re DiStefano*, 808 F.3d 845 (Fed. Cir. 2015)); as explained in *In re Xiao*, 462 F. App’x 947, 950-52 (Fed. Cir. 2011) (non-precedential):

[T]he Board did not create a new “mental distinctions” rule in denying patentable weight On the contrary, the Board simply expressed the above-described functional relationship standard in an alternative formulation—consistent with our precedents—when it concluded that any given position label’s function . . . is a distinction “discernable only to the human Mind” *Board Decision* at 6; see *In re Lowry*, 32 F.3d 1579, 15 83 (Fed. Cir. 1994) (describing printed matter as “useful and intelligible only to the human mind”) (quoting *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969)).

“The rationale behind this line of cases is preventing the indefinite patenting of known products by the simple inclusion of novel, yet functionally unrelated limitations” (*King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1279 (Fed. Cir. 2010)). Accordingly, the argument that the claimed audible notification distinguishes from that of Voldarsky or any of the additional cited references in that it is “representative of at least a first spoken word whose literal content includes a duration of time that the apparatus has remained in the operated state” and the recited “further audible notification being representative of at least a first spoken word whose literal content includes and updated total amount of time that has elapsed since the apparatus was placed in the operated state,” as recited in claim 1 and as commensurately recited in claims 14, 37, and 38, is unpersuasive as to error in the rejection.

To facilitate compact prosecution, however, we address Appellant’s contentions regarding the obviousness of the recited claims over the cited prior art.

35 U.S.C. § 103

Claims 1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, and 38

Appellant contends claims 1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, and 38 would not have been obvious over Volodarsky, Ueda, and Noguchi (Appeal Br. 7–10).

Claims 1, 14, 27, and 38

With respect to claims 1, 14, 37, and 38, the issue presented by the arguments is whether the combination of Volodarsky, Ueda, and Noguchi teaches, suggests, or otherwise renders obvious:

the periodically outputting of an audible notification comprising outputting a first audible notification that is representative of at least a first spoken word whose literal content includes the amount of time that has elapsed since the apparatus was placed in the operated state; and

the periodically outputting of an audible notification further comprising outputting a number of further audible notifications subsequent to the outputting of the first audible notification, each further audible notification of the number of further audible notifications being representative of at least a first spoken word whose literal content includes an updated total amount of time that has elapsed since the apparatus was placed in the operated state,

as recited in claim 1. Appellant argues neither Ueda nor Noguchi teaches:

outputting of a spoken word whose literal content includes an amount of time that *has elapsed* since the apparatus was placed in an operated state, and . . . outputting of a further spoken word whose literal content includes an *updated* total amount of time that *has elapsed* since the apparatus was placed in the operated state

(Appeal Br. 7).

We are not persuaded by Appellant’s contentions. Specifically, in our previous Decision of September 6, 2017 (hereinafter “Dec.”), we were “not persuaded the Examiner erred in finding Volodarsky discloses ‘periodically outputting an audible notification representative of a duration of time that the apparatus has remained in the operated state,’ as recited in claims 38 and similarly recited in claim 37” (Dec. 4–5). Further, we were “not persuaded the Examiner erred in finding the combination of Volodarsky and Ueda teaches ‘an audible notification representative of at least a first spoken word whose literal content includes a duration of time that the apparatus has remained in the operated state,’ as recited in claim 1 and similarly recited in claim 14” (*id.* at 6–7). In response, Appellant amended the claims to include the elements at issue. The Examiner finds Ueda and Noguchi teach the disputed limitations (Ans. 4–5 (citing Ueda, 8:31–9:25; Noguchi ¶¶ 9–11)).

As set forth in our previous Decision (Dec. 5), “Volodarsky teaches a system which ‘provide[s] a non-invasive audible and visual warning to indicate to [a] person that the range is on . . . at intervals of two to three minutes (or [some] other programmable interval)’ (Volodarsky ¶ 11; *see id.* ¶¶ 8, 30–31).” We further found (Dec. 6–7) “Volodarsky teaches ‘communication of other information, such as . . . range operating time’ to a person ([Volodarsky] ¶ 31)” and “Ueda teaches audio ‘output notification[s] that [are] representative of at least a spoken wor[d] whose literal content includes duration of time’ e.g., ‘about 8 minutes’ (Ueda, 8:31–36).” Thus, we were not persuaded the Examiner erred in finding the combination of Volodarsky and Ueda teaches “periodically outputting an audible notification representative of at least a first spoken word whose literal content includes a duration of time that the apparatus has remained in the

operated state,” as recited in claim 1 and as commensurately recited in claims 14, 37, and 38 (*see* Dec. 6–7).

Appellant argues Ueda’s outputs “do not constitute the outputting of a spoken word whose literal content includes an amount of time that *has elapsed* since the apparatus was placed in an operated state[and] . . . subsequent outputting of a further notification after a further predetermined time period has elapsed” (Appeal Br. 7). Appellant has not persuaded us an ordinarily skilled artisan would not have found it obvious to modify Ueda’s teaching of outputting of *a spoken word* whose literal content includes a *duration of time* that the apparatus has remained in the operated state to output an amount of time that has *elapsed* since the apparatus was placed in the operated state and subsequently output a further notification after a predetermined time period has *elapsed*. Indeed, the combination of Volodarsky and Ueda teaches determining a duration of time and outputting the representative spoken word.

The Examiner further provides Noguchi as support for the determination that “it was well known in the art . . . to periodically provide [a] notification after a first predetermined time is elapsed” (Final Act. 5 (citing Noguchi ¶¶ 9–11)). Noguchi teaches a notification controller to prompt a user “after the elapse of a first period and, after a second period has elapsed from the notification, notify the elapse of the second period” (Noguchi ¶ 9). Noguchi further teaches the first period indicates “the sunburn preventing treatment has finished”; “the second period corresponds to a period spent for the sunburn preventing treatment”; and “a total period of the first period and the second period is a period until the preset sunburn preventing treatment loses its effect” (*id.* ¶¶ 10–11). Thus, Noguchi teaches

calculating a duration of time, i.e., it is calculating how much time has elapsed, before providing a notification.

Appellant, however, argues Noguchi fails to provide audible outputs that are spoken word, as recited, but rather, provides audible outputs “in the form of ‘a beep sound such as a buzzer’” (Appeal Br. 9). Setting aside that Appellant’s argument is directed to the content of the information, which is non-functional descriptive material, as discussed above, we agree with the Examiner that Appellant is arguing the references individually (Ans. 7) while the Examiner is relying on the combination of teachings of Volodarsky, Ueda, and Noguchi (Final Act. 5; Ans. 6–7). The Examiner relies on the combination of Volodarsky and Ueda to teach audible outputs (Final Act. 4). One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (*In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986)).

Thus, we are not persuaded by Appellant that the Examiner erred in finding the combination of Volodarsky, Ueda, and Noguchi teaches:

the periodically outputting of an audible notification comprising outputting a first audible notification that is representative of at least a first spoken word whose literal content includes the amount of time that has elapsed since the apparatus was placed in the operated state; and

the periodically outputting of an audible notification further comprising outputting a number of further audible notifications subsequent to the outputting of the first audible notification, each further audible notification of the number of further audible notifications being representative of at least a first spoken word whose literal content includes an

updated total amount of time that has elapsed since the apparatus was placed in the operated state,

as recited in claim 1 and as commensurately recited in claims 14, 37, and 38.

The Examiner concludes an ordinarily skilled artisan would have found it obvious to combine the teachings of Volodarsky and Ueda “*to satisfy system needs and/or environment requirement which require using such notification method*” (Ans. 6). Thus the Examiner has articulated reasoning as to why an ordinarily skilled artisan would have found it obvious to output an audible notification representative of at least a first spoken word, as recited.

Appellant contends (i) Ueda discloses “*different notifications*” than those recited; (ii) the Examiner’s assertion that “the recited elements fail to yield unexpected results . . . is not a requirement of patentability”; (iii) the Examiner’s “suggestion” that it would have been obvious to combine the teaching to “*satisfy system needs and/or environment requirement . . . which require using such notification method*” . . . is an insufficient basis upon which to find that a claimed invention is obvious”; and (iv) the Examiner has not shown what the relevant “solutions” are or that the relevant “solutions” are “finite in number,” are predictable, or have a reasonable expectation of success (Appeal Br. 7–8). Appellant has failed to proffer sufficient evidence or argument to persuade us the Examiner’s articulated reasoning is in error. Further, although Appellant disagrees with the Examiner’s finding that combining the three references would have been obvious, Appellant provides no additional detail as to why the Examiner’s articulated motivation lacks a rational basis or why the Examiner’s reasoning is in error (Ans. 9).

We agree with the Examiner that an ordinarily skilled artisan would have found it obvious to output spoken word of a duration of time comprising an amount of time that has elapsed and subsequently, an updated total amount of time that has elapsed since the apparatus was placed in the operated state. Here, as discussed *supra*, we find that Volodarsky and Ueda teach periodically outputting a duration of time that the apparatus has remained in the operated state.

Additionally, Appellant has not persuaded us an ordinarily skilled artisan would not have found it obvious to combine the teachings of Volodarsky and Ueda to output an amount of time that has elapsed, as recited, and subsequently, an updated total amount of time that has elapsed, as recited. Moreover, we are unpersuaded that combining the teachings would have been “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art” (*see Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007)) in light of the teachings of Volodarsky and Ueda. Indeed, the added elements recite specifics of what the duration of time is. A skilled artisan is “a person of ordinary creativity, not an automaton” (*See KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420-21 (2007)).

Furthermore, the Examiner articulates reasoning with a rational underpinning as to why an ordinarily skilled artisan would have combined the teachings of Volodarsky, Ueda, and Noguchi, concluding that “[i]t would have been obvious to one of ordinary skill in the art . . . to generate notifications after predetermined time durations elapses in order to provide maximum awareness to the user by providing an alert periodically after each time passes and thereby increase the overall user convenience” (Final Act.

5). Appellant has not persuasively addressed the Examiner’s articulated motivation. We are unpersuaded outputting an elapsed amount of time would not have been obvious in light of Volodarsky’s and Ueda’s teachings of outputting a duration of time and Noguchi’s teaching of determining an elapsed time.

Appellant argues in the Reply Brief that the Examiner used “prohibited hindsight” (Reply Br. 1–2). Appellant had an opportunity to raise the arguments in the Appeal Brief, and has provided no showing of good cause for not doing so. In the absence of a showing of good cause by Appellant, the new arguments by Appellant are thus deemed waived (*see* 37 C.F.R. § 41.41(b)(2); *see also* *Optivus Tech., Inc. v. Ion Beam Appl’ns S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (“[A]n issue not raised by an appellant in its opening brief ... is waived.”) (Internal citations and quotation marks omitted)).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Volodarsky, Ueda and Noguchi teaches, suggests, or otherwise renders obvious the limitations as recited in independent claim 1 and as commensurately recited in independent claims 14, 37, and 38.

Claims 5 and 18

With respect to claims 5 and 18, Appellant argues that “the references, whether considered individually or in combination, fail to disclose, teach, or suggest the outputting of another audible notification representative of one or more spoken words whose literal content includes a predetermined condition detected in the vicinity of an apparatus” (Appeal Br. 10–11).

Appellant proffers insufficient evidence or argument to persuade us of error in the Examiner's findings and conclusions (*See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (stating that interpreting 37 C.F.R. § 41.37(c)(1)(vii) to require a more substantive argument than a naked assertion that the prior art fails to teach limitation in order to address a claim separately, is not an unreasonable interpretation of the rule)). Additionally, new arguments presented in the Reply Brief are not considered (*see* 37 C.F.R. § 41.41(b)(2); *see also Optivus Tech.*, 469 F.3d at 989).

Remaining Dependent Claims

Appellant does not separately argue dependent claims 8, 10, 11, 20, 22, 23, and 32–34 (*see* Appeal Br. 10–12). Rather, Appellant relies on the arguments set forth with respect to claim 1. For the reasons set forth *supra*, Appellant has not persuaded us of error in the Examiner's findings and conclusions. Therefore, claims 8, 10, 11, 20, 22, 23, and 32–34 fall with their respective independent claims.

Conclusion

For the reasons set forth *supra*, we sustain the rejection of claims 1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, and 38 under 35 U.S.C. § 103(a) for obviousness over Volodarsky, Ueda, and Noguchi.

35 U.S.C. § 103: Claims 3, 4, 16–17, 24–26, 30, and 31

Appellant contends claims 3, 4, 16–17, 24–26, 30, and 31 would not have been obvious over Volodarsky, Ueda, Noguchi, and White (Appeal Br. 12–15).

Claims 3 and 16

With respect to claims 3 and 16, the issue presented by the arguments is whether the combination of Volodarsky, Ueda, Noguchi, and White teaches, suggests, or otherwise renders obvious

outputting as at least a portion of the audible notification an audible sound tag representative of one or more spoken words whose literal content includes the operational level, as recited in claim 3 and commensurately recited in claim 16. Appellant admits “it is known in the relevant art to operate an apparatus at any of a plurality of levels,” as taught in White; however, according to Appellant, “the references, whether considered individually or in combination, fail to disclose, teach or suggest” the disputed limitation (Appeal Br. 13). Appellant does not elaborate on why the references fail to teach the disputed limitation.

As discussed *supra*, we agree with the Examiner’s finding that the combination of Volodarsky and Ueda teaches periodic time notifications relaying the amount of time that has elapsed since the apparatus was placed in the operated state (Final Act. 4). The Examiner further finds, and we agree, White teaches determining the operational level of a device (Final Act. 13 (citing White ¶¶ 31–32, 42, 56)).

Appellant’s argument that “the references, whether considered individually or in combination, fail to disclose, teach or suggest . . . *an audible sound tag that is representative of one or more spoken words whose literal content includes the operational level*” (Appeal Br. 12–13) is without

elaboration and does not address the Examiner's combination of Volodarsky, Ueda, and White. In particular, Appellant does not address the Examiner's modification of Volodarsky and Ueda, teaching outputting as at least a portion of the audible notification an audible sound tag representative of one or more spoken words whose literal content includes the operational level, with White, teaching the apparatus's state includes different operating levels, resulting in additional notification information regarding the operating level of the apparatus (Final Act. 13–14; Ans. 9–11).

Accordingly, we are not persuaded the Examiner erred in finding the combination of Volodarsky, Ueda, Noguchi, and White teaches, suggests, or otherwise renders obvious the limitations as recited in claim 3 and commensurately recited claim 16. Therefore, we sustain the rejection of claims 3 and 16 under 35 U.S.C. § 103(a) for obviousness over Volodarsky, Ueda, Noguchi, and White.

Remaining Dependent Claims

Appellant does not provide separate, substantive arguments for dependent claims 4, 17, 24–26, 30, and 31 (*see* Appeal Br. 13–15). Therefore, we are not persuaded of error in the Examiner's rejection of these claims.

Conclusion

For the reasons set forth *supra*, we sustain the rejection of claims 3, 4, 16–17, 24–26, 30, and 31 under 35 U.S.C. § 103(a) for obviousness over Volodarsky, Ueda, Noguchi, and White.

35 U.S.C. § 103: Claims 6, 7, 9, 12, 13, 19, 21, 35, and 36

Appellant contends claims 6, 7, 9, 12, 13, 19, 21, 35, and 36, would not have been obvious over Volodarsky, Ueda, Noguchi, and Thiessen (Appeal Br. 15–19).

Claims 6, 19, 35, and 36

With respect to claims 6 and 19, the issue presented by the arguments is whether the combination of Volodarsky, Ueda, Noguchi, and Thiessen teaches, suggests, or otherwise renders obvious “outputting as the another audible notification a number of spoken words whose literal content includes the existence of the flame,” as recited in claim 6 and as commensurately recited in claims 19, 35, and 36 (Appeal Br. 15–16, 18–19).

Appellant points to a teaching in Thiessen, not cited by the Examiner (Final Act. 20–21), to argue “Thiessen . . . merely discloses a carbon monoxide (CO) detector. . . [which is] not the same as the detection of a flame” (Appeal Br. 15). The Examiner, however, relies on Thiessen’s teaching of “an environmental condition sensor which senses smoke, heat, gas, *flame* and/or rate of heat rise” (Final Act. 20 (citing Thiessen, 1:37–42 (citing U.S. Patent No. 5,189,392))).

As we noted in our previous decision (Dec. 9–10), we determine claims 6 and 19 would have been obvious over Volodarsky, Ueda, White, and Thiessen. As discussed *supra*, we agree with the Examiner’s finding that the combination of Volodarsky and Ueda teaches a system which provides notifications that an apparatus was placed in the operated state (Final Act. 20–21; Ans. 13–14). Further, Thiessen teaches “inform[ing] designated, responsible persons . . . of the nature of each sensed event”

(Thiessen 3:12–18; *see* Dec. 9). Additionally, Thiessen teaches “an environmental condition sensor which senses . . . flame” (Thiessen 1:40–42; Final Act. 20; Ans. 13–15). Thus, a sensed event may be the existence of a flame.

In the Reply Brief, Appellant argues “the device to which Thiessen . . . is directed does not even disclose the detection of a flame[] inasmuch as Thiessen . . . mentions in its background information . . . that a prior art device performs an automatic shutdown in response to a detection of a flame” (Reply Br. 3). Rather, according to Appellant, Thiessen’s disclosure is directed to detecting carbon monoxide (*id.*).

“The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain” (*In re Heck*, 699 F.2d 1331, 1333 (Fed. Cir. 1983) (quoting *In re Lemelson*, 397 F.2d 1006, 1009 (CCPA 1968))). The patent cited in Thiessen teaches a sensor which senses flame (Thiessen 1:40–42). That it may take action in response to that does not change that it teaches detecting a flame.

Appellant’s contention that Thiessen performing an automatic shutdown in response to detection of a flame “teaches away” from the claimed invention, is untimely as this contention was not proffered in the Appeal Brief (*See* 37 C.F.R. § 41.41(b)(2); *see also Optivus Tech.*, 469 F.3d at 989).

Appellant has not persuasively addressed the Examiner’s findings. Thus, we are not persuaded Thiessen fails to teach or suggest “outputting as the another audible notification a number of spoken words whose literal

content includes the existence of the flame,” as recited in claim 6 and commensurately recited in claims 19, 35, and 36. Accordingly, we are not persuaded the Examiner erred in finding the combination of Volodarsky, Ueda, Noguchi, and Thiessen teaches, suggests, or otherwise renders obvious the limitations as recited in claims 6, 19, 35, and 36.

Claim 12

The argued issue, with respect to claim 12, is whether the Examiner has shown the combination of references teaches “detecting a touch input on a controller of the apparatus; and ‘providing another audible notification . . . includ[ing] *an identity of the controller*’” (Appeal Br. 16–17). According to Appellant, “Thiessen . . . includes no disclosure whatsoever of the touching of a keyboard panel constituting a ‘sensed even’ that results in a spoken word message” (*id.* at 16).

We are not persuaded. As noted in our Decision (Dec. 11–12), Thiessen teaches input “panel **114** interfaces the user or installer with the system **10**, and allows him or her to configure and to operate the system” (Thiessen 7:43–46; *see id.* at 4:24–26, 8:5–8; Ans. 15). Indeed, Thiessen illustrates in Figure 6 a panel that we determine an ordinarily skilled artisan would understand to be a controller of the apparatus (Thiessen, 7:43–46, Fig. 6). Further, we determine an ordinarily skilled artisan would understand the panel to detect a touch input, i.e, pressing one of the illustrated buttons (*id.*). Appellant has not defined explicitly “touch input” in the Specification. However, in light of the Specification, we determine the panel illustrated in Figure 6 and the further description of use of “other suitable user interface arrangements” teaches the recited controller that detects a touch input.

Thus, Thiessen’s panel 114 teaches the controller detects touch input. Thiessen further teaches a “voice/data unit,” which “allow[s] text or voice messages to be communicated” for monitoring (*id.* at 3:45–51). Appellant contends that audible notification does not include an “*identity of the controller*” (Reply Br. 4). The Examiner, however, determines an ordinarily skilled artisan would have found it obvious “to provide an audible notification representative of an identity of the controller in order to allow extensive safety measure and to provide a more secure apparatus” (Final Act. 22).

Appellant further argues Thiessen:

would not provide a spoken word message regarding the nature of a touch input on a keyboard panel or of any corrective action taken by the system because touch inputs to a keyboard panel are not the type of thing that need to be communicated to a property owner or a building manager

(Appeal Br. 16–17). This argument and Appellant’s argument that a touch input is not the “type of ‘sensed event’” for which Thiessen would generate a notification (Appeal Br. 16; Reply Br. 4) do not sufficiently address the Examiner’s conclusion of obviousness based on the teachings of the references, particularly Thiessen’s teaching of using of voice/data unit for *remote operation* (Thiessen 7:43–53). The Examiner has articulated a reason that a person of ordinary skill in the art would have provided a notification of the identity of the controller (Final Act. 20), and we find the Examiner’s reasoning sufficient to support the conclusion of obviousness because identifying a controller that is being operated is indeed a type of monitoring. Appellant has proffered insufficient evidence or argument to persuade us of error in the Examiner’s finding. Accordingly, Appellant has

not persuaded us the combination of Volodarsky, Ueda, Noguchi, and Thiessen teaches or suggests the limitation as recited in claim 12.

Claim 13

Appellant contends the Examiner erred in finding the combination of Volodarsky, Ueda, and Thiessen teaches “wirelessly receiving from a remote device a command representative of a change to the operated state,” as recited in claim 13 (Appeal Br. 17). Specifically, Appellant argues that although “the word ‘wirelessly’ can be found in Volodarsky and that the generation of commands can be found in Thiessen, . . . [t]he mere existence of these two words in two separate references does not constitute a disclosure, teaching, or suggestion of ‘wirelessly receiving’” (*id.*).

We are not persuaded. As stated in our previous Decision (Dec. 12), Volodarsky teaches a “range transmitter unit **50** can be in wireless communication with the sensor assembly **20**” (Volodarsky ¶ 35; Final Act. 23). Furthermore, as the Examiner correctly finds, Thiessen teaches a “remote device or user interface provides . . . a command that will change the operating state in accordance with the command” (Final Act. 23 (citing Thiessen 3:23–31, 4:26–30, 7:43–52); Ans. 16–17). Thiessen also describes the system “provides relevant information to the owner or other responsible persons, e.g., via a telephone link” and these selected persons “may carry a pager or a cellular phone” (Thiessen 2:1–3, 3:45–48). The Examiner applies Volodarsky’s wireless transmission to Thiessen’s received command signals, and determines the resulting combination teaches wirelessly transmitted and, correspondingly, wirelessly received command signals (Final Act. 23).

As we previously noted (Dec. 12–13), Appellant’s argument (Appeal Br. 17) improperly attacks Volodarsky and Thiessen individually when the rejection is based on a combination of Volodarsky and Thiessen (*Keller*, 642 F.2d at 426). Thus, Appellant does not persuade us the combination of Volodarsky and Thiessen fails to teach the disputed limitation. We further note Appellant’s own Specification fails to provide any details as to how the system wirelessly receives aside from disclosing that a wireless transceiver is used, that the wireless transceiver apparatus “may provide wireless communications that follow, for instance, the IEEE 802.11 protocol” and that “the wireless transceiver apparatus 42 may additionally provide a wired output that can be *directly wired* to the security system” (Spec. ¶¶ 24, 44, 49–52 (emphasis added)). The lack of detail in the Specification persuades us an ordinarily skilled artisan would understand how to connect two devices wirelessly. Thus, Appellant has not persuaded us the Examiner erred in finding the combination of Volodarsky, Ueda, and Thiessen teaches “wirelessly receiving from a remote device a command representative of a change to the operated state.”

Appellant additionally argues the Examiner’s motivation – “to send a command representative of a change to the operated state in order to enable a user to configure the operation of the system according [to] his/her needs, to allow extensive safety measures and to provide a more secure apparatus” (Final Act. 23) – does not have anything to do with wirelessly receiving a command (Appeal Br. 17). As discussed above, both references describe wireless communication (*see* Volodarsky ¶ 35; Thiessen 2:1–3, 3:45–48). Appellant has not proffered sufficient evidence or argument to persuade us of error in the Examiner’s articulated reasoning. Both references describe

wireless communication and the Examiner has articulated why an ordinarily skilled artisan would have modified Volodarsky to receive from a remote device a command.

Accordingly, we are not persuaded the Examiner erred in finding the combination of Volodarsky, Ueda, and Thiessen renders obvious “wirelessly receiving from a remote device a command representative of a change to the operated state,” as recited in claim 13.

Remaining Dependent Claims

Appellant does not separately argue the remaining dependent claims, claims 7, 9, and 21, instead relying on the arguments set forth for claims 6, 5, and 14 (Appeal Br. 16–17). For the reasons set forth above, Appellant has not persuaded us of error in the Examiner’s findings. Accordingly, we are not persuaded the Examiner erred in finding the combination of Volodarsky, Ueda, Noguchi, and Thiessen renders obvious claims 7, 9, and 21.

Conclusion

For the reasons set forth above, we sustain the rejection of claims 6, 7, 9, 12, 13, 19, 21, 35, and 36 under 35 U.S.C. § 103(a) for obviousness over Volodarsky, Ueda, Noguchi, and Thiessen.

35 U.S.C. § 103: Claims 27–29

Appellant contends the combination of Volodarsky, Ueda, Noguchi, White, and Thiessen, fails to teach the elements recited in claim 27 based on the arguments set forth with respect to claim 14 (Appeal Br. 19–20). Similarly, Appellant contends the combination of Volodarsky, Ueda,

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Noguchi, White, and Heilman fails to teach the elements recited in claims 28 and 29 based on the arguments set forth with respect to claim 14 (Appeal Br. 20). For the reasons set forth above, we are not persuaded the Examiner erred in determining claim 14 would have been obvious over the cited prior art. Accordingly, we sustain the rejections of claim 27–29 under 35 U.S.C. § 103 for obviousness.

CONCLUSION

The Examiner’s rejections are AFFIRMED.

More specifically,

We sustain the Examiner’s rejection under 35 U.S.C. § 103 of claims 1, 3–14, and 16–38 as being obvious.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, 38	103(a)	Volodarsky, Ueda, Noguchi	1, 5, 8, 10, 11, 14, 18, 20, 22, 23, 32–34, 37, 38	
3, 4, 16–17, 24–26, 30, 31	103(a)	Volodarsky, Ueda, Noguchi, White	3, 4, 16–17, 24–26, 30, 31	
6, 7, 9, 12, 13, 19, 21, 35, 36	103(a)	Volodarsky, Ueda, Noguchi, Thiessen	6, 7, 9, 12, 13, 19, 21, 35, 36	
27	103(a)	Volodarsky, Ueda, Noguchi, White, Thiessen	27	
28, 29	103(a)	Volodarsky, Ueda, Noguchi, White, Heilman	28, 29	
Overall Outcome			1, 3–14, 16–38	

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