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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/156,038	01/15/2014	Brien Buckman	1615/77	4680

25297 7590 03/25/2020

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ART UNIT	PAPER NUMBER
3697	

NOTIFICATION DATE	DELIVERY MODE
03/25/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRIEN BUCKMAN, KIMBERLY PEYTON, and MARK LULIC

Appeal 2019-005033
Application 14/156,038
Technology Center 3600

Before JEREMY J. CURCURI, ADAM J. PYONIN, and MICHAEL J. ENGLE, *Administrative Patent Judges.*

PYONIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[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 MasterCard International Incorporated. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to facilitating access to transportation services, by providing "preauthorization, route planning, and journey tracking steps" for "toll roads" and "other transportation services, such as bus, rail, ferry, or air transportation." Spec. 15:6–10. Claims 1–5, 7–16, and 18–23 are pending; claims 1, 12, and 23 are independent. Appeal Br. 20–25. Claim 1 is reproduced below for reference (emphases added):

> 1. A system for facilitating access to transportation services, the system comprising:
>
> an application configured to execute on a mobile phone, the application being configured to receive or determine information regarding a route to be traveled by a user, to identify a transportation service associated with the route and an authority for the identified transportation service, to obtain cost information from the identified authority for accessing the transportation service, present the cost information to the user, receive input from the user indicating selection of the route, *obtain preauthorization from the authority for the user to access the transportation service, wherein, prior to the user beginning to travel the route, the application identifies a plurality of transportation service providers* whose toll gates will be accessed during travel of the route and wherein *the application includes transponder interface configured to emulate a toll transponder and communicate with toll gate transponders using protocols used by dedicated transponder devices*;
>
> at least one server including a processor and memory, the server being configured to communicate with the application and with the authority to facilitate the obtaining of the preauthorization to access the transportation service, wherein, *prior to the user beginning to travel the route, the at least one server is configured to receive a request for the preauthorization* from the application, generate and send a preauthorization request to the authority, receive a preauthorization approval from the authority and wherein the request for preauthorization

includes information for identifying an account of the user and an amount to be charged for accessing the transportation service; and

wherein the authority stores the preauthorization along with user credentials prior to the user beginning travel along the route and, during travel of the route by the user:

receives the user credentials, accesses the stored preauthorization, and uses the stored preauthorization to obtain payment for the transportation service.

References and Rejections[2]

The Examiner relies on the following prior art:

Name	Reference	Date
Yamauchi	US 2003/0115095 A1	June 19, 2003
Chan	US 2011/0000962 A1	Jan. 6, 2011
Nuzzi	US 2013/0030964 A1	Jan. 31, 2013
Underwood	US 2013/0090991 A1	Apr. 11, 2013
Willis	US 2014/0025444 A1	Jan. 23, 2014

Claims 1–5, 7, 8, 11–16, 18, 19, 22, and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable in view of Yamauchi, Underwood, Chan, and Willis. Final Act. 6.

Claims 9, 10, 20, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable in view of Yamauchi, Underwood, Chan, Willis, and Nuzzi. Final Act. 17.

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) (2018).

[2] The Examiner has withdrawn the patent eligibility rejection. *See* Ans. 3.

Appellant argues that each of the cited references "fails to disclose, teach, or suggest the subject matter of the independent claims." Appeal Br. 17. Particularly, Appellant contends "[i]n contrast to [Chan's] obtaining authorization at the toll gate reader, each of the independent claims recites the preauthorization request is sent to the authority prior to the user beginning travel of a pre-planned route." *Id*. Appellant further contends Chan's disclosure of a "single transportation service" does not teach the claimed "planned route involving multiple transportation service." *Id*. Moreover, Appellant contends the cited art provides "no disclosure that the toll tag device or that the mobile phone with the toll tag device emulates a toll transponder by communicating with the toll transponder using the protocols used by dedicated transponder devices." *Id*. at 18.

Appellant's arguments focus on the individual teachings of each reference, whereas the Examiner's rejection is based on the combined teachings of Yamauchi, Underwood, Chan, and Willis. *See* Ans. 4 ("[T]he rejection is based on a combination of references, not a single reference."). We do not find the Examiner errs in determining the claims are obvious in view of the prior art. *See KSR Int'l Co. v. Teleflex Inc*., 550 U.S. 398, 415, 418 (2007) ("Neither the enactment of § 103 nor the analysis in *Graham* disturbed this Court's earlier instructions concerning the need for caution in granting a patent based on the combination of elements found in the prior art," and "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents."). 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 discussion of claim 1 primarily for emphasis.

Regarding the claimed preauthorization "prior to the user beginning to travel the route," we agree with the Examiner that one of ordinary skill would have combined Underwood's "planned user travel; and Chan['s] identif[ying] preauthorization for transit system access, and preauthorization occurring subsequent to a user accessing the transit service." Final Act. 20; Underwood ¶¶ 2, 38; Chan ¶¶ 44, 49. For at least this reason, we are not persuaded the Examiner errs in finding the disputed limitation taught or suggested by the cited references. Further, as cited by the Examiner, Chan discloses "[a] pre-authorization amount may be generated for a single transit system use or for a set of uses of the system (i.e., multiple trips)," which "may be stored in a transit system or issuer database." Chan ¶ 44; *see also id*. at 49. We find Chan's teaching of "multi-use pre-authorization," for multiple distinct trips, teaches or suggests pre-authorization prior to travelling the route, as claimed. Chan ¶ 44; Final Act. 9.

Regarding the claimed multiple transportation services, Appellant does not challenge the Examiner's reliance on Willis for this limitation. *See* Final Act. 20 ("Willis identifies a plurality of transportation services."); Willis ¶¶ 4, 5. Nor does Appellant provide technical reasoning or substantive argument to show the Examiner errs in combining such teaching of Willis with the other cited references. *See* Appeal Br. 17; Reply Br. 4. Accordingly, we do not find the Examiner errs in determining the disputed limitations are obvious in view of the cited references.

Regarding the claimed "the application includes transponder interface configured to emulate a toll transponder and communicate with toll gate transponders using protocols used by dedicated transponder devices," we agree with the Examiner that Chan in view of Willis teaches such interface.

See Final Act. 10, 11; Chan ¶ 29; Willis ¶¶ 27–29. Chan teaches "the payment device may be integrated into another device (e.g., a mobile phone[])]," and Appellant fails to show such integrated payment features are substantively distinguishable from the claimed method of using a mobile phone application to emulate a toll transponder and communicate with a toll gate.[3] Chan ¶ 29. Further, we agree with the Examiner that one of ordinary skill would have modified Chan's mobile phone (emulating a toll transponder) with Willis's teaching of "permitting a mobile phone to interact with toll gate transponders using protocols used by dedicated transponder devices." Final Act. 20; *see also* Willis Fig. 1; ¶¶ 101, 102. Thus, we are not persuaded the Examiner errs in determining the disputed limitations are obvious in view of the combination of cited references.

We are not persuaded the Examiner errs in finding independent claim 1 to be obvious in view of the cited references. Appellant does not present separate substantive arguments for the remaining claims. *See* Appeal Br. 18. Thus, we sustain the Examiner's obviousness rejection of claims 1–5, 7–16, and 18–23.

[3] Separately, we note that it is not clear, from the record before us, how a mobile phone would communicate with a toll gate transponder without using the protocols used by dedicated transponders.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Basis/Reference(s)	Affirmed	Reversed
1–5, 7, 8, 11–16, 18, 19, 22, 23	103	Yamauchi, Underwood, Chan, Willis.	1–5, 7, 8, 11–16, 18, 19, 22, 23	
9, 10, 20, 21	103	Yamauchi, Underwood, Chan, Willis, Nuzzi	9, 10, 20, 21	
Overall Outcome			1–5, 7–16, 18–23	

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