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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte COSTA APOSTOLAKIS

Appeal 2019-005532
Application 14/698,807
Technology Center 2600

Before ALLEN R. MacDONALD, KALYAN K. DESHPANDE, and
ADAM J. PYONIN, *Administrative Patent Judges*.

MacDONALD, *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 1–20. We have jurisdiction under
35 U.S.C. § 6(b).

We affirm.

¹ Appellant identifies the real party in interest is the inventor, Costa
Apostolakis. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A fluid metering device, comprising:
 - [A.] a fluid channel;
 - [B.] a flow measuring unit configured to measure a flow amount of fluid passing through the fluid channel;
 - [C.] ***a monitoring unit configured to monitor fluid usage information*** to determine whether the fluid ***usage*** information meets a predetermined condition;
 - [D.] a battery; and
 - [E.] a wireless communications unit powered by the battery;
 - [F.] wherein the fluid usage information is processed from the flow amount of fluid passing through the fluid channel, and
 - [G.] wherein the wireless communications unit is powered up if
 - [i.] the fluid ***usage*** information meets the predetermined condition and
 - [ii.] the fluid ***usage*** information is transmitted using the wireless communications unit.

REFERENCES²

The Examiner relies on the following references:

Name	Reference	Date
Pryor	US 2011/0273304 A1	Nov. 10, 2011
Salazar	US 2012/0078548 A1	Mar. 29, 2012
Laird	US 2014/0361908 A1	Dec. 11, 2014
Contra Costa Water District (CCWD)	“How To Read Your Water Meter”	Oct. 13, 2008

REJECTIONS

A.

The Examiner rejects claims 1–6, 8–15, 17, and 18, under 35 U.S.C. § 103 as being unpatentable over the combination of Laird, Pryor, and CCWD. Final Act. 10–19.

Appellant argues separate patentability for claim 1. Appeal Br. 7–13. Appellant does not present separate arguments for claims 2–6, 8–15, 17, and 18. We select claim 1 as the representative claim for this rejection. Except for our ultimate decision, we do not address the merits of the § 103 rejection of claims 2–6, 8–15, 17, and 18 further herein.

B.

The Examiner rejects claims 19 and 20 under 35 U.S.C. § 103 as being unpatentable over the combination of Laird and Pryor. Final Act. 19–22.

² All citations herein to patent and pre-grant publication references are by reference to the first named inventor only.

Appellant argues separate patentability for claim 19. Appeal Br. 13–15. Appellant does not argue separate patentability for claim 20. We select claim 19 as the representative claim for this rejection. Except for our ultimate decision, we do not address the merits of the § 103 rejection of claim 20 further herein.

C.

The Examiner rejects claims 7 and 16 under 35 U.S.C. § 103 as being unpatentable over the combination of Laird, Pryor, CCWD, and Salazar. Final Act. 23.

To the extent that Appellant discusses claims 7 and 16, Appellant merely references the arguments directed to claim 1. Appeal Br. 16. Such a repeated argument (or referenced argument) is not an argument for “separate patentability.” Thus, the rejection of these claims turns on our decision as to claim 1. Except for our ultimate decision, we do not address the merits of the § 103 rejection of claims 7 and 16 further herein.

OPINION

We have reviewed the Examiner’s rejections in light of Appellant’s Appeal Brief and Reply Brief arguments.

Appellant raises the following case law point.

Appellant respectfully submits that in meeting its burden of establishing a prima facie case of unpatentability, a rejection must show that the reference **or combination of references** teach or suggest **all** of the elements of the claim. *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)(overturning the Examiner’s rejections under both 35 U.S.C. § 102 and also **35 U.S.C. § 103** for not teaching or suggesting all of the claimed elements).

Appeal Br. 8 (emphasis added).

Appellant's particular reliance on *Royka* is ill-founded subsequent to *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 3985 (2007). *Royka* is based on the now limited pre-*KSR* teaching-suggestion-motivation theory of § 103 rejection. Appellant fails to acknowledge the modifying effect on *Royka* of the Court's Decision in *KSR*. The appropriate rule subsequent to *KSR* is more correctly that to establish a *prima facie* case of obviousness of a claimed invention, all of the claim limitations ***must be taught, suggested, or rendered obvious*** by the prior art. We evaluate Appellants' argument and Examiner's rejection on this basis, rather than the pre-*KSR* basis set forth by Appellant.

A. Claim 1

A.1.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

A first reason for reversal of the rejection is that the single paragraph [287] of *Pryor* relied upon fails to go far enough to cure the first admitted deficiency in *Laird*. That is, it is respectfully submitted that ***Pryor fails to disclose*** a monitoring unit configured to determine whether the fluid ***usage*** information meets a predetermined condition.

A second reason for reversal of the rejection is that the single paragraph of *Pryor* relied upon fails to go far enough to cure the second admitted deficiency in *Laird*. Specifically, ***Pryor fails to disclose*** a wireless communications unit being powered up if the fluid ***usage*** information meets the predetermined condition and that the fluid ***usage*** information is transmitted using the wireless communications unit.

Appeal Br. 9 (emphasis added).

Indeed, [in *Pryor*,] no mention whatsoever can be found in par. 287 or elsewhere of monitoring fluid ***usage*** information.

Rather, Pryor merely mentions a “water level” such as “in springs or wells” that may be measured using “sensors of the external environment, such as a water level sensor.” Pars. 41, 259, 286, 287.

It is respectfully submitted that it is not understood how the water level sensors of Pryor could ever be used to monitor water *usage* information within a fluid metering device. Indeed, the principles of measuring water flow or fluid *usage* information is very different from measuring a water level in a spring or well. Pryor never mentions or suggests fluid *usage* information, as that term is understood by one of ordinary skill in the art, both in view of the present application and the present claims.

Appeal Br. 10–11 (emphasis added).

We agree with Appellant’s argument to the extent that water “usage” information is not taught by Pryor. However, Appellant recognizes that this alone is not determinative given the teachings of Laird and CCWD. As addressed directly below, Appellant then argues “even if Laird and CCWD do show a fluid metering device . . . the remaining citation to Pryor fails to go far enough to provide the material missing from Laird and CCWD.”

Appeal Br. 11. Thus, we find Appellant’s argument unpersuasive of Examiner error.

A.2.

Also, Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

Additionally, triggering transmission of images upon a spring or well level “reaching a certain point” as indicated by a “water level sensor” simply *does not equate* to a wireless communication device being powered up if fluid usage information (“processed from the flow amount of fluid passing through the fluid channel”) meets a predetermined condition.

That is, even if Laird and CCWD do show a fluid metering device, comprising a monitoring unit configured to monitor fluid usage information processed from a flow amount of fluid, along with a wireless communications unit powered by a battery, the remaining citation to Pryor fails to go far enough to provide the material missing from Laird and CCWD. Specifically, *Pryor fails to suggest a wireless communication device being powered up if a fluid usage information meets a predetermined condition*. To find otherwise would be to say any water-related triggering event (i.e., spring or well water level) causing transmission of any data not directly related to said trigger (i.e., photos) would suggest Appellant's claimed feature of a wireless communication device being powered up if fluid usage information meets a predetermined condition and transmission of said fluid usage information.

Appeal Br. 11 (emphasis added).

We are unpersuaded by Appellant's argument. We determine that Pryor at paragraph 287 teaches that a predetermined condition sensed by a water "level" meter can trigger an operation of a device. Further, contrary to Appellant's argument, we determine that this is sufficient to suggest that other water sensing devices such as those metering fluid usage information (as taught by Laird and CCWD) can trigger operation of a device.

A.3.

Further, Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

The proposed combination of Laird, Pryor, and CCWD is improper because the relied upon teaching of Pryor changes the principle of operation of Laird (and CCWD).

...

As discussed above, it is respectfully submitted that it is not understood how the water level sensors of Pryor could ever be used to monitor water *usage* information within a fluid

metering device. Indeed, the principles of measuring water flow or fluid usage information are very different from measuring a water level in a spring or well. Pryor never mentions or suggests fluid *usage* information, as that term is understood by one of ordinary skill in the art, both in view of the present application and the present claims.

Appeal Br. 12 (emphasis added).

Appellant's argument is founded on the same points Appellant argues above in sections A.1. and A.2. We are unpersuaded by this argument for the same reasons discussed *supra*.

B. Claim 19

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 19 under 35 U.S.C. § 103.

As discussed above, Pryor merely mentions a “water level” such as “in springs or wells” that may be measured using “sensors of the external environment, such as a water level sensor.” Pars. 41, 259, 286, 287.

It is respectfully submitted that a wireless communications unit being powered up by the controller if the flow amount of fluid meets or exceeds the predetermined threshold and the flow amount of fluid being transmitted using the wireless communications unit is not taught or suggested by a spring or water level reaching a certain point as indicated by a water level sensor.

Appeal Br. 15.

The proposed combination of Laird, Pryor, and CCWD [sic] is improper because the relied upon teaching of Pryor changes the principle of operation of Laird.

Id.

These arguments repeat the arguments made as to claim 1. We are unpersuaded by Appellant's arguments for the reasons already discussed above as to claim 1.

CONCLUSION

The Examiner has not erred in rejecting claims 1–20 as being unpatentable under 35 U.S.C. § 103.

The Examiner's rejections of claims 1–20 as being unpatentable under 35 U.S.C. § 103 are **affirmed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–6, 8–15, 17, 18	103	Laird, Pryor, CCWD	1–6, 8–15, 17, 18	
7, 16	103	Laird, Pryor, CCWD, Salazar	7, 16	
19, 20	103	Laird, Pryor	19, 20	
Overall Outcome			1–20	

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