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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHAEL J. MOUSER, PHILIP A. WEAVER, and
DONALD J. FINNEY

Appeal 2019-006466¹
Application 14/858,161²
Technology Center 3600

Before PHILLIP J. KAUFFMAN, TARA L. HUTCHINGS, and
ALYSSA A. FINAMORE, *Administrative Patent Judges*.

HUTCHINGS, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Our Decision references Appellant’s Specification (“Spec.,” filed Sept. 18, 2015), Election and Amendment (“Election and Amendment,” filed Jan. 24, 2017), Appeal Brief (“Appeal Br.,” filed May 30, 2019), Reply Brief (“Reply Br.,” filed Aug. 28, 2019), Notice of Change in Real Party (“Notice,” filed Sept. 5, 2019), the Examiner’s Answer (“Ans.,” mailed June 28, 2019), and Final Office Action (“Final Act.,” mailed May 30, 2018).

² We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant indicates that the real party in interest is “The Hertz Corporation.” Notice 1.

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 4–7, 12, 13, 16–19, and 24.³ We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

CLAIMED INVENTION

Appellant’s claimed invention relates to user authentication for an occupant of a vehicle, such as a rental vehicle. Spec. ¶ 2.

Claims 1 and 13 are the independent claims on appeal. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method implemented by a computing device in a vehicle, comprising:
 - obtaining identifying information from an occupant of the vehicle, wherein the identifying information is received via an input device operatively connected to the computing device;
 - determining whether the computing device has connectivity to a remote authentication server;
 - based on a determination that the computing device lacks connectivity to the remote authentication server, temporarily enabling full operation of the vehicle until the computing device has connectivity to the remote authentication server; and
 - based on a determination that the computing device has connectivity to the remote authentication server:
 - transmitting a request to the remote authentication server, wherein the request includes the identifying information and a vehicle identifier of the vehicle, and

³ The Appeal Brief includes claims 8–11 and 20–23 in the Appendix of Claims. However, these claims have been withdrawn. Final Act. 2; *see also* Election and Amendment 10 (indicating “claims 1, 4-7, 12-13, 16-19, and 24 are elected, and [non-elected] claims 2-3, 8-11, 14-15, 20-23 are withdrawn”).

requests that the remote authentication server determine, based on the identifying information and the vehicle identifier, whether the occupant is authorized to operate the vehicle; and

controlling whether full operation of the vehicle is enabled or disabled based on a response sent from the remote authentication server to a mobile device of the occupant that is separate from the computing device.

REJECTIONS

Claims 6 and 18 are rejected under 35 U.S.C. § 112(b) as indefinite for failing to particularly point out and distinctly claim the subject matter Appellant regards as the invention.

Claims 1, 5–7, 12, 13, 17–19, and 24 are rejected under 35 U.S.C. § 103 as unpatentable over Okada (US 7,679,486 B2, iss. Mar. 16, 2010) and Hoyos (US 2015/0363986 A1, pub. Dec. 17, 2015).

Claims 4 and 16 are rejected under 35 U.S.C. § 103 as unpatentable over Okada, Hoyos, and Drori (US 5,650,774, iss. July 22, 1997).

ANALYSIS

Indefiniteness

The Examiner rejects claims 6 and 18 under 35 U.S.C. § 112(b) as indefinite. Final Act. 3. More specifically, the Examiner concludes that claim 6 should depend from claim 5, and that claim 18 should depend from claim 17. *Id.* “Appellant agrees with the Examiner.” Appeal Br. 3. Therefore, we sustain the rejection of claims 6 and 18 under 35 U.S.C. § 112(b).

Obviousness

Independent Claims 1 and 13, and Dependent Claims 4, 7, 12, 16, 19, and 24

We are not persuaded by Appellant’s argument that the Examiner erred in rejecting claims 1 and 13 under 35 U.S.C. § 103, because Okada and Hoyos do not teach or suggest “controlling whether full operation of the vehicle is enabled or disabled based on a response sent from the remote authentication server to a mobile device of the occupant that is separate from the computing device,” as recited in claim 1, and similarly recited in claim 13. Appeal Br. 4–5.

Appellant argues that Hoyos does not teach “sending the authorization notification to the mobile device when the vehicle has already been temporarily enabled,” as recited in claim 1, and similarly recited in claim 13. Appeal Br. 4–5. Appellant contends that Hoyos, instead, “only discloses sending the authorization notification to the mobile device as part of the initial authorization and enablement of the operation of the vehicle.” *Id.* at 4.

Appellant’s argument does not apprise us of Examiner error, at least because the Examiner relies on Okada for teaching of an authorization notification when the vehicle has been temporarily enabled. Final Act. 5 (citing Okada 15:20–23), 9; *see also* Okada 15:18–23 (describing that a temporarily-enabled vehicle is shifted from a temporary permission mode to an authentic mode after central authentication is completed in agreement). The Examiner relies on Hoyos only for teaching that it would have been obvious to modify Okada to send the authorization notification to a mobile device of the occupant, instead of the computing device. Final Act. 5 (citing Hoyos ¶¶ 25, 120), 9; *see also* Hoyos ¶ 120 (describing that an authorization

notification is sent to an on-board computer or a mobile device of the user attempting to gain access to the vehicle).

Therefore, we sustain the rejection of independent claims 1 and 13 under 35 U.S.C. § 103 as unpatentable over Okada, Hoyos, and Drori. Appellant does not provide additional arguments with respect to the rejections of dependent claims 4, 7, 12, 16, 19, and 24 under 35 U.S.C. § 103. *See* Appeal Br. 6 (asserting that the dependent claims are allowable by virtue of their dependence from an allowable base claim). Therefore, we also sustain the rejections of claims 4, 7, 12, 16, 19, and 24 under 35 U.S.C. § 103.

Dependent Claims 5 and 17

We are persuaded by Appellant's argument that the Examiner erred in rejecting claim 5 under 35 U.S.C. § 103 because Hoyos fails to teach that the response sent from the remote authentication server to a mobile device "includes an authentication code," as required by claim 5. Appeal Br. 5. The Examiner finds that sending an authorization notification from a system server to a mobile device, as taught by Hoyos at paragraph 120, teaches the claimed response includes an authentication code. Final Act. 6. Yet, Hoyos teaches that the authorization notification sent to the mobile device identifies the user, and indicates that the user has been authenticated and authorized. Hoyos ¶ 121.

In the Answer, the Examiner elaborates that the term "'authentication code' is not defined within the claim" and, thus, could be interpreted as "any signal, representation, [or] transmission, etc." Ans. 4. We disagree. Although Appellant's Specification does not define "authentication code," Appellant's Specification describes an "authentication code" consistent with

its plain meaning, i.e., as a code, such as a personal identification number (PIN) or password, used to perform authentication. *See, e.g.*, Spec. ¶¶ 6, 8, 22, 33, 35, 45, 48. For example, paragraph 33 of the Specification explains that the authentication system “receive[s] an authentication code, such as a PIN or password, from the user (e.g., on the touch display 12) and either authenticate[s] the PIN locally or transmit[s] to the authentication server 36 for authentication.” In our view, one of ordinary skill in the art would understand, in light of the Specification, that the claimed “authentication code” is not any signal, but rather a code used to perform authentication. No such authentication code is evident from the portion of Hoyos relied upon by the Examiner. Therefore, we do not sustain the rejection of claim 5 under 35 U.S.C. § 103 as unpatentable over Okada and Hoyos.

Claim 17 recites language similar to claim 5. Accordingly, we do not sustain the rejection of claim 17 under 35 U.S.C. § 103 as unpatentable over Okada and Hoyos for the same reasons set forth above with respect to claim 5.

Dependent Claims 6 and 18

Claim 6 depends from claim 1, and claim 18 depends from claim 13. Appellant acknowledges that claim 6 should depend from claim 5, and that claim 18 should depend from claim 17. Appeal Br. 3. However, because a corresponding amendment has not been entered, the proper scope of these claims remains unclear. Therefore, we do not sustain, *pro forma*, the rejection of these claims under 35 U.S.C. § 103 as unpatentable over Okada and Hoyos. *See, e.g., In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary skill

in the art would have to make speculative assumptions concerning the meaning of claim language.).

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
6, 18	112(b)	Indefiniteness	6, 18	
1, 5–7, 12, 13, 17–19, 24	103	Okada, Hoyos	1, 7, 12, 13, 19, 24	5, 6, 17, 18
4, 16	103	Okada, Hoyos, Drori	4, 16	
Overall Outcome			1, 4, 6, 7, 12, 13, 16, 18, 19, 24	5, 17

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 IN PART