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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* JOHN J. CLARK and ADAM S. BERGMAN

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Appeal 2020-000892  
Application 15/380,116  
Technology Center 2600

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Before MAHSHID D. SAADAT, JAMES R. HUGHES, and  
STACY B. MARGOLIES, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–21, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</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 Sensormatic Electronics, LLC. Appeal Br. 3.

## STATEMENT OF THE CASE

### *Introduction*

Appellant's disclosure is directed to "Electronic Article Surveillance ('EAS') detection systems" and "implementing systems and methods for responding to EAS alarm's issuance resulting from a detection of an active EAS security tag's presence in a surveillance zone." Spec. ¶¶ 1, 4. In response to determining that a mobile device is within a specific communication range, "the mobile device receives a user input for inputting a reason code specifying a reason for the EAS alarm's issuance." Spec. ¶ 4. In response to the reason code, a user of the mobile device may be prompted "to indicate at least one detail associated with human activities associated with the EAS alarm's issuance" and/or "the mobile device's voice or sound detection and recognition operations are automatically initiated or enabled." Spec. ¶ 5.

Claim 1 is illustrative of the invention and reads as follows:

1. A method for responding to an Electronic Article Surveillance ("EAS") alarm's issuance, comprising:

disabling alarm response functions of a mobile device to prevent acknowledgement of the EAS alarm by a user of the mobile device while the user is not in proximity of EAS equipment issuing the EAS alarm;

receiving, by the mobile device, a short range communication signal from a fixed device located in proximity to the EAS equipment issuing the EAS alarm;

in response to the short range communication signal's reception, automatically enabling the previously disabled alarm response functions of the mobile device so that the user of the mobile device is able to provide acknowledgement of the EAS alarm to a system;

receiving, by the mobile device, a user input for inputting a reason code specifying a reason for the EAS alarm's issuance;

communicating the reason code from the mobile device to an external device for causing a deactivation of the EAS alarm's issuance;

determining, by the mobile device, whether the reason code is a certain reason code of a plurality of possible reason codes; and

automatically activating operations of select input devices of the mobile device to obtain information about a surrounding environment in response to a determination that the reason code is the certain reason code of the plurality of possible reason codes.

#### *The Examiner's Rejection*

Claims 1–21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Shafer (US 2014/0351098 A1; pub. Nov. 27, 2014), Rocas (US 2014/0126010 A1; pub. May 8, 2014), and Allen (US 2009/0174544 A1; pub. July 9, 2009). *See* Final Act. 3–12.

#### ANALYSIS

With respect to claim 1, the Examiner finds Shafer discloses (1) a method for responding to an Electronic Article Surveillance (“EAS”) alarm's issuance; (2) receiving, by the mobile device, a short range communication signal from a fixed device located in proximity to the EAS equipment issuing the EAS alarm; (3) in response to the short range communication signal's reception, automatically enabling the previously disabled alarm response functions of the mobile device so that the user of the mobile device is able to provide acknowledgement of the EAS alarm to a system; (4) receiving, by the mobile device, a user input for inputting a command for the EAS alarm; (5) communicating the command from the

mobile device to an external device for causing a deactivation of the EAS alarm's issuance. Final Act. 3–4 (citing Shafer Figs. 1, 4, 10, ¶¶ 44, 62, 67, 72, 76, 116, 129–131). The Examiner further relies on Rocas as disclosing “[d]isabling response functions of a mobile device to prevent commands by a user of the mobile device while the user is not in proximity of equipment and automatically enabling the previously disabled response functions of the mobile device.” Final Act 4–5 (citing Rocas ¶¶ 76–77). The Examiner specifically relies on paragraph 77 of Rocas and concludes that one of ordinary skill in the art would have modified Shafer with Rocas to ensure correct operation of the alarm system controlled by a mobile device. Final Act. 5. For the remaining limitations of claim 1, the Examiner finds Allen discloses (1) inputting a reason code specifying a reason for the EAS alarm's issuance; (2) determining whether the reason code is a certain reason code of a plurality of possible reason codes; and (3) automatically activating operations of select input devices of the mobile device to obtain information about a surrounding environment in response to a determination that the reason code is the certain reason code of the plurality of possible reason codes. Final Act. 5–6 (citing Allen ¶¶ 33, 35). According to the Examiner, one of ordinary skill in the art would have modified the Shafer-Rocas combination with Allen in order “to reduce or eliminate false alarms in system detection zones.” Final Act. 6 (citing Allen ¶ 9).

Appellant acknowledges the claim features that were found as missing in Shafer, as specified by the Examiner and outlined above, and contends that the Examiner erred in relying on Rocas and Allen to cure the deficiencies of Shafer. *See* Appeal Br. 10–19.

Appellant argues “Rocas does not teach that a response function of the mobile device is selectively disabled by the proximity detection mechanism (730), but rather an unsafe feature of the multi-function device (104) is selectively disabled by the proximity detection mechanism (730).” Appeal Br. 13.

The Examiner responds by explaining:

The teachings of Rocas states that the features of controlling the multifunction device 104 via the telecommunication device 116 and/or 122 are only disabled when the device user interface 710 is out of range 740, i.e. the user is not within a proximity of multifunction device 104. Thus, a feature of the telecommunication device 116 and/or 122 are disabled when the device(s) is/are out of range, but enabled when the device(s) is/are in range.

Ans. 3.

We agree with the Examiner that the rejection is based on modifying Shafer to include the feature Rocas describes as disabling a device user interface when the device is not within a proximity of the multifunction device and enabling the previously disabled functions of the user mobile device when the device is within the proximity of multifunction device. *See* Final Act. 4–5. More specifically, the disclosure of Rocas is directed to wirelessly activating or deactivating the features of a mobile multi-function device user interface based on user proximity. *See* Rocas Abstract. As shown in Figure 7, Rocas determines the distance between multi-function device 104 and telecommunication device 116 configured with user interface 710 and enables certain previously disabled functions if device 116 is within programmed range 740. *See* Rocas ¶¶ 73–75.

We are unpersuaded by Appellant’s argument that Rocas’s teaching is limited to disabling unsafe features. Rocas discloses that the

enabling/disabling device functionality may be used for not only “safe” operation of multi-function device 104 but also for “correct” operation of the multi-function device. Rocas ¶ 77. Moreover, we observe that the rejection relies on Shafer as disclosing different information related to the alarm event and how the user inputs override the alarm (Shafer Fig. 9B, ¶¶ 127–129). *See* Final Act. 3–5. We find no error in the Examiner’s reliance on Rocas’s general teaching of disabling while not within range and automatically enabling while within range and on Shafer for other aspects of the “proximity” claim limitations.

Appellant contends the proposed combination would render Shafer inoperable because, in Rocas, “the ‘unsafe’ transmitting feature of the location beacons (66) are automatically enabled when an alert device (5) is in proximity thereto, and are automatically disabled when the alert device (5) is no longer in proximity thereto.” Appeal Br. 14. According to Appellant, “[s]uch a modification to Shafer’s EAS system renders it inoperable for its intended purpose” considering that “active EAS tags would only be detected when an employee in possession of an alert device is in proximity of the EAS system.” *Id.* Appellant further argues that the Examiner’s stated motivation to combine Shafer and Rocas is insufficient and “[i]t is unclear why one of ordinary skill in the art would look beyond Shafer to find further information about EAS system operations.” Appeal Br. 14–15.

In response, the Examiner reiterates that the motivation is “to ensure correct operation of a device/system controllable by a mobile device.” Ans. 4 (citing Rocas ¶ 77); *see* Final Act. 5 (same). The Examiner also explains

that the features of Rocas are added to the functionality of Shafer rather than replacing the functionality of Shafer. Ans. 4.

Appellant has not persuaded us of error. As explained by the Examiner (Ans. 4), one of ordinary skill in the art would have understood that Rocas teaches certain features of a multi-functional device that are activated or deactivated based on a user device proximity to the multi-functional device, which may be added to a system like the article tracing system of Shafer and allow using a user device such as a smart phone as part of the alert system. Rocas ¶¶ 76–77; Shafer ¶¶ 72–75; *see also* Final Act. 4–5. We observe that Appellant’s reference to enabling Shafer’s “‘unsafe’ transmitting feature of the location beacons” based on the teachings of Rocas (*see* Appeal Br. 13–14) is not commensurate with the disclosure of the references. In contrast with Appellant’s discussion of “safety feature operations” in Rocas (*see* Reply Br. 2), Rocas considers safety in discussion of the situations in which the device features are disabled when those features require the user’s presence “within a visual distance of the device.” *See* Rocas ¶ 5. In other words, the safety concern disclosed in Rocas is as to whether certain functions of a multi-function device (such as a multi-function printer) may be used remotely. *See* Rocas ¶¶ 4, 5, 10, 75, 77. By contrast, the cited passages of Shafer do not disclose a safety concern with EAS systems, such as transmission signals interfering with medical devices, as asserted by Appellant. *See* Shafer ¶¶ 50, 53–55, 80, 117, 118; Appeal Br. 13–14.

As also explained by the Examiner, the disclosure of activating or deactivating certain features of a system based on the proximity of the user device in paragraphs 76–78 of Rocas, when considered together with the

disclosure of the alert system in paragraphs 72–75 of Shafer, does not change the principle of operation of Shafer with respect to disabling the alarm response function of the monitoring device. Additionally, the Supreme Court made clear that when considering obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Furthermore, the skilled artisan is “a person of ordinary creativity, not an automaton,” and this is a case in which the skilled artisan would “be able to fit the teachings of multiple patents together like pieces of a puzzle.” *KSR*, 550 U.S. at 421. We therefore find the Examiner provided a sufficiently reasonable motivation for one of ordinary skill in the art to combine Shafer and Rocas based on the above discussed improvements to Shafer’s system as modified by Rocas.

Appellant recognizes that Allen discloses an EAS system where a user provides a reason code using a mobile device. Appeal Br. 15–16. However, Appellant contends that Allen does not disclose or suggest that the mobile device determines whether the reason code is a certain reason code of a plurality of possible reason codes, as required by claim 1. Appeal Br. 16. According to Appellant, the EAS system controller 106, and not the mobile device, of Allen analyzes the reason code. *Id.* Appellant also argues that there is “no reason apparent from Allen” that the mobile device should be modified to analyze the reason code and perform actions for adjusting the EAS system’s sensitivity and that such a modification “would result in increased cost and complexity.” Appeal Br. 17.

We are not persuaded. First, the Examiner finds Allen teaches verifying false alarms by determining whether the reason code is a certain reason code, whereas “the functions of inputting, analyzing, and determining based on reason codes as taught by Allen is incorporated into the mobile device as taught by the combination of Shafer in view of Rocas.” Ans. 4. Thus, the Examiner does not rely on Allen alone for teaching “determining, by the mobile device, whether the reason code is a certain reason code of a plurality of possible reason codes.” Second, we agree with the Examiner that nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See Id.*; *In re Keller*, 642 F.2d 413, 425 (CCPA 1981) and *In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Here, the proposed combination is based on modifying the EAS system of Shafer-Rocas including the disclosed use of a mobile device with the teachings of Allen with respect to evaluating the reason code. In other words, Allen’s stated benefit of analyzing the entered reason code to more accurately adjust the EAS system’s accuracy or sensitivity would have suggested further modifying Shafer-Rocas combination with Allen’s teachings to, in addition to enabling or disabling multifunction device, incorporate entering and analyzing a reason code by the mobile device.

Appellant further contends that the combination of Shafer with Allen fails to disclose or suggest the determining limitation. Appeal Br. 19. Specifically, Appellant argues that the combination teaches that the network system, and not the alert device, analyzes the reason code. *Id.* . *Id.* According to Appellant, the network system “is not the same as or equivalent to the mobile device” and therefore performing the determining

step at the network system is distinct from the recited determining by a mobile device. *Id.*

We are unpersuaded. As discussed above, Appellant is arguing the references individually whereas the rejection is based on the combination of the cited references where all of the features of the secondary reference need not be bodily incorporated into the primary reference (*see Keller, supra*, at 642 F.2d 425) and the artisan is not compelled to blindly follow the teaching of one prior art reference over the other without the exercise of independent judgment (*see Lear Siegler, Inc. v. Aeroquip Corp.*, 733 F.2d 881, 889 (Fed. Cir. 1984)). We agree with the Examiner that the combination of references teaches the determining step. Specifically, we agree with the Examiner's finding and observe that modifying Shafer's EAS system with disabling alarm response functions, as taught by Rocas per the discussion *supra*, and determining a reason code among certain reason codes, as taught by Allen (Final Act. 4–6), would have suggested performing the functions of disabling the alarm response functions and analyzing the reason code by the mobile device. This is a combination of familiar elements according to known methods with predictable results. *See KSR*, 550 U.S. at 416.

Contrary to Appellant's statement that "Shafer and Rocas teach different concepts" in that Shafer teaches "a system for protecting items using EAS tags" and Rocas teaches "a system for wirelessly activating and deactivating features of a multi-function device" (Reply Br. 3), the references relate to different aspects of wirelessly controlling device features by a user's mobile device. Such control features are relevant to EAS tags in tracking systems and wirelessly activating or deactivating functions associated with a multi-function device user interface based on a user's

mobile device proximity. *See* Shafer Abstract; Rocas Abstract. Further, we find the Examiner has provided a rational underpinning to support the conclusion of obviousness based on knowledge within the level of ordinary skill in the art, specifically to provide an EAS system the additional functionality of enabling certain functions. Ans. 3–4. *See KSR*, 550 U.S. at 417–418.

Accordingly, we sustain the Examiner’s obviousness rejection of independent claim 1. The Examiner rejects independent claim 11 on a similar basis as claim 1, and, therefore, we also sustain the Examiner’s obviousness rejection of claim 11, as well as dependent claims 2–10 and 12–21, which are not separately argued by Appellant. *See* Appeal Br. 10–19.

#### 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>
1–21	103	Shafer, Rocas, Allen	1–21	

#### FINALITY AND 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