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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/629,952	02/24/2015	Jeffrey A. Grant	P1087D/US/B	5623
88320	7590	09/25/2020	EXAMINER	
Trent A. Kirk InVue Security Products Inc. 9201 Baybrook Lane Charlotte, NC 28277			KING, CURTIS J	
			ART UNIT	PAPER NUMBER
			2684	
			NOTIFICATION DATE	DELIVERY MODE
			09/25/2020	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY A. GRANT, CHRISTOPHER J. FAWCETT, and
WILLIAM M. WARREN

Appeal 2020-003339
Application 14/629,952
Technology Center 2600

Before JEAN R. HOMERE, CAROLYN D. THOMAS, and
CARL W. WHITEHEAD JR., *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–12, 14–19, 23, 24, and 26, which constitute all of the pending claims. Claims App. Claims 13, 20–22, and 25 have been canceled. *Id.* We have jurisdiction over the appeal 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 InVue Security Products Inc. Appeal Br. 1.

The present claimed subject matter relates generally to an electronic key for protecting and item of merchandise from theft. *See Spec., Abstract.*

Claim 1 is illustrative:

1. A security system for protecting and item of merchandise from theft, comprising:
an electronic key; and
a plurality of merchandise security devices each comprising a housing containing a logic control circuit and a transfer port on the housing for communicating with the electronic key, each merchandise security device further comprising a lock mechanism configured to be locked using electrical power transferred from the electronic key to the lock mechanism and to be unlocked using electrical power transferred from the electronic key to the lock mechanism,

wherein the electronic key is configured to initially communicate with a logic control circuit of a first lock mechanism having a first transfer port to unlock the first lock mechanism, and wherein the electronic key is incapable of unlocking a second lock mechanism in response to subsequently communicating with a logic control circuit of the second lock mechanism having a second transfer port prior to locking the first lock mechanism that has been successfully unlocked, the first and second lock mechanisms configured to independently communicate with the electronic key via a respective transfer port,

wherein the electronic key is configured to receive a signal transmitted from the lock mechanism indicating a change in state thereof.

Appellant appeals the following rejections:

R1. Claims 1, 11, 12, 14, 18, and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai (US 2004/0027236 A1, Feb. 12, 2004), Shoenfeld (US 2007/0244598 A1, Oct. 18, 2007), and Berstis (US 2007/0262848 A1, Nov. 15, 2007). Final Act. 2–5.

R2. Claims 2 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, Berstis, and Stillwagon (US 6,496,101

B1, Dec. 17, 2002). Final Act. 5–6, 14.

R3. Claims 3, 6, 7, 9, 15, and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, Berstis, and Eshel (US 2004/0080403 A1, Apr. 29, 2004). Final Act. 6–8.

R4. Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, Berstis, Eshel, and Danler (US 5,280,518, Jan. 18, 1994). Final Act. 8.

R5. Claims 5, 8, 10, and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, Berstis, Eshel, and Choi (US 2011/0084802 A1, Apr. 14, 2011). Final Act. 9–11.

R6. Claims 23 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, and Stillwagon. Final Act. 11–13.

R7. Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Zhai, Shoenfeld, Stillwagon² and Hyatt, Jr. (US 6,005,487, Dec. 21, 1999). Final Act. 13–14.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Appellant contends that “Shoenfeld clearly limits its ability to unlock one lock at a time to drawers that are within the same cabinet having a single computer that controls all of the latch mechanisms. . . . Therefore, any

² Although the header of the Examiner’s rejection of claim 24 fails to list the Stillwagon reference, we note that independent claim 23, which claim 24 is dependent upon, is rejected under Zhai, Shoenfeld, Stillwagon. As such, we shall treat claim 24 as additionally being rejected under Stillwagon.

combination of Shoenfeld with Zhai would result in a cabinet having multiple drawers . . . but not separate cabinets having separate transfer ports.” Appeal Br. 5. We disagree with Appellant.

Here, the Examiner relies upon Zhai to teach an electronic key and the plurality of merchandise security devices with locks, each comprising a housing with logic control circuits and transfer ports. *See* Final Act. 2–3. Appellant fails to rebut Zhai’s teachings.

The Examiner merely brings in Shoenfeld to teach that it is known for a key to be incapable of unlocking a second lock prior to locking a first lock. *Id.* at 3; *see also* Ans. 5. Specifically, Shoenfeld discloses:

In some embodiments, the cabinet may have only a single drawer, but in others there can be two, three, or more medications drawers. . . . Each drawer has its own respective latch mechanism, and said latch mechanism are each independently actuatable. The automatic access facility of the medications cabinet ensures that only one of the drawers is unlocked and opened at a time.

Shoenfeld, ¶ 12. In other words, Shoenfeld teaches independently openable locks, whereby only one of the locks is opened at a time.

Given the Examiner’s unrebutted findings in Zhai, i.e., an electronic key and a plurality of security devices with locks, coupled with Shoenfeld’s only opening one lock at a time teaching, we find that the Examiner has appropriately shown that the combined teachings of Zhai and Shoenfeld teaches the an electronic key incapable of unlocking a second lock prior to locking the first lock, as required by the claims.

Here, Appellant’s arguments do not take into account what the collective teachings of the prior art would have suggested to one of ordinary skill in the art and is therefore ineffective to rebut the Examiner’s prima

facie case of obviousness. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981)(“The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.”) (citations omitted). This reasoning is applicable here as Appellant is attempting to bodily incorporate Shoenfeld’s locking drawers into Zhai’s structure, instead of recognizing what the combined teachings what have suggested to those of ordinary skill in the art.

Appellant also contends that “neither Zhai nor Shoenfeld teaches or suggests ‘detecting a first lock still being unlocked’ as alleged by the Examiner, as Shoenfeld at most discloses that one drawer is opened at a time.” Appeal Br. 6. We agree with the Examiner that Shoenfeld suggests that “in order for the system not to allow a second lock to be unlock, due to detecting a first lock still being unlocked, the first lock is initially [detected as] unlocked.” Ans. 7. In other words, we agree with the Examiner that there is some unlocking/locking detection taking place in Shoenfeld in order to ensure that only one drawer is unlocked and opened at a time.

Finally, Appellant contends that “neither Shoenfeld nor Zhai teaches or suggest an electronic key . . . that is configured to initially communicate with a first lock mechanism and subsequently communicate with a second lock mechanism.” Appeal Br. 6. Here, the Examiner finds, and we agree, that because Shoenfeld only allows one drawer to be unlocked at a time, this reasonably teaches initially communicating with a first lock mechanism and subsequently communicating with a second lock mechanism, as a second

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lock cannot be unlocked/opened until a previous lock is locked. *See* Ans. 7. Appellant fails to persuasively distinguish Shoenfeld's aforementioned teachings with the argued limitation related to initially communicating with a first lock.

Accordingly, we sustain the Examiner's rejection of claim 1. Appellant's arguments regarding the Examiner's rejection of independent claims 14 and 23 rely on the same arguments as for claim 1, and Appellant does not argue separate patentability for the dependent claims. *See* Appeal Br. 4–7. We, therefore, also sustain the Examiner's rejection of claims 2–12, 14–19, 23, 24, and 26.

CONCLUSION

The Examiner's rejections of claims 1–12, 14–19, 23, 24, and 26 as being unpatentable under 35 U.S.C. § 103 are affirmed.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 11, 12, 14, 18, 19	103	Zhai, Shoenfeld, Berstis	1, 11, 12, 14, 18, 19	
2, 26	103	Zhai, Shoenfeld, Berstis, Stillwagon	2, 26	
3, 6, 7, 9, 15, 17	103	Zhai, Shoenfeld, Berstis, Eshel	3, 6, 7, 9, 15, 17	
4	103	Zhai, Shoenfeld, Berstis, Eshel, Danler	4	
5, 8, 10, 16	103	Zhai, Shoenfeld, Berstis, Eshel, Choi	5, 8, 10, 16	
23, 25	103	Zhai, Shoenfeld, Stillwagon	23, 25	
24	103	Zhai, Shoenfeld, Stillwagon, Hyatt, Jr.	24	
Overall Outcome			1–12, 14–19, 23, 24, 26	

No period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED