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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KIMBALL C. CHEN, ALEXANDER W. EVANS, and DANIEL
E. SHPRECHER

Appeal 2010-000055
Application 10/662,940
Technology Center 3600

Before, HUBERT C. LORIN, ANTON W. FETTING and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331. Claims 4-6, 9-12, 14, 16, 18, 20-151, 153-179, 183-185, 188-191, 193, 195, 197, 199-330, and 332-432 have been withdrawn. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

An oral hearing was held on January 20, 2011.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellants claim a system and method for controlling, monitoring and managing remote devices for reducing demand/consumption to resource supply based on user defined data. (Specification 1: 15-19).

Claim 1, reproduced below, is representative of the subject matter on appeal.

Claim 1. (Previously Presented) A method for controlling one or more of resource-consumption and resource-production associated with a plurality of remote devices, the method comprising the steps of:

automatically generating at least one informational message at a central server responsive to one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of at least one device of

the plurality of remote devices; and transmitting the at least one informational message to at least one communication device, where the at least one communication device initiates at least one action for providing a change of one or more of resource-consumption by, resource-production by, operating characteristics of, and operational state of one or more of the following: a) the at least one device of the plurality of remote devices, b) one or more second devices of the plurality of remote devices, wherein the one or more second devices is different from the at least one device and c) one or more devices of a second plurality of remote devices, wherein the second plurality of remote devices is different from the plurality of remote devices.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Brown	US 5,544,036	Aug. 6, 1996
Woolard	US 6,178,362 B1	Jan. 23, 2001

The following rejection is before us for review.

The Examiner rejected claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331 under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Woolard.

ISSUE

Did the Examiner err in rejecting claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Brown in view of Woolard on the grounds that a person with ordinary skill in the art would understand that

the command center computer 24 in Brown automatically provides signals to the transmitter 20?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Brown discloses that the devices are controlled by “programmed data [which] is normally generated by customer command center computer 22 and transmitted to controllers 14 as paging message signals by transmitter 20....” (Col. 3, ll. 57-60).

2. Brown further discloses:

... [I]n some instances, the "on" signals from controller 14 merely permits the appliance to turn on if other conditions are present. For example, the water heater control "on" signal permits more hot water to be generated, but the thermostat associated with the water heater must still indicate that hot water is needed. On the other hand, the "off" signal will generally disable the appliance from being on, regardless of the setting of other controls associated by the appliance.

(Col. 3, ll.17-25).

3. Brown neither discloses nor infers any human intervention involved in generating and transmitting programmed data by a customer command center computer 22.

4. Appellants' Specification does not specifically define the term automatically, nor does it utilize the term contrary to its customary meaning.

5. The ordinary and customary definition of the term *automatic* as defined by Merriam Webster's Collegiate Dictionary is: "done or produced as if by a machine". (<http://www.merriam-webster.com/dictionary/automatic>).

6. Brown discloses "[i]n certain instances, the energy management and automation functions programmed by the user may be overridden by the utility company when it is necessary to reduce the consumption in a particular area. (Col. 4, ll. 4-7).

ANALYSIS

We affirm the rejection of claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331 under 35 U.S.C. § 103(a).

Appellants' arguments against each of independent claims 1 and 180 are based on perceived deficiencies of Brown. Inasmuch as Appellants raise the same issues with respect to each of these claims, we discuss them together, addressing each of Appellants' arguments in turn.

Appellants argue that "[a]t best, Brown discloses a one way communication channel for sending paging signals from transmitter 20 to various controllers 14.... [and] nowhere does Brown disclose, or even suggest, that the signals are automatically generated by the utility command center computer 24." (Appeal Br. 8-9).

We disagree with Appellants because we find that in Brown, programmed data is normally generated by a customer command center computer 22 and is transmitted to home controllers 14 as paging message

signals by a transmitter 20 (FF 1). Brown neither, discloses or infers, any human intervention involved in generating and transmitting such programmed data by a customer command center computer 22 (FF 1). The claims only generally require that the at least one informational message at a central server be responsive to the operational state of a device. We thus find that because the customer command center computer 22 is programmed to initiate paging messages at given times in response to ON/OFF conditions of a device, it in fact responds to an operational state and operating characteristics. This is because the ON or OFF modes are states of working operation, and because the messages are tailored for a given appliance, they thus respond to the characteristics of the given appliance.

We further find that Appellants' Specification does not specifically define the term *automatically*, nor does it utilize the term contrary to its customary meaning. (FF 4) The ordinary and customary definition of *automatic* is "done or produced as if by a machine". (FF 5) As found, *supra*, in Brown, the informational message generated and transmitted by the customer command center computer 22 contains both operational state and operating characteristics data which are generated and transmitted to the device without direct human involvement, except for initial programming (FF 1). As such, we find that Brown discloses automatically generating and transmitting at least one informational message at a central server responsive to operating characteristics of, and operational state of a device because the generating and transmitting steps are automatically produced by operation of a machine, i.e., the customer command center computer 22.

Appellants next argue that Brown teaches away because “messages are used by the utility company to assist it in more equitably reducing power consumption under circumstances when the potential demand for power exceeds the ability of the utility company to generate power...(emphasis original).” (Appeal Br. 10).

We disagree with Appellants because we find that Brown does not actually teach away from *every aspect of all* power control systems. *See In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). We find instead that Brown discloses this power reducing scenario only “in certain instances,” (FF 6) and thus in the normal course of operation, the control system in Brown operates according to the requirements of the claims, as discussed *supra*.

Claims 3 and 182.

Representative claim 3 recites in pertinent part, *receiving at least one command at the central server, wherein the at least one command is related to controlling the at least one device and wherein the at least one informational message is generated based on the at least one command*.

Appellant argues that “[t]here is nothing in Woolard that provides any teaching or suggestion that an information message is generated based on the at least one command.” (Appeal Br. 12). We find this argument unpersuasive because as discussed, *supra*, Brown explicitly discloses an information message, namely the paging message, is generated by the customer command center computer 22 based on the at least one command which is inputted as programmed instructions. Accordingly, we sustain the rejection, finding Woolard cumulative to the rejection.

Claims 13 and 192

Representative claim 13 recites in pertinent part *wherein the at least one command is generated in accordance with a user profile.*

Appellants argue that Woolard "...merely discloses a site configuration function that permits the user to generate a site map for a newly opened facility which is going to be managed by the apparatus 26." (Appeal Br. 14).

We find this argument unpersuasive because as discussed, *supra*, Brown explicitly discloses an information message, namely, the paging message, which is generated by the customer command center computer 22 based on the at least one command which is inputted as programmed instructions. We interpret the programmed instructions resident in memory to be a user profile, since like a profile, the instructions are inputted by the user according to a desired mode of operation. Accordingly, we sustain the rejection, finding again Woolard cumulative to the rejection.

Appellants' arguments to claims 2, 7, 15, 17, 19, 152, 181, 186, 187, 194, 196, 198, and 331 are not persuasive because they are statements merely repeating the claim elements. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim. See, 37 C.F.R. § 41.37 (c)(1)(vii) (2004)

CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331 under 35 U.S.C. § 103(a) as being unpatentable over Brown in view of Woolard.

Appeal 2010-000055
Application 10/662,940

DECISION

The decision of the Examiner to reject claims 1-3, 7, 8, 13, 15, 17, 19, 152, 180-182, 186, 187, 192, 194, 196, 198, and 331 is Affirmed.

AFFIRMED

MP

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