The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL T. GRUNDEN,
JAY VERNER and CHRISTOPHER S. YORK

Appeal No. 2003-1632
Application 09/173,991

ON BRIEF

Before THOMAS, KRASS, and GROSS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 40 through 52 and 54

through 80, appellants having cancelled claims 1 through 36 and the examiner indicating the allowance of claims 37 through 39.[1]

Representative claim 40 is reproduced below:

40. A method of monitoring wireless communications between a tag computer associated with a vehicle tag and a remote computer coupled to a tag interface unit, the method comprising the steps of:

establishing a wireless communications link between the tag interface unit and the vehicle tag;

providing a password associated with the tag computer to the remote computer via the wireless communications link; and

activating at least one notification device associated with the vehicle if the remote computer determines that the password is acceptable.

The following references are relied on by the examiner:

Chaum et al. (Chaum)	5,485,520	Jan. 16, 1996
McNair	5,559,505	Sep. 24, 1996
Carrender et al. (Carrender)	6,061,614	May 9, 2000 (filed Oct. 17, 1997)

Claims 40, 44 through 46, 49 through 52, 56 through 58, 60, 61, 64 through 66, 70, 73 and 76 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Chaum. The remaining claims on appeal are rejected under 35 U.S.C. § 103. As evidence

[1] In Paper No. 17 filed on January 17, 2002, in which appellants attempt to add new claims 40 through 80, there is no listed claim 53 as filed.

of obviousness as to claims 41 through 43, 47, 48, 59, 62, 63, 67, 71, 72, 74, 75, 77 and 78, the examiner relies upon Chaum in view of McNair. Lastly, as to claims 54, 55, 68, 69, 79 and 80, the examiner relies upon Chaum in view of Carrender.

Rather than repeat the positions of the appellants and the examiner, reference is made to the Brief and Reply Brief for appellants' positions, and to the Answer for the examiner's positions.

OPINION

At the outset, we note that at pages 5 and 6 of the principal Brief on appeal, appellants take no position with respect to both rejections under 35 U.S.C. § 103 of their respective dependent claims. On the other hand, appellants indicate in the middle of page 6 that the Brief accordingly addresses only the rejection under 35 U.S.C. § 102 of the independent claims 40, 46, 56, 60, 70 and 73. This portion of the Brief goes on to further indicate that the rejections of the claims under 35 U.S.C. § 103 are considered to be moot in view of the arguments presented as to the rejection of the claims under 35 U.S.C. § 102. Inasmuch as appellants treat each independent claim on appeal in turn, we do so likewise in this opinion.

We sustain the rejection of independent claims 40, 46, 70 and 73 under 35 U.S.C. § 102 and the respective rejections of their dependent claims under 35 U.S.C. § 102 and 35 U.S.C. § 103. On the other hand, we reverse the rejection of independent claims 56 and 60 under 35 U.S.C. § 102 and their respective dependent claims rejected under 35 U.S.C. § 102 and 35 U.S.C. § 103.

Initially, as to the features recited in corresponding method independent claim 56 and system independent claim 60, the focus of the dispute between the parties revolves around the feature of these claims relating to providing a serial number of the embedded computer to the remote computer via the wireless link and the subsequent determination in the remote computer of whether the serial number is included within the serial number database.

Essentially as to these claims, we agree with appellants' positions in the Brief and Reply Brief since the argued position of the examiner that the teachings and suggestions in the long paragraph at column 3 meet this feature is misplaced. In fact, we find no teaching or suggestion in Chaum from our study of it relating to the existence or reliance

upon the serial number of any computer that may be attributed to any of the remote collection system (RCS) computers and the in-vehicle units (IVU). As such, Chaum clearly cannot anticipate the subject matter as a whole of respective independent claims 56 and 60. Likewise, their corresponding dependent claims cannot be met by Chaum and its combination with respect to the other references relied upon under 35 U.S.C. § 103.

We do, however, sustain the rejection of the other independent claims 40, 46, 70 and 73. Representative claim 40 requires providing a password associated with a so-called tag computer to the remote computer via a wireless link, and the associated notification feature at the end of representative claim 40 of notification if the remote computer determines that the password is acceptable. Generally corresponding features are recited in independent claim 46 which is not argued by appellants (Brief, page 9) to distinguish in any manner over the corresponding method claim 40. Generally, independent claim 70 contains a feature of monitoring the communication between an embedded computer and a remote computer via the wireless link, which feature corresponds in a broader form to the password limitation of independent claim 40. It is further noted that

unlike claim 40, claim 70 requires that the notification device associated with the vehicle be activated when the communications monitoring determines that it is improperly occurring. Appellants' arguments with respect to independent claim 73 correspond to those of independent claim 70 (Brief, page 11).

As best expressed in the Reply Brief, we agree with appellants' general observation initially that the vehicle classification data comprising part of the "commit" message as relied upon by the examiner at column 3 of Chaum does not form any reasonable version of a so-called password to the extent recited in claim 40, and not necessarily within the ambit of the monitoring communication of claim 70. Still, we sustain the rejection because according to the examiner's initial positions, the reference teaches at the middle of column 5 its reliance upon a so-called public key cryptography or RSA system. This conventional system in the art relies upon the use of a so-called private key which is known only to the user but the remaining portions of the cryptography system are public information. It is this private key that may provide a basis of the broadly "associated" password associated with the tag computer limitation of representative claim 40 on appeal.

The discussion at column 13 associated with figure 3C relates to the operational use of the in-vehicle unit. In the middle of this figure the logic flow diagram indicates that a determination is made relative to the PIN or personal identification number, clearly analogous to a password. At least with respect to block element 412b, the message is communicated to the user that the wrong PIN number has been entered. It is clear to the reader from the overall operational sense of this reference that a PIN must be utilized by the user of the IVU in the claimed broad “association” required by claim 40 on appeal. This feature may also alternatively comprise the claimed password in addition to the private key associated with the RSA cryptography system mentioned earlier.

As to the notification feature of acceptability of the password at the end of representative claim 40 on appeal, the logic flow at the bottom of figure 3C indicates the attempt to notify the user of a proper or an improper entry of a PIN number or password (that is, whether it is acceptable in the sense of claim 40 or unacceptable in the sense of claim 70).

From our study of this reference, it is clear that according to the teachings at the bottom of column 12 of Chaum,

the buzzer 324, the display 318 and the LEDs 320, 322 in figure 3 and figure 3A of the in-vehicle unit clearly provide the means for the overall system environment to communicate this and interact with the user. The discussion at column 12, beginning at line 47, relates to the human interface provided by these named elements to additionally provide acceptability of the payment with the green LED indication and nonacceptable payment with respect to the illumination of the red LED in addition to

> similar types of yes/no go/stop status indications) and an audible output buzzer 324 (e.g., to audibly interrupt the user's attention when urgent user control is needed or to audibly indicate success, failure or key click sounds). The primary function of the buzzer is to provide audio feedback without the necessity of reading the LCD display and/or LED's. [Chaum, column 12, lines 50 through 57.]

Thus, we do not agree with appellants' views in the Brief and Reply Brief that these features do not provide the means with which the overall systems and subsystems in Chaum communicate with the user.

The discussion at the paragraph bridging columns 15 and 16 and the showings in figures 5 and 3D relate to the function of the link ASIC 308 associated with the IVU indicating the bidirectionality of downlink and uplink communications.

These include the verification and entry of the suitable cryptographic key which is discussed at columns 15 and 16 relating to the public key system relied upon by Chaum specifically as taught there from the prior art discussion at column 5. The acceptability or unacceptability of the bidirectional communications is discussed in greater detail in the remaining parts of the reference and shown in figure 5. Table 1 at column 17 indicates the transmit identification is identified in certain frames as well as the validity status as an acknowledgment or nonacknowledgment capability of the respective subelements communicating with each other.

Since we have found that Chaum teaches within 35 U.S.C. § 102 the disputed features of representative independent claims 40 and 70 argued by appellants in the Brief and Reply Brief, we sustain the rejection of respective independent claims 40, 46, 70 and 73 rejected under 35 U.S.C. § 102 as well as their corresponding dependent claims rejected under this statutory basis and under 35 U.S.C. § 103. On the other hand, we have not sustained the rejection of independent claims 56 and 60 under 35 U.S.C. § 102 and their corresponding dependent claims rejected under 35 U.S.C. § 102 and 35 U.S.C. § 103. As such, the decision of the examiner is affirmed-in-part.

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

AFFIRMED-IN-PART

JAMES D. THOMAS Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ANITA PELLMAN GROSS Administrative Patent Judge	)	

JDT:psb

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