

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIMITRI KANEVSKY
and
STEPHANE HERMAN MAES

Appeal No. 2006-0803
Application 09/437,352

ON BRIEF

Before THOMAS, BARRETT and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-58, which are all of the claims pending in the present application.

The claimed invention relates to a global positioning system (GPS)-based access control method and apparatus in which access to a device or a secure facility is limited by verifying an

Appeal No. 2006-0803
Application 09/437,352

authorized user's location. More particularly, the GPS-based access controls system confirms that a user requesting access is actually physically present at the location of the device or secure location. The user's location is obtained by use of an individual GPS system carried by each user on a portable device, such as a pocket token, computer-readable card, cellular telephone, or watch. If the location of a person making an access control request does not match the coordinates of the GPS device worn by an authorized user, the person requesting access is unauthorized.

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

1. A method for verifying the identity of a user, said method comprising the steps of:

- issuing a challenge to said user;
- receiving a response to said challenge from said user;
- identifying a location of an authorized person associated with said response;
- identifying a location where said response is received; and
- providing access to said user if said locations match.

The Examiner relies on the following prior art:

MacDoran et al. (MacDoran) 5,757,916 May 26, 1998

Appeal No. 2006-0803
Application 09/437,352

Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in appealed claims 1-58. Accordingly, we affirm.

As a general proposition in an appeal involving a rejection under 35 U.S.C. § 103, an Examiner is under a burden to make out a prima facie case of obviousness. If that burden is met, the burden of going forward then shifts to Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976).

Appeal No. 2006-0803
Application 09/437,352

At the outset, we note that independent claims 1, 16, 27, and 38 are directed to user access authentication in which a challenge response from a user is compared with location information associated with the user. Independent claims 39 and 49 differ from independent claims 1, 16, 27, and 38 in that the authentication information received from a system user is limited to "biometric" information, with the further requirement that persons within a predefined distance of a requested device are identified. Independent claims 42 and 52 add the requirement that a user's location is compared with the location where biometric information was obtained while independent claims 45 and 55 are limited to a confirmation that a user is physically present at the location of a requesting device.

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed independent claims 1, 16, 27, 38, 39, 42, 45, 49, 52, and 55 based on the combination of Li and MacDoran, after reviewing the Examiner's analysis (Answer, pages 3 and 4), it is our opinion that the stated position is sufficiently reasonable that we find that the Examiner has at least satisfied the burden of presenting a prima facie case of obviousness. The burden is,

Appeal No. 2006-0803
Application 09/437,352

therefore, upon Appellants to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed waived [see 37 CFR § 41.37(c)(1)(vii)].

Appellants' arguments in response to the Examiner's 35 U.S.C. § 103(a) rejection assert a failure to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied prior art references. Appellants' arguments (Brief, pages 4 and 5; Reply Brief, pages 3 and 4) initially focus on the assertion that, in contrast to the claimed invention in which the location of an authorized person is determined, MacDoran determines only the location of an authorized device or user entity, and not of the individual user of the device or entity.

After reviewing the MacDoran reference in light of the arguments of record, we are in general agreement with the examiner's interpretation of the disclosure of MacDoran. While

Appellants have pointed to the passage at column 6, lines 59-65² of MacDoran as supporting their contention that MacDoran authenticates devices and not individual users, other portions of MacDoran do suggest that authentication is provided for users of devices. For example, MacDoran at column 1, lines 8-10 states that the disclosed invention relates to "authenticating the identity of a remote electronic device user" Further, MacDoran unambiguously states at lines 29 and 30 of column 2 that a client "may be a remote computer user," and, at column 2, lines 41-43, that an object of the disclosed invention is to "authenticate the position and velocity of fixed or moving remote client users by employing GPS sensor devices" ³ We also agree with the Examiner (Answer, page 3) that Li provides a disclosure of authenticating an individual user using biometric information (Li, column 17, lines 29-35) while MacDoran discloses

²We interpret the cited passage of MacDoran as suggesting that perhaps the disclosed GPS system may not, in and of itself, be able to authenticate individual users. It is apparent, however, that this limitation also extends to Appellants' disclosed system since, for example, a stolen GPS device would not authenticate an individual user without an additional layer of authentication tied to an individual user such as a password.

³We also make the observation that we find nothing in the language of claim 1 which requires a "user" to be a "person."

Appeal No. 2006-0803
Application 09/437,352

(column 24, lines 18-29) a distance threshold location criteria for authenticating a client device user.

Further, even assuming, arguendo, that Appellants are correct in their assertion that MacDoran does not authenticate individual users, it is our view that Appellants' arguments unpersuasively focus on the individual differences between the limitations of the appealed independent claims and each of the applied references. It is apparent, however, from the Examiner's line of reasoning in the Answer, that the basis for the obviousness rejection is the combination of Li and MacDoran. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In re Keller, 642 F. 2d 413, 425, 208 USPQ 871, 881 (CCPA 1981); In re Merck & Co., Inc., 800 F. 2d 1091, 1097, 231 USPQ 375, 380 (Fed. Cir. 1986).

In other words, while Appellants contend that MacDoran lacks a teaching of authenticating individual users of a device, the Examiner has relied upon Li as providing this teaching. Similarly, although Appellants argue that Li fails to teach the determination of location as an authentication criteria, this

teaching is specifically provided by MacDoran. We further find, Appellants' arguments to the contrary notwithstanding, that the Examiner's line of reasoning (Answer, page 4) has provided proper motivation for the proposed combination of Li and MacDoran so as to establish a prima facie case of obviousness. In our view, the ordinarily skilled artisan would have recognized and appreciated that the GPS user and/or device location determination system disclosed by MacDoran would serve as an obvious enhancement to the personal authentication system disclosed by Li. Thus, while Appellants contend that MacDoran would not provide confirmation that a user who provides biometric authentication information is actually present at the device where access is requested, the combination of Li and MacDoran, in our opinion, would result in a system in which a location sensor would be associated with an authenticated individual seeking access to a device, thereby providing confirmation of a user's physical presence at an access requested device as claimed.

For the above reasons, since it is our opinion that the Examiner's prima facie case of obviousness based on the combination of Li and MacDoran has not been overcome by any convincing arguments from Appellants, the Examiner's 35 U.S.C.

Appeal No. 2006-0803
Application 09/437,352

§ 103(a) rejection of independent claims 1, 16, 27, 38, 39, 42, 45, 49, 52, and 55 as well as dependent claims 2-5, 7-11, 15, 18-21, 26, 29-32, 37, 46, 47, 56, and 57 not separately argued by Appellants, is sustained.⁴

Turning to a consideration of the Examiner's obviousness rejection, based on the combination of Li and MacDoran, of separately argued dependent claims 6, 17, 28, 40, 43, 50, and 53 directed to the feature of using an individual GPS system to obtain the location of an authorized person, we sustain this rejection as well. We find Appellants' arguments, which reiterate their contention that MacDoran provides GPS sensors only for client devices and not individual users, to be unconvincing. As discussed supra, we find ample suggestion in MacDoran for using the disclosed GPS technology for authenticating not just client devices, but also for users of such client devices. We also emphasize our earlier comment which calls attention to the fact that the Examiner's obviousness rejection

⁴ Our review of the language of independent claims 1, 16, 27, and 38 reveals substantial ambiguity and lack of clarity since, although the feature of "providing access" is recited, it is unclear as to what is being accessed. We leave clarification of this matter to Appellants and the Examiner in any further prosecution of this application.

is based on the combination of Li and MacDoran. In other words, the disclosure of authenticating an individual already exists in Li, with the teachings of MacDoran providing an obvious enhancement to Li by adding an additional layer of authentication utilizing GPS location determining technology. For similar reasons, the Examiner's obviousness rejection of separately argued dependent claims 13, 24, 35, 41, 44, 51, and 54 is also sustained as we find no error in the Examiner's assertion, based on the disclosure at column 23 of MacDoran, that MacDoran's GPS device, i.e., the LSS, functions as a transmitting device.

Lastly, we also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 12, 14, 22, 23, 25, 33, 34, 36, 48, and 58 in which the Meyer reference is added to the combination of Li and MacDoran to address the "enhanced cellular 911" and "triangulation" features of these claims. Appellants' arguments reiterate those previously made with respect to Li and MacDoran, which arguments we found to be unpersuasive as discussed supra. We further find ample support in Meyer (pages 188 and 189), as did the Examiner, for enhancing the system of Li as modified with MacDoran to improve location determination with enhanced cellular 911 and triangulation techniques as claimed.

Appeal No. 2006-0803
Application 09/437,352

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-58 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv)(effective September 13, 2004).

AFFIRMED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
)	
LEE E. BARRETT)	APPEALS AND
Administrative Patent Judge)	
)	INTERFERENCES
)	
)	
JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	

JFR:psb

Appeal No. 2006-0803
Application 09/437,352

Kevin M. Mason
Ryan Mason & Lewis LLP
1300 Post Road
Suite 205
Fairfield, CT 06430