

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JANE F. MACFARLANE

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Appeal 2007-3721  
Application 10/171,123  
Technology Center 2600

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Decided: November 20, 2008

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Before MAHSHID D. SAADAT, JOHN A. JEFFERY,  
and CARLA M. KRIVAK, *Administrative Patent Judges*.

KRIVAK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from a final rejection of claims 1-22. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

## STATEMENT OF CASE

Appellant's claimed invention is a wireless key system that includes a personalized key fob device for sending a voice command to a mobile vehicle to perform a requested function (Spec. 1:7-10).

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

1. A wireless key system for a mobile vehicle, comprising:

a key fob including a controller, a microphone operably coupled to the controller, and a memory operably coupled to the controller; and

a telematics unit operably coupled to a vehicle communication bus; wherein verbal commands received through the microphone initiate the controller to send a function message in accordance with instructions stored in the memory to the telematics unit that activates a function through the vehicle communication bus.

## REFERENCES

Maes	US 6,073,101	Jun. 6, 2000
Coon	US 6,539,358 B1	Mar. 25, 2003
McCarthy	US 6,693,517 B2	Feb. 17, 2004
Keiderling	DE 19916308A1	Oct. 19, 2000

Claims 1-11, 13-18, 21, and 22 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Keiderling and McCarthy.

Claim 12 stands rejected under 35 U.S.C. § 103(a) based upon the teachings of Keiderling, McCarthy, and Maes.

Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of Keiderling, McCarthy, and Coon.

Appellant contends that claims 1-22 are not obvious over Keiderling and McCarthy as there is no teaching or motivation to combine because

Keiderling does not teach or suggest a telematics unit (App. Br. 12-13; Reply Br. 10).<sup>1</sup>

### ISSUE

Did the Examiner err in combining Keiderling and McCarthy rejecting the claims under 35 U.S.C. § 103(a)?

### FINDINGS OF FACT

1. Appellant's invention is directed to a key fob (220; Fig. 2) having a controller (240; Fig. 2), a microphone (224; Fig. 2) and a memory (242; Fig. 2) connected to the controller (cls. 1, 9; Abstract; Spec. 10:24-30). A telematics unit (130; Figs. 1 and 2) is coupled to a vehicle communication bus (146; Fig. 1). Verbal commands are received through the microphone to initiate the controller to send a function message, in accordance with instructions stored in the memory, to the telematics unit that activates a function through the vehicle communication bus (cls. 1, 9; Spec. 12:1-17).

2. Keiderling teaches simplifying a parking process at different sites having different requirements by using a key (9) or key fob, a display arrangement (20), and methods for using the arrangements (p. 8, ll. 10-17).<sup>2</sup> The key serves to lock and unlock a vehicle and also as an operating device for a display arrangement located in or on the motor vehicle for monitoring money, parking time, and parking data storage (p. 8, ll.17-22). The key includes a display, a microprocessor having a timer and memory, control

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<sup>1</sup> Throughout this opinion we refer to the Appeal Brief mailed September 26, 2006.

<sup>2</sup> Throughout this opinion we refer to the United States Patent and Trademark Office April 2005 translation of Keiderling.

devices, a signal emitter, and a microphone (p. 8, ll. 23-25). The memory in the key is a transponder that is read and written by devices in or out of the vehicle (p. 9, ll. 14-16). The device can wirelessly transmit information concerning the status of individual vehicle components such as tire pressure to the key transponder and have it displayed (p. 11, ll. 3-6).

3. In Keiderling, a driver can dictate a short message into a microphone (17) on the key. The message is stored in a microprocessor (13) memory (p. 24, ll. 6-9). The driver listens to the pre-recorded message by playing it over the loud speaker 16 (p. 24, ll. 21-24).

4. McCarthy teaches a vehicle-based wireless communication system having an interior rearview mirror assembly including a telecommunication link from the vehicle to an external provider of information or service (Abstract). The device provides compatibility and interoperability for mobile devices such as mobile phones, personal digital assistants (PDAs), and hand-held remote entry devices such as key fobs (col. 2, ll. 16-20). By way of an in-vehicle voice detection/recognition/generation system, and by linking a PDA to the vehicle, a driver can hear data stored in the PDA. Further, the in-vehicle voice detection/recognition/generation system can receive spoken words from the driver and convert them to digital data to communicate with the PDA (col. 9, ll. 1-33). An operator interfaces with the system using the existing PDA, phone, or other mobile device capable of composing or editing messages (col. 6, ll. 50-53).

5. Telematics is the combination of telecommunications and computing. (1995-02-07) Copyright © 2008, Dictionary.com, LLC. All rights reserved; <http://dictionary.reference.com/browse/telematics>.

That is, telematics is the blending of computers and wireless

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telecommunication technologies such as the Internet. It includes both telecommunications and informatics.

<http://searchnetworking.techtarget.com/home/0,289692,sid7,00.html>; then search “telematics.”

#### PRINCIPLES OF LAW

“Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

“[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). “To facilitate review, this analysis should be made explicit.” *KSR*, 127 S. Ct. at 1741.

If the Examiner’s burden is met, the burden then shifts to the Appellant 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 (Fed. Cir. 1992).

## ANALYSIS

Appellant addresses the Examiner's rejection of claims 1-11, 13-18, 21, and 22 as obvious over Keiderling and McCarthy under 35 U.S.C. § 103(a).

### *Claims 1, 2-4, 6-11, 13, 14, 21, and 22*

Appellant traverses the Examiner's rejection of these claims by providing arguments for independent claims 1, 9, and 21. We address this rejection with respect to representative claim 1 as claims 9 and 21 contain substantially the same limitations as claim 1.

The Examiner contends that Keiderling teaches a key fob for operating vehicular functions and teaches all of the elements recited in Appellant's claim 1 except for a telematics unit coupled to a vehicle bus (Ans. 4-5). The Examiner further contends that McCarthy teaches a vehicle based wireless communication system between a key fob and an in-vehicle telematics unit that receives voice commands (Ans. 5). Specifically, the Examiner asserts Keiderling discloses "a key fob in communication with a vehicular communication system for controlling vehicular functions, whereas McCarthy discloses both vehicular functions and telematic functions as being utilized to provide a more diverse remote keyless entry (RKE) system" (Ans. 5). Further, Keiderling discloses "a verbal commands [sic] into a key, which has a microphone" (Ans. 11). The Examiner argues Keiderling also discloses a "telematic system within the vehicle in that telematic information, such as automotive warning data from tire pressure" is transmitted (Ans. 11) and concludes it would be obvious to one ordinarily

skilled in the art at the time of the invention to incorporate the telematics unit of McCarthy into the system Keiderling (Ans. 5). We do not agree.

Keiderling does not teach a telematics system as asserted by the Examiner (Ans. 11). Keiderling does teach it is possible to use a wireless system to inform a key transponder of, for example, tire pressure (FF 3). This is merely internal to the vehicle in Keiderling and although wireless, it is not a telematic system (FF 5) as it uses a transponder and IR for communication of signals (FF 2). Thus, Keiderling performs display of a motor vehicle function in a self contained system that uses IR to send signals.

With respect to McCarthy, the Examiner cited McCarthy as teaching two-way communication between a key fob and a telematics vehicular unit (Ans. 11). However, McCarthy on its own is defective. McCarthy includes a separate key fob and a PDA in addition to the telematics system (FF 4). The key fob, communicates with the PDA, not the telematic system (FF 4). Further, the two-way communication is between the telematics service provider and a service provider such as a gas station, store, etc. (col. 8, ll. 43-54). There is no teaching in McCarthy of combining the key fob and PDA so that the key fob can communicate directly with the telematic system. Even if McCarthy did teach this, adding the telematic system as set forth in McCarthy would add nothing to Keiderling. Thus, there is no apparent reason or rational underpinning for one of ordinary skill in the art to combine the elements in these references in the manner claimed. Thus, the Examiner erred in rejecting independent claims 1, 9, and 21 over the combination of Keiderling and McCarthy. For the same reasons, we reach

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the same conclusion with respect to dependent claims 2-4, 6-11, 13, 14, and 22.

*Claims 5, 12, and 15-20*

We will also not sustain the Examiner's rejection of independent claim 19 for similar reasons as the additional reference to Coon fails to cure the above-noted deficiencies with respect to Keiderling and McCarthy. Furthermore, because claims 5, 12, and 15-18, and 20 depend directly or indirectly from claims 1, 9, 19, or 21, and none of the remaining cited references cure the deficiencies found in Keiderling or McCarthy, we find error in the rejection of these claims over the combination of the cited references.

**CONCLUSION**

The Examiner erred in rejecting claims 1-22 under 35 U.S.C § 103(a).

**DECISION**

The Examiner's decision in rejecting claims 1-22 is reversed.

**REVERSED**

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