

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte ADOLF PROIDL*

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Appeal 2008-2690  
Application 10/213,553  
Technology Center 2600

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Decided: September 23, 2008

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Before JOSEPH F. RUGGIERO, MAHSHID D. SAADAT,  
and SCOTT R. BOALICK, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-32. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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Appellant's invention relates to the providing of programming information for programming a portable device or appliance. The programming information is selected from a database and transmitted as a short message service (SMS) message to a communication device which transmits it to the programmable appliance or device. (Spec. 11-13).

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

1. A method of providing a programming information for programming a programmable device or appliance, wherein the programming information is selected from a database, and the programming information is transmitted to a communication device in the form of a Short Message Service (SMS) electronically transmittable message, which communication device is designed for receiving said SMS message, and the programming information is made available to the programmable device or appliance by the communication device.

The Examiner relies on the following prior art references to show unpatentability:

Horowitz	EP 0 999 678 A2	May 10, 2000
Song	US 6,393,297 B1	May 21, 2002 (filed Dec. 9, 1999)
Blatz	US 6,516,026 B1	Feb. 4, 2003 (filed Oct. 1, 1997)
Ogasawara	US 6,543,052 B1	Apr. 1, 2003 (filed Jul. 9, 1999)
Allport	US 6,882,299 B1	Apr. 19, 2005 (filed Jan. 14, 2000)

Claims 1, 2, 4, 10, 11, 18, 20-24, and 26-29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allport in view of Song.

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Claims 5-9, 12-16, 19, 25, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allport in view of Song and further in view of Horowitz.

Claims 3, 17, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allport in view of Song and further in view of Ogasawara.

Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Allport in view of Song and further in view of Blatz.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

## ISSUES

- (i) Under 35 U.S.C. § 103(a), with respect to appealed claims 1, 2, 4, 10, 11, 18, 20-24, and 26-29, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Allport and Song to render the claimed invention unpatentable?
- (ii) Under 35 U.S.C. § 103(a), with respect to appealed claims 5-9, 12-16, 19, 25, and 31, would one of ordinary skill in the art at the time of the invention have found it obvious to modify the combination of Allport and Song by adding the teachings of Horowitz to render the claimed invention unpatentable?
- (iii) Under 35 U.S.C. § 103(a), with respect to appealed claims 3, 17, and 30, would one of ordinary skill in the art at the time of the invention

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have found it obvious to modify the combination of Allport and Song by adding the teachings of Ogasawara to render the claimed invention unpatentable?

(iv) Under 35 U.S.C. § 103(a), with respect to appealed claim 32, would one of ordinary skill in the art at the time of the invention have found it obvious to modify the combination of Allport and Song by adding the teachings of Blatz to render the claimed invention unpatentable?

## PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741(2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

## ANALYSIS

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of representative independent claim 1 based on the combination of Allport and Song, Appellant's arguments in response assert a failure to set forth a prima facie case of obviousness since the Examiner has not established a proper basis for the proposed combination of references.<sup>1</sup> We do not agree. Appellant's arguments to the contrary notwithstanding, we find that the Examiner has set forth an articulated valid line of reasoning (Ans. 5) for combining the SMS message teachings of Song with the programmable device teachings of Allport. The Examiner's reasoning has a substantial basis of support in the disclosure of Song (col. 1, ll. 37-41) which describes the advantages of controlling an external appliance by utilizing short message service (SMS) transmission through a mobile communication device.

We further find to be unpersuasive Appellant's argument (Reply Br. 1-3) that the control commands transmitted by Song do not correspond to the claimed programming information. As described by Song (col. 4, ll. 5-35), the commands transmitted in SMS format by monitoring center 150 function to change the temperature of the exemplary heating system 100 "in accordance with the specified internal program." It is apparent from the disclosure of Song that the transmitted control commands work in conjunction with the internal programs of the monitoring center 150 and heating system 100 to change the output temperature of the heating system

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<sup>1</sup> Appellant argues independent claims 1, 11, 21, 26, and 28 together as a group. *See* App. Br. 4-6. Accordingly, we select claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

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and, in our view, would be reasonably interpreted by the skilled artisan as “programming information” as claimed.

Accordingly, for all of the above reasons, since it is our opinion that the Examiner’s *prima facie* case of obviousness has not been overcome by any convincing arguments from Appellant, the Examiner’s 35 U.S.C. § 103(a) rejection, based on the combination of Allport and Song, of representative independent claim 1, as well as claims 2, 4, 10, 11, 18, 20-24, and 26-29 not separately argued by Appellant, is sustained.

We also sustain the Examiner’s obviousness rejection of dependent claims 3, 5-9, 12-17, 19, 25, and 30-32 in which the teachings of the secondary references to Horowitz, Ogasawara, and Blatz are applied in various combinations with the combined teachings of Allport and Song. Appellant has made no separate arguments as to the patentability of these claims but, rather, has relied on arguments previously made with respect to representative independent claim 1, which arguments we found to be unpersuasive for all of the reasons discussed *supra*.

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## CONCLUSION

In summary, we have sustained the Examiner's 35 U.S.C. § 103(a) rejections of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-32 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)(2006).

AFFIRMED

gvw

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