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24374	7590	08/30/2011	EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			AHN, SAM K	
			ART UNIT	PAPER NUMBER
			2611	
			NOTIFICATION DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eoffice@volpe-koenig.com

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, line 6, the claim recites "... algorithms compares the plurality of power commands...". It appears from the recitation that the second algorithm performs comparing of the power commands. One skilled in the art would recognize that in order to perform "comparing", at least two elements are required in order to compare one from another. However, based on the recitation, it is unclear as to what these two elements are. It merely recites that the power commands are compared without further reciting which element the power commands are compared with. Therefore, the claim fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-12 depend on claim 9.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

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unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims of U.S. Patent No. 7,961,822 (hereinafter ‘822). Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the limitations are fully recited. Regarding claim 1, the limitations of the at least one antenna device and the algorithm device circuitry are recited in claim 1 of '822 (note col.21, lines 8-18). And although claim 1 of the instant application does not explicitly recite wherein the increase or decrease is by a fixed amount, one skilled in the art would recognize that claim 1 of the instant application is broader than claim 1 of '822. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to recognize that claim 1 of the instant application is fully recited in claim 1 of '822.

Regarding claim 2, the claim corresponds to claim 2 of '822.

Regarding claim 3, the claim corresponds to claim 3 of '822.

Regarding claim 4, the claim corresponds to claim 4 of '822.

Regarding claim 5, the claim corresponds to claim 5 of '822, as explained in claim 1.

Regarding claim 6, the claim corresponds to claim 6 of '822.

Regarding claim 7, the claim corresponds to claim 7 of '822.

Regarding claim 8, the claim corresponds to claim 8 of '822.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sam Ahn whose telephone number is (571) 272-3044. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

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/Sam K. Ahn/
Primary Examiner, Art Unit 2611

8/25/2011