

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD., and
SAMSUNG ELECTRONICS, AMERICA, INC.,
Petitioners,

v.

FENDGO LLC,
Patent Owner.

Case IPR2024-00113

Patent 11,265,404

PATENT OWNER SUR-REPLY

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Patent Owner Fendgo LLC (“Patent Owner”) respectfully submits this Sur-Reply to Petitioners’ Reply (Paper 17, “Reply”) regarding U.S. Patent No. 11,265,404 (Ex. 1001, “’404 patent”).

I. Introduction

Petitioner bears “the burden of proving a proposition of unpatentability by a preponderance of the evidence.” 35 U.S.C. § 316(e). Petitioner has failed to meet that burden here.

First, neither the express disclosures of Walker nor Petitioner’s unsupported obviousness arguments disclose the transmission of owner identification information as part of the functionality of Walker’s eyewitness device.

Second, none of the references teach transmitting the emergency information to a “specified location” as required by the claims. Rather, all three primary references that Petitioner relies on teach a fixed point to which emergency information is transmitted.

Third, Martin does not disclose transmitting the image, audio, and location data contemporaneously during the communication session, and thus, fails to teach transmitting the emergency information, which comprises image, audio and location data, when the panic button is triggered.

Accordingly, this Petition fails to establish the unpatentability of the challenged claims.

II. Walker Does Not Teach the Transmittal of “Owner Identification Information” as Required by the Claims

In attempting to rebut Patent Owner’s argument, Petitioner relies on the same assumptions presented in the Petition, and fails to provide any disclosure in Walker supporting its contention that the eyewitness device in Walker transmits the “owner identification information” along with the “emergency information” as required by the claims of the ’404 Patent. This is because there is none.

Neither the Petition nor Petitioners’ Reply establish that Walker discloses transmitting the device owner’s identity as required by the claim limitations. Instead, both simply state that Walker “discloses creating a file linked with the ‘device owner’s identity.’” Petition at 13, Reply at 3. Creating a file with the device owner’s identity, however, does not disclose *transmitting* the device owner’s identity. See Ex. 2001 at ¶¶ 68-69.

Moreover, while Petitioners argue that “POSITA would have understood that some information to identify the owner — ‘owner identification information’—is transmitted by Walker’s mobile device to Walker’s data storage facility to enable the data storage facility to link the file with the device owner’s identity,” Petitioners do not point to any disclosure in Walker to support this assumption. Reply at 3. Additionally, in making this argument, Petitioners ignore Walker’s fundamental purpose as an “eyewitness device” rather than an alert system.

The purpose of an “eyewitness device,” even as described by Walker itself, is to bear witness to a crime in order to “assist authorities and security services in obtaining evidence linking the identities of the criminals to their crimes.” Ex. 1007 at [57]; Ex. 2001 at ¶ 66. An eyewitness device like Walker does not need to immediately draw a link between the emergency information transmitted and the identity of the device owner as the information transmitted is not used at the time of the transmittal. Furthermore, as Patent Owner’s response emphasizes, Walker’s omission of any disclosure linking the device owner’s identification information with the emergency information at the time of transmittal is significant as Walker expressly discloses other information that is transmitted. POR at 10-11; Ex. 2002 at 50:5-25; Ex. 2001 (Edwards Decl.) at ¶69.

Moreover, while Petitioners assert that it would have been obvious for a POSITA to modify Walker to transmit owner identification information, Petitioners’ obviousness arguments are unsupported by prior art disclosure. Reply at 6. Instead, the only support Petitioners provide is their expert’s say so, which simply recites the Petition without any added support as to why a POSITA would make any of Petitioners’ proposed modifications. *Id.* at 7. Further, and contrary to Petitioners’ argument, Patent Owner did explain why a POSITA would not have been motivated to make this modification. Specifically, a POSITA would not have been motivated to make the alleged modifications because Walker does not specify a need to

transmit the owner identification information along with “emergency information” and because modifying the invention in the way suggested by Petitioners would require fundamentally modifying Walker’s architecture. Ex. 2001 at ¶ 70.

Petitioners’ Reply does not rectify the shortcomings of its Petition with regards to the Walker reference, and thus, Walker does not disclose the limitations of the ’404 Patent.

III. Walker, Zellner and Martin Do Not Disclose the “Specified Location” Limitation

None of Petitioners’ primary references teach sending the “emergency information” to a specified location.

Petitioners’ argument on this issue hinges on the assumption that “specified location” as described in the ’404 Patent is not a user specified location. Reply at 10-11. However, as detailed in the Patent Owner’s Response, the ’404 Patent’s disclosure teaches that a user can rely on a variety of communication protocols to “send the data to a specified location.” POR at 13 (citing Ex. 1001 at 6:20–53; Ex. 2001 (Edwards Decl.) at ¶71.) These protocols disclose, for example, sending emails directly to an email address. Ex. 1001 at 6:20–53. As Dr. Edwards explained, the ’404 Patent is flexible in terms of the specified location, allowing the user “to specify the recipient as a 911 Call Center or some other recipient, such as a ‘private

emergency network specifically set up for these purposes to work with the public authorities in assisting victims.” Ex. 2001 at ¶ 62.¹

Thus, Patent Owner is not attempting to rewrite the claim language, but instead is giving meaning to the language of the claims as used in the '404 Patent, which is a required tenet of claim construction. *Bicon, Inc. v. Straumann Co.*, 441 F.3d 945, 950 (Fed.Cir.2006) (explaining that “claims are interpreted with an eye toward giving effect to all terms in the claim.”). The verb “specified” means that the location to which emergency information is sent is determined by a subject, which, based on the disclosure of the '404 Patent is the device's user. Further, while Petitioners claim that “specified location” is a noun phrase, they provide no explanation as to how interpreting it as a noun-phrase impacts the construction of the term, other than to reiterate their same argument that the specified location need not be user-specified. As discussed above, this argument is at odds with the '404 Patent's disclosures.

¹ While Petitioners feign ignorance with respect to determining where Dr. Edwards discussed the “specified location” term due to a miscite of VII.1 (Reply at 11), had Petitioners read Dr. Edwards' declaration, they would have seen that he discussed that term in Section VII.A. See Ex. 2001 at ¶ 62.

Petitioners' arguments on this issue fail to address the full scope of the claim language, and Petitioners fail to show how any of Petitioners' primary references disclose sending the "emergency information" to a specified location.

IV. Martin Does Not teach the Limitation that Requires the Device to "send the emergency information and the specific information to a specified location when the panic button is activated"

The Petition does not establish that Martin teaches that the image data, audio data, and location data are collected and transmitted at the same time and together, such as when a panic button is pressed.

Petitioners rely on their expert's testimony that Martin discloses "a single communications path" and thus, "by definition, [the data] would be sequentially being transmitted through that path. But you've opened a communication system, so all the data that is being transferred in that session is being transferred contemporaneously," to support their argument that the above information in Martin is being transmitted at once upon the triggering of the panic button. Reply at 19. However, Petitioners ignore the disclosure highlighted in the Patent Owner's Response that shows that Martin generates and transmits location and image/audio content *separately*. POR at 24-25 (citing Ex. 1009 at 5:4-14; 5:39-47). Martin's disclosure establishes that if the captured content (e.g., images and sound) are sent, they are sent in a separate message from, and at a different time than, the location information. *Id.* Petitioners do not address this element of Martin's system.

Thus, Petitioners fail to establish that Martin discloses the limitations in independent claims 9 and 13.

V. Conclusion

As discussed above, Petitioners have failed to establish the unpatentability of the challenged claims. Accordingly, the Board should find the challenged claims valid.

Date: December 23, 2024

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24, the undersigned hereby certifies that the foregoing document contains 1408 words, and thus complies with the word-count limits of 37 C.F.R. § 42.24.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER SUR-REPLY was served on December 23, 2024 by filing this document through the P-TACTS platform as well as by delivering a copy via the delivery method indicated to the attorneys of record for the Petitioners as follows:

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