

### **REMARKS**

In affirmance of the election made on February 25, 2013 during the telephone conversation with the Examiner, claims 1-11 and 24 are hereby withdrawn from the subject application. Claims 12-23 are elected, without traverse, and are pending in the application with claim 12 being independent. Claim 12 has been amended. Reconsideration of the application as amended is requested.

#### **Objections to the Drawings/Specification:**

The drawings are objected to under 37 C.F.R. § 1.83(a). However, for at least the following reasons, the Applicant respectfully traverses the Examiner's objections to the drawings.

Page 4 of the Office Action mailed April 12, 2013 (hereinafter "Office Action") submits that the drawings fail to disclose the following features of the invention specified in the claims: "a thermostat including a communication module"; "said thermostat having a proximity detection module"; "home mode", "away mode", and "LCD display". With respect to the features of "a thermostat including a communication module" and "said thermostat having a proximity detection module", the Applicant respectfully points to Figure 4 of the original specification which illustrates a block diagram of a controller which includes a communication interface **430** and a proximity detection module **438**. As further illustrated in Figure 12, and correspondingly disclosed in Paragraph [0238] of the original specification, a thermostat **1200** can include the controller **1210** or processor. With respect to the features of "home mode" and "away mode", the Applicant respectfully points to both Figures 7 and 10 which each illustrate a proximity detection selector **728**, **1036** of the thermostat having an "ON" and "OFF" mode. The

Applicant respectfully submits that, as evidenced by the Examiner's interpretation of the keys **110, 111** disclosed in Paragraph [0143] of Pouchak (*See* Page 7 of the Office Action), one of ordinary skill in the art would readily appreciate that a "home mode" and an "away mode" can be illustrated by "ON" and "OFF" modes. With respect to the feature of an "LCD display", the Applicant respectfully points to Figures 7-11 of the original specification which each illustrate various displays of the thermostat. As correspondingly disclosed in at least Paragraph [0233] of the original specification, an illustrated display in any of the Figures can include "Various type[s] of display technology having single color, multicolor, or any combination thereof can be used with wireless thermostat **1100**, including, but not limited to ... LCD displays". For at least these reasons, the Applicant respectfully submits that the claimed features of "a thermostat including a communication module"; "said thermostat having a proximity detection module"; "home mode", "away mode", and "LCD display" are expressly shown in the Figures.

Page 4 of the Office Action also submits that the drawings fail to disclose the following features of the invention specified in the claims: "the thermostat includes a generally round housing" and "the housing includes a control mechanism configured to rotate clockwise and counterclockwise". With respect to the feature of a housing, the Applicant respectfully points to at least Figure 11 of the original specification which, as correspondingly disclosed in Paragraph [0236], illustrates a "thermostat **1100** [that] can include a housing **1130**". Further, the Applicant respectfully cites 37 C.F.R. § 1.83(a) which notes, in pertinent part, that:

conventional features disclosed in the description and claims, **where their detailed illustration is not essential for a proper understanding of the invention**, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box).

(Emphasis added). In accordance with 37 C.F.R. § 1.83(a), the Applicant respectfully submits that the illustration of the more specific feature of a “generally round” housing is not essential for a proper understanding of the invention, and can merely be represented by the rectangular box of the housing **1130** currently illustrated in Figure 11. With respect to the feature of “the housing includes a control mechanism configured to rotate clockwise and counterclockwise”, Figure 11 has been amended in the Replacement Drawings to now expressly illustrate a mechanism **1113** as originally described in Paragraph [0237] of the subject application. A corresponding amendment has been made to Paragraph [0237] to now reference the mechanism **1113** added to Figure 11. In accordance with 37 C.F.R. § 1.83(a), the Applicant respectfully submits that the illustration of the more specific feature of “configured to rotate clockwise and counterclockwise” is not essential for a proper understanding of the invention, and can be represented by the rectangular box of the mechanism **1113** added to Figure 11. For at least the above reasons, the Applicant respectfully submits that the drawings comply with 37 C.F.R. § 1.83(a) with respect to the claimed features of “the thermostat includes a generally round housing” and “the housing includes a control mechanism configured to rotate clockwise and counterclockwise”.

For the above reasons, the Applicant respectfully submits that the objections to the drawings have been overcome, and thus respectfully requests withdrawal of said objections.

**The Section 112(2) Claim Rejections:**

Claims 12-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. As suggested by Page 6 of the Office Action, the recitation of “said proximity

detection having ...” in lines 4-5 has been amended to now recite “said proximity detection module”. Accordingly, the Section 112(2) claim rejections are believed to be overcome.

The Applicant also submits that the subject application has been examined for compliance with Section 112, and that all of the Section 112 issues raised by the Examiner in the Office Action have been addressed by the subject Amendment. Thus, the Applicant respectfully submits that the subject application is now in full compliance with Section 112.

**The Section 102(b) Claim Rejections:**

Claims 12-23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Pouchak (U.S. Pub. No. 2005/0040247).

Independent claim 12 has been amended to include limitations recited in dependent claim 19 to clarify that the thermostat implements the away mode of the proximity detection module and that the proximity detection module detects a presence of a user at the site. Put another way, independent claim 12 as amended now clarifies that a detected presence of a user at a site (or lack thereof) is a separate and distinct limitation from an enabled away mode of the proximity detection module. As also required by amended claim 12, the proximity detection module alters an operating condition of the thermostat during the enabled away mode in response to, or based on, the detected presence of the user.

Although Pouchak discloses a thermostat capable of communicating with a PDA, and Paragraph [0143] of Pouchak in its most favorable interpretation discloses an away mode of a thermostat (albeit not an away mode of a proximity detection module), the Applicant respectfully submits that the entirety of Pouchak still fails to make a single mention of determining or detecting a physical presence of a user at a site. Thus, the Applicant respectfully submits that

Pouchak simply fails to disclose a proximity detection module configured to detect a presence of a user at the site as the Office Action suggests. For these same reasons, it necessarily follows that Pouchak also fails to disclose a proximity detection module configured to alter an operating condition of the thermostat during the away mode in response to, or based on the detected presence of the user. Accordingly, the Applicant respectfully submits that independent claim 12 distinguishes over Pouchak, and thus is believed to be allowable.

Claims 13-23 depend, ultimately, on claim 12 and are believed to be allowable for at least these same reasons.

**Conclusion:**

It is submitted that the amendments have antecedent basis in the application as filed and that the amendments do not add new matter to the application. It is further submitted that the amendments place the claims of the application in suitable condition for allowance; notice of which is respectfully requested. If the Examiner believes that prosecution of the application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicant(s) attorney at the telephone number or email address listed below.

Respectfully submitted,

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