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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/846,713	05/14/2004	Elizabeth Wilhite	02-019-1/1038 (IDRF120)	1784
25681	7590	01/25/2013	EXAMINER	
ORMISTON & MCKINNEY, PLLC			TURCHEN, JAMES R	
P.O. BOX 298			ART UNIT	PAPER NUMBER
802 W. Bannock, Ste. 402			2439	
BOISE, ID 83701			MAIL DATE	DELIVERY MODE
			01/25/2013	PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ELIZABETH WILHITE, ALBERT HENRY CARLSON,
DARIN MITCHELL EVANS, JUSTIN MICHAEL CASSIDY,
THOMAS MAIN DUBUISSON, and PHILIP LEE GREGG

Appeal 2010-004166
Application 10/846,713
Technology Center 2400

Before JOSEPH F. RUGGIERO, DENISE M. POTHIER, and
STANLEY M. WEINBERG, *Administrative Patent Judges*.

POTHIER, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-100.¹ We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

¹ Throughout this opinion, we refer to the corrected Appeal Brief (App. Br.) filed September 1, 2009 and the Examiner's Answer (Ans.) mailed April 24, 2009.

Invention

Appellants' invention relates to a technique for generating a key from selected portions of a network data stream. *See* Abstract. Claims 1 and 16 are reproduced below with the key disputed limitations emphasized:

1. A method for generating a key, comprising:
reading a network data stream;
selecting a portion of data from the data stream; and
assembling the key from the selected portion.

16. The method of Claim 8, wherein altering comprises *isolating a network node from a network path and sending a disruptive signal over the network path.*

The Rejections

The Examiner relies on the following as evidence of unpatentability:

Unkenholz	US 4,429,180	Jan. 31, 1984
Benayoun	US 7,203,834 B1	Apr. 10, 2007 (filed May 17, 2000)

Claims 1, 2, 4-15, 23-32, 34-36, 38-49, 57-66, 68-77, 83-91, 93-95, and 98-100 are rejected under 35 U.S.C. § 102(e) as anticipated by Benayoun. Ans. 3-14.

Claims 3, 33, 37, 67, 92, 96, and 97 are rejected under 35 U.S.C. 103(a) as unpatentable over Benayoun and Official Notice. Ans. 14-15.

Claims 16-22, 50-56, and 78-82 are rejected under 35 U.S.C. § 103(a) as unpatentable over Benayoun and Unkenholz. Ans. 15-17.

THE ANTICIPATION REJECTION OVER BENAYOUN

Regarding illustrative claim 1, the Examiner finds that Benayoun discloses all the limitations recited in claim 1, including assembling a key

from a selected portion of network data stream. Ans. 3 (citing col. 5, ll. 39-48). Appellants argue that Benayoun does not assemble keys right from a selected portion of a data stream read at each given node. Br. 9. Specifically, Appellants assert Benayoun is not assembling directly from a data stream but rather indirectly from the dictionary. Br. 10.

ISSUE

Under § 102, has the Examiner erred in rejecting claim 1 by finding that Benayoun discloses assembling a key from the selected portion of a network data stream?

ANALYSIS

Based on the record before us, we find no error in the Examiner's rejection of claim 1, which calls for assembling a key from the selected portion of a network data stream. Claim 1 does not recite assembling a key right or directly from selected portions at each node. Moreover, a claim is given its broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art" during examination. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (internal citations and quotations omitted). When looking at the Specification (*see generally* Spec.), Appellants have not defined "assemble" in the disclosure, such that the meaning of "assembling" in claim 1 requires a direct assembly of the key from the selected portions.

Appellants have also failed to demonstrate adequately the word, "assembling," would have been understood by an ordinary artisan to mean the argued direct assembly. *See* Br. 10. Presumably to support how the

term, “assembling,” would have been understood by an ordinary artisan. Appellants present an analogy between assembling a building from lumber versus seeds and Benayoun’s assembling a key from a dictionary versus the selected portion. Br. 10. Yet, we find such an argument and the analogy unavailing. Appellants have failed to demonstrate that the applicability of the definition of the word, “assemble,” from an ordinary dictionary (i.e., “to fit together the parts of”) to claim 1’s usage, such that an ordinary skilled artisan in the art of generating cryptographic key would have understood the word to have this meaning. *Id.* Thus, Appellants have not adequately established the applicability of the provided definition and the analogy concerning assembling a building to claim 1 and its recitation of assembling keys. Contrary to Appellants’ contentions, we agree therefore with the Examiner (Ans. 18) that the broadest reasonable construction of the phrase, “assembling the key from the selected portion” in claim 1, includes assembling the key indirectly from the selected portion of the data. *See Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364. We next turn to Benayoun.

Benayoun discloses receiving decrypted data. Col. 5, ll. 35-39. After decrypting, compressed data is sent to a data compressor/decompressor 44, and dictionary 46 is updated. Col. 5, ll. 39-41; Figs. 2, 4. This allows a new key to be generated from the new contents of the dictionary. Col. 5, ll. 41-42. Benayoun further teaches that the decryption process involves decrypting the data at step 76 and then de-compressing the data at step 78. Col. 6, ll. 40-60; Fig. 4. The decompressing step has the effect of updating the dictionary (col. 6, ll. 53-54), and thus at least a portion of the data stream (col. 5, ll. 20-22, 39-41) is used to update the dictionary. Moreover, because the data portion updates the dictionary’s contents (*see* col. 5, ll. 20-22, 39-

41, col. 6, ll. 52-55) and the new key is generated from the dictionary's new contents (col. 6, ll. 53-54), the key is assembled indirectly from the selected portion and maps to claim 1, as broadly as recited. We therefore disagree that Benayoun is so cryptic regarding its dictionary's contents (Br. 9) that the reference does not disclose the recited assembling step.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of independent claim 1 and claims 2, 4-15, 23-32, 34-36, 38-49, 57-66, 68-77, 83-91, 93-95, and 98-100 not separately argued with particularity (Br. 10-13).

THE OBVIOUSNESS REJECTION OVER BENAYOUN

Appellants assert that claims 3, 33, 37, 67, 92, 96, and 97 depend from a patentable base claim, and for the reasons set forth concerning why the base claims were patentable, claims 3, 33, 37, 67, 92, 96, and 97 are also patentable. Br. 13-14. We disagree for the reasons set forth above when addressing claim 1 and each base claims.

THE OBVIOUSNESS REJECTION OVER BENAYOUN AND UNKENKOLZ

Regarding claim 16, the Examiner finds that Unkenholz teaches periodically swapping communications lines, which causes a disruptive signal over a network path. *See* Ans. 16. The Examiner elaborates that the phrase, "isolating a network node from a network path and sending a disruptive signal over the network path" broadly includes removing or disconnecting a node from the network and sending a disruptive signal over the path at some later point. *See* Ans. 19. In the Examiner's view, the

recited sending step does not have to occur concurrently with the recited isolating step. *See id.* Based on this understanding, Unkenholz teaches sending a disruptive signal over the network path after reconnecting an isolated node. *See id.*

Appellants argue that the Examiner findings of Unkenholz do not relate to the claim limitation of isolating a network node from a network path and sending a disruptive signal over the same network path, since once network path is open and a node is isolated in Unkenholz, no signals can be sent. *See Br. 14-15.*

ISSUE

Under § 103, has the Examiner erred in rejecting claim 16 by finding that Benayoun and Unkenholz collectively would have taught or suggested isolating a network node from a network path and sending a disruptive signal over the network path?

ANALYSIS

Based on the record before us, we find no error in the Examiner's rejection of claim 16 which calls for isolating a network node from a network path and sending a disruptive signal over the network path. Giving claim 16 its broadest reasonable construction, we agree with the Examiner (*see Ans. 19*) that the sending step as recited does not have to happen simultaneously with the isolating step. Thus, even if the network path is open at some point to isolate a node, we find unpersuasive Appellants' argument that no signals (e.g., a disruptive signal) can be sent over the

network path (Br. 14), including at a later time when the communications lines are reconnected.

The Examiner finds that Unkenholz teaches isolating the nodes from the network path when the switches are open. *See* Ans. 16 (citing col. 3, ll. 4-7 that discusses opening the circuit when the signals values on lines 13 and 23 are the same); *see also* Ans. 19. The Examiner further finds that Unkenholz teaches or suggests, after being in an isolated mode for some time, switching to a reconnected position or switching between lines, which causes a disruptive signal to be sent over the network path. *See* Ans. 16, 19. Appellants have not disputed these findings (*see generally* App. Br.14-15) nor filed a Reply Brief contesting these findings.

As for illustrative claim 17, Appellants repeat the arguments presented for claim 16. Br. 15.

For the foregoing reasons, Appellants have not persuaded us of error in the rejection of independent claim 16 and claims 17-22, 50-56, and 78-82 not separately argued with particularity (Br. 14-15).

CONCLUSION

The Examiner did not err in rejecting claims 1-100 under §§ 102 or 103.

DECISION

The Examiner's decision rejecting claims 1-100 is affirmed.

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Application 10/846,713

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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