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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS KIN TAK FONG

Appeal 2010-004384
Application 11/069,575
Technology Center 2400

Before JEAN R. HOMERE, CARL W. WHITEHEAD JR., and
GREGORY J. GONSALVES, *Administrative Patent Judges.*

GONSALVES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the rejection of claims 1-23 and 25-29 (App. Br. 3). Claim 24 was cancelled (*id.*). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Exemplary claim 1 follows:

1. A method for digitally testing a hybrid fiber coaxial cable plant, comprising:

 sending a query to a plurality of cable modems, the query including a request for cable modem status information;

 receiving a reply from at least one of the plurality of cable modems wherein the reply includes at least a unique identifier portion corresponding to the at least one of the plurality of cable modems, and the requested cable modem status information;

 storing the reply in a database;

 correlating each reply in the database to a specific cable modem using the unique identifier portion in each reply;

 developing a performance baseline report from reply data in the database, wherein the baseline report encompasses information related to one or more periodic effects on plant performance; and

 providing reconfiguration and adjustment instructions to a cable modem that does not meet performance baselines as identified in the performance baseline report.

Claims 1, 4, 6-8, and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann (US 6,393,478 B1, May 21, 2002) , Anderson (US 5,850,386, Dec. 15, 1998), La Joie (US 5,630,048, May 13, 1997), and Leano (US 6,453,472 B2, Sep. 17, 2002) (Ans. 3-11).

Claims 9, 12, 15 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and Dziekan (US 6,704,288 B1, Mar. 9, 2004) (Ans. 11-14).

Claims 10-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and Stewart (US 5,812,557, Sep. 22, 1988) (Ans. 15-16).

Claim 13 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and Bergins (US 4,691,314, Sep. 1, 1987) (Ans. 16-17).

Claim 14 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and Moran III (US 6,377,552 B1, Apr. 23, 2002) (Ans. 17).

Claim 17 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and McMullan Jr. (US 5,142,690 Aug. 25, 1992) and Stewart (US 5,812,557, Sep. 22, 1998) (Ans. 18-19).

Claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano, and Hershey (US 5,568,471, Oct. 22, 1996) (Ans. 19- 20).

Claim 20 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Anderson, La Joie, Leano and Ozluturk (US 6,157,619, Dec/ 5. 2000) (Ans. 20).

Claims 2, 21, and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Dziekan, and La Joie (Ans. 20-24).

Claim 3 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Dziekan, La Joie, Moran (US 6,377,552) and Morgan (“*Return Path Alignment, Insights into proper return path alignment, Digital trouble shooting is a whole new ballgame*”; Communication Engineering Design, Oct.1996) (Ans. 24-26).

Claims 5, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Wichelman (US 6,711,134 B1, Mar. 23, 2004), La Joie, and Robrock II (US 5,680,390, Oct. 21, 1997) (Ans. 26-31).

Claim 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bahlmann, Wichelman, La Joie, Robrock, and Hrastar (US 6,272,150 B1, Aug. 7, 2001) (Ans. 31-34).

FACTUAL FINDINGS

We adopt the Examiner’s factual findings as set forth in the Answer (Ans. 3, *et seq.*).

ISSUE

Appellant’s responses to the Examiner’s positions present the following issue:

Did the Examiner err in finding that the combination of Bahlmann, Anderson, La Joie, and Leano teaches or suggests “developing a performance baseline report from reply data in the database, wherein the baseline report encompasses information related to one or more periodic

effects on plant performance,” as recited in independent claim 1, and as similarly recite in independent claims 2, 4, and 5?

ANALYSIS

Appellant contends that the Examiner erred in rejecting the independent claims as obvious because La Joie “fails to disclose ‘developing a performance baseline report from reply data in the database, wherein the baseline report encompasses information related to one or more periodic effects on plant performance’” (App. Br. 17 (emphasis omitted)). In support of their contention, Appellant argues that “[m]erely taking the temperature of a computer system does not correspond to developing a report that reflects variations in temperature over time” (*id.*). Appellant further argues that La Joie discloses merely a thermometer and that “[w]hile such a thermometer might be involved in developing a baseline report that reflects periodic effects on plant performance, that thermometer does not-by-itself-meet this claim element” (*id.*).

The Examiner concluded, however, that “La Joie, not - by itself -, but instead combined with other references such as Bahlmann and Anderson, is believed to have rendered the claim obvious to those skilled in the art” (Ans. 38). More particularly, the Examiner concluded that “it is reasonable to conclude that La Joie's ‘thermometer’ can be involved in developing a baseline report that reflects periodic effects on plant performance” (*id.*). The Examiner reasoned that “as evidenced by Bahlmann and Anderson, it is a further predictable and known technique for those skilled in the art to track and develop baseline reporting of the operating parameters of devices” (*id.*).

We agree with the Examiner. Our reviewing Court requires us to give a claim its broadest reasonable meaning consistent with the Specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Appellant's Specification discloses that "automated digital certification encompasses the collection of data over a day or more to identify any periodic effects on plant performance, such as those caused by daytime heating and nighttime cooling of components" (p. 8, l. 19 – p. 9, l. 2). Accordingly, we construe the claim term "periodic effects" as encompassing parameters that change over time such as temperature. La Joie discloses measuring temperature over time:

“[a] temperature of the external computer system is monitored through another connection between the monitoring system and the external computer system. This temperature measurement typically monitors a temperature sensor installed within the fan of the external computer system specification

(col. 11, ll. 40-45). Moreover, Bahlmann discloses a system that tracks problems with devices in a network where “many devices 212 provide values from internal sensors” (col. 7, l. 65 – col. 8, l. 2). Anderson teaches developing a performance baseline report from network performance data:

It is an object of the present invention to provide a new and improved protocol analyzer capable of displaying station level statistics, displaying real time event detection creating baseline network performance information and comparing said baseline information with real-time performance information and displaying to a user the results of that comparison . . .

(col. 4, ll. 47-53).

Accordingly, we conclude that the claim limitation of developing a performance baseline report compassing information related to periodic effects is a combination of the familiar element of sensing data that changes

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over time like temperature as taught by La Joie and Bahlmann and developing a performance baseline report from that data as taught by Anderson that would have yielded predictable results. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Thus, we find no error in the Examiner's obviousness rejection of independent claims 1, 2, 4, and 5 as well as the claims dependent therefrom (*i.e.*, claims 1-23 and 25-29) because Appellants did not set forth any separate and distinct patentability arguments for the dependent claims (*see* App. Br. 15-17).

DECISION

We affirm the Examiner's decision rejecting claims 1-23 and 25-29 as unpatentable under 35 U.S.C. § 103(a).

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

Vsh