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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RALF PRENZEL, ANDREAS SCHMIDT,
and MARKUS TRAUBERG

Appeal 2010-005876
Application 10/511,056
Technology Center 2600

Before DEBRA K. STEPHENS, KALYAN K. DESHPANDE, and JUSTIN BUSCH, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 31-38. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Introduction

According to Appellants, the invention relates to "a method for transmitting data, particularly having multimedia contents, from a first communications unit . . . to a second communications unit . . . in a telephone communications network." Abstract.

STATEMENT OF THE CASE

Exemplary Claim

Claim 31 is exemplary and reproduced below:

> 31. A method for transmitting data having multimedia content from a first communications unit to a second communications unit in a telecommunications network, the method comprising:
>
> transmitting at least one transmission status message assigned to the data to the first communications unit;
>
> wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

Reference

Hronek	US 7,127,264 B2	Oct. 24, 2006
		(filed Feb. 27 2001)
Ratschunas	WO 01/28171 A1	Apr. 19, 2001

Rejections

Claims 31-38 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Ratschunas and Hronek.

ISSUE

Appellants argue their invention is not rendered obvious by the combination of Ratschunas and Hronek. App. Br. 4-6; Reply Br. 4-6. Specifically, Appellants argue that the combination of Ratschunas and Hronek does not teach "the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons." App. Br. 6.

Issue: Has the Examiner erred in determining that the combination of Ratschunas and Hronek teaches "the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons"?

ANALYSIS

Appellants begin by arguing that an object of their invention is to provide the sender of data "'a more detailed item of information concerning

the deliverability of the data which it has sent.'" App. Br. 4 (emphasis omitted). Despite any aspects of this "object," any arguments based on language other than what is recited in the claims is not commensurate with the scope of the claims and thus, unpersuasive.

Appellants argue that the rejection ignores the portion of the limitation that recites the "non-delivery reason . . . is selected from at least two non-delivery reasons." App. Br. 5. Appellants point out that the Examiner relies on Hronek for teaching this aspect of the claims but that Hronek always provides the same transmission message regardless of the delivery failure reason (i.e., either because the user had his device turned off or because the device was out of the service area). *Id.*; Reply Br. 5. Appellants assert that, because "Hronek merely 'informs the HLR of the failure,' without providing any information as to the reason for the delivery failure," Hronek teaches a single failure message regardless of the non-delivery reason and does not provide "any information about a non-delivery reason." App. Br. 6; Reply Br. 5.

Appellants then argue that confirmation of the lack of multiple failure messages is shown because "Hronek does not teach or suggest deciding between sending the massage [sic] again or discarding the message because the HLR has not receive [sic] sufficiently detailed information from the delivery failure message to inform such a decision." App. Br. 6; Reply Br. 5-6.

This argument is not commensurate with the scope of the claims. While the prior art must teach each limitation of the claims, deciding

between sending the message again and discarding the message is neither a limitation of the claims, nor required to meet the recited limitations.

The Examiner finds that there are two different reasons for non-delivery in Hronek, specifically (1) the intended user was out of the service area and (2) the user had his device turned off. Ans. 10. The Examiner further finds that the two non-delivery reasons claimed by Appellants are broad enough such that either of the identified non-delivery reasons of Hronek could be read on either of the non-delivery reasons claimed by Appellants. Ans. 11. We agree.

Appellants' response that only the non-delivery reason of not being able to deliver the data applies when the user is out of the service area is not sufficient to persuade us of error in the Examiner's findings. Reply Br. 4-5.

Indeed, Appellants' claimed "non-delivery reason" is merely a description of "data." Even under Appellants' proffered construction, Appellants are arguing patentability based on the **content of the data** that is transmitted. This data is not positively recited as affecting the method or switching arrangement of claims 31 and 38, respectively. Nor is the content related to the recited transmitting step in claim 31 or the signaling apparatus of claim 38. Appellants have not persuaded us that the label or content of this nonfunctional descriptive material further limits the claimed invention, either functionally or structurally. *See In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004) (Nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious). We therefore interpret the claim language reciting that "the transmission status message includes a

non-delivery reason . . .” as merely content describing the “transmission status message” and accord such limitation no patentable weight.

Moreover, Appellants argue their Specification discloses detailed delivery information is provided. App. Br. 4-5 (citing Spec. ¶ 50). This portion of the Specification states that various delivery “statuses are currently defined in the MMS specification [2, 5] which are transmitted in an MMS delivery status notification or transmission status message ‘M-Delivery.ind.’” Spec. ¶ 50. After explaining the existing statuses, Appellants provide an explanation of their new status, “undeliverable.” Spec. ¶ 51.

However, even if we were to give patentable weight to the non-functional content of the transmission status message, Appellants have presented no evidence that modifying the content of the transmission status message was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007)).

Therefore, we agree with the Examiner that the broadest reasonable interpretation of independent claims 31 and 38, in light of Appellants’ Specification, is read on by the combination of Ratschunas and Hronek. Therefore, we find that the Ratschunas-Hronek combination teaches the limitations recited in independent claims 31 and 38 and also teaches or suggests the limitations recited in dependent claims 32-37, not separately argued.

DECISION

The Examiner's rejection of claims 31-38 is affirmed.

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) (2011).

AFFIRMED

ELD