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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEAN E. THORSON, WILLIAM R. BAYER,
and ASIF Z. MEHDI

Appeal 2010-008525
Application 11/212,135
Technology Center 2600

Before BRUCE R. WINSOR, JEREMY J. CURCURI, and
BARBARA A. BENOIT, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Appellants' invention relates to detection of unauthorized communication system users. *See generally* Abstract; Spec. ¶ 0001. Claim 1 is illustrative and reads as follows, with key disputed limitations emphasized:

1. A method comprising:

[(a)] at a code division multiple access base transceiver station:

[(b)] - using a correlating receiver to monitor what may comprise possible multi-path versions of a transmission from an authorized communication system user to provide monitoring results;

[(c)] - *using the monitoring results to detect that [(i)] one of the possible multi-path versions of the transmission was sourced by an unauthorized communication system user while [(ii)] at least another of the possible multi-path versions of the transmission was sourced by an authorized communication system user.*

The Rejections

1. The Examiner rejected claims 1-6 and 9-20 under 35 U.S.C. § 103(a) as unpatentable over Daudelin (US 6,915,123 B1; issued July 5, 2005) and Kiema (US 5,684,793; issued Nov. 4, 1997). Ans. 3-6.

2. The Examiner rejected claim 7 under 35 U.S.C. § 103(a) as unpatentable over Daudelin, Kiema, and Urita (US 6,466,777 B1; issued Oct. 15, 2002). Ans. 6-7.

3. The Examiner rejected claim 8 under 35 U.S.C. § 103(a) as unpatentable over Daudelin, Kiema, and Hill (US 7,367,497 B1; issued May 6, 2008; filed Dec. 6, 2004). Ans. 7-8.

OBVIOUSNESS REJECTION OVER DAUDELIN AND KIEMA

Contentions

The Examiner finds that Daudelin substantially teaches or suggests all of the limitations of illustrative claim 1, including using a receiver to monitor what may comprise possible multi-path versions of a transmission. Ans. 4. Daudelin discloses monitoring the operational area of a subscriber station for a wireless network and determining whether the subscriber station is operating in an authorized coverage area. Daudelin, Abstract. The Examiner further relies on Kiema as teaching a correlated receiver. Ans. 4. The Examiner concludes that it would have been obvious to an ordinarily skilled artisan to incorporate Kiema's correlated receiver with Daudelin's system to recognize signals on the basis of the spreading code. Ans. 4.

Appellants argue, among other things, that Daudelin does not teach or suggest step (c) recited in claim 1 – that is, “using the monitoring results to detect that [(i)] one of the possible multi-path versions of the transmission was sourced by an unauthorized communication system user while [(ii)] at least another of the possible multi-path versions of the transmission was sourced by an authorized communication system user.” App. Br. 7-8; Reply Br. 5-6.

In response, the Examiner explains that Daudelin teaches or suggests step (c) recited in claim 1 because (i) the determination that Daudelin's subscriber station is in an authorized area equates to detecting that one of the possible multi-path versions of the transmission was sourced by an authorized communication system user and (ii) the determination that Daudelin's subscriber station is not in an authorized area equates to detecting that one of the possible multi-path versions of the transmission was

sourced by an unauthorized communication system user. Ans. 10. The Examiner's position is that Daudelin's system in which a single subscriber station is an authorized communication system user during part of a call (when operating in an authorized coverage area) and is an unauthorized communication system user during a different part of the same call (when operating outside of the authorized coverage area) teaches or suggests step (c) recited in claim 1.

Analysis

This appeal turns on whether step (c) in claim 1 precludes the type of monitoring results that the Examiner concluded was taught or suggested by Daudelin – namely, a single subscriber station being both an authorized communication system user and an unauthorized communication system user during different times of a call.

We therefore begin by construing the term “while.” It is well-established that we are to apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the Specification. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). As used in claim 1, “while” is a conjunction that joins claim phrase (i) describing sourcing of the transmission by an unauthorized communication system user and claim phrase (ii) describing sourcing of the transmission by an authorized communication system user.

In the context of claim 1, “while” requires a temporal relationship between phrase (i) and phrase (ii) – namely, phrase (i) must occur at the

same time as phrase (ii) occurs.¹ The broadest reasonable interpretation of step (c) then requires the sourcing of the transmission by an unauthorized communication system user to occur at the same time as the sourcing of the transmission by an authorized communication system user.

With this claim construction in mind, we find the Examiner’s reliance on Daudelin to be erroneous for Daudelin’s monitoring does not meet the temporal relationship recited in claim 1. Rather, in rejecting claim 1, the Examiner interpreted “while” as meaning “although” or “and”² – that is, not requiring a temporal relationship. We find that construing claim 1 without a temporal relationship to be unreasonable in light of the language of claim 1 and Appellants’ Specification, which discloses detecting, in a substantially simultaneous manner, monitoring results that comprise both a transmission of a voice frame type and a frame type that is ordinarily not used to convey voice content. *See* Spec. ¶ 0017 (describing step 103 of process 100, which is the only description of step (c) of claim 1 in the Specification).

Accordingly, we agree with Appellants that Daudelin does not teach or suggest step (c) recited in claim 1 because the Examiner’s interpretation is overbroad. App. Br. 8; *see also* Reply Br. 6. We therefore will not sustain the rejection of (i) independent claim 1, (ii) independent claims 9 and 15, each of which recite commensurate limitations, and (iii) dependent claims 2-6, 10-14, and 16-20.

¹ AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 2033 (3d ed. 1992) (defining “**while conj.**” as “**1.** As long as; during the time that . . . **2.** At the same time that”).

² *See* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 2033 (3d ed. 1992) (defining “**while conj.**” as “**2.** At the same time that; although . . . **3.** Whereas; and”).

THE REMAINING OBVIOUSNESS REJECTIONS

Because the Examiner has not shown that Urita or Hill remedies the deficiencies noted above regarding the independent claims, we do not sustain (1) the obviousness rejection of dependent claim 7 over Daudelin, Kiema, and Urita or (2) the obviousness rejection of dependent claim 8 over Daudelin, Kiema, and Hill for similar reasons.

CONCLUSION

The Examiner erred in rejecting claims 1-20 under 35 U.S.C. § 103(a).

ORDER

The Examiner's decision rejecting claims 1-20 is reversed.

REVERSED

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