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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREAS SCHMIDT, HOLGER SCHMIDT, and
NORBERT SCHWAGMANN

Appeal 2010-009190
Application 11/470,493
Technology Center 2600

Before JOSIAH C. COCKS, MICHAEL R. ZECHER, and
BRIAN J. MCNAMARA, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 42-53, 55-57, and 70-84. App. Br. 2. Claims 1-41, 54, and 58-69 were cancelled. *Id.* We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented a system, apparatus, and method for transmitting data within a communication session. Spec. 1:9-12.

Illustrative Claim

Claims 42, 70, 78-82, and 84 are independent claims. Independent claim 42 is illustrative:

42. A communication system, comprising:
- a first communication network comprising a central communication session server unit configured to provide of a communication session between a plurality communication terminals;
 - at least one first communication terminal being registered in the first communication network;
 - a second communication network comprising a data distribution unit configured to distribute data to communication terminals,
 - at least one second communication terminal being registered in the second communication network;
 - a data distribution unit generation unit configured to generate the data distribution unit;
 - the central communication session server unit configured to:
 - during setup of a communication session, establish, via the data distribution unit, a communication connection between the at least one first communication terminal and the at least one second communication terminal, and

send the data to be transmitted to the at least one second communication terminal within the communication session at least partially to the data distribution unit, or at least partially receive the data to be transmitted to the at least one first communication terminal within the communication session, from the data distribution unit and forward this data to the at least one first communication terminal,

the data distribution unit configured to receive the data to be transmitted to the at least one second communication terminal within the communication session and forward this data to the at least one second communication terminal or receive the data to be transmitted to the at least one first communication terminal within the communication session and forward this data to the central communication session server unit.

Prior Art Relied Upon

Tomikawa	US 2002/0064273 A1	May 30, 2002
Mangal	US 2003/0148785 A1	Aug. 7, 2003
Itzkovitz	US 2006/0234690 A1	Oct. 19, 2006 (effectively filed Jan. 21, 2005)
Blicker	US 2007/0275747 A1	Nov. 29, 2007 (PCT filed Sept. 2, 2004)

Rejection on Appeal

Claims 42, 44-52, 55-57, 70-76, and 78- 84 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicker and Tomikawa.¹ Ans. 3-7.

¹ While the Examiner omits dependent claim 83 in the statement of the rejection (Ans. 3), the Examiner nonetheless includes dependent claim 83 in the corresponding body of the rejection (Ans. 6). We will treat the Examiner's incorrect statement of the rejection as mere harmless error and, therefore, presume that the Examiner intended to reject claims 42, 44-52, 55-57, 70-76, and 78-84 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicker and Tomikawa. Accord App. Br. 8 (confirming

Claim 43 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Blicher, Tomikawa, and Mangal.² *Id.* at 7.

Claims 53 and 77 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher, Tomikawa, and Itzkovitz.³ *Id.* at 7-8.

Examiner's Findings and Conclusions

The Examiner concludes that the claimed “data distribution unit generation unit” may be broadly, but reasonably construed as hardware. Ans. 9. The Examiner also concludes that the claimed “data distribution unit” may be broadly, but reasonably construed as software application. *Id.* Based on that claim construction, the Examiner finds that because Tomikawa’s distribution route generating apparatus is configured to

that dependent claim 83 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher and Tomikawa).

² The Examiner rejects dependent claim 43 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher and Mangal. Ans. 7. However, we note that independent claim 42, from which claim 43 depends, stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher and Tomikawa. Ans. 3. Therefore, because Tomikawa is part of the rejection of independent claim 42, we will treat dependent claim 43 as being rejected under 35 U.S.C. § 103(a) as being unpatentable over Blicher, Tomikawa, and Mangal.

³ The Examiner rejects dependent claims 53 and 77 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher and Itzkovitz. Ans. 7. However, we note that independent claims 42 and 70, from which claims 53 and 77 depend, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Blicher and Tomikawa. Ans. 3. Therefore, because Tomikawa is part of the rejection of independent claims 42 and 70, we will treat dependent claims 53 and 77 as being rejected under 35 U.S.C. § 103(a) as being unpatentable over Blicher, Tomikawa, and Itzkovitz.

generate an application program that provides distribution route information, Tomikawa teaches a data distribution generation unit... configured to generate the data distribution unit, as required by independent claim 42. *Id.* (citing to ¶¶ [0014-15] and [0041]).

Appellants' Contentions

Appellants contend that the Examiner's claim construction of the claim term "a data distribution unit" is unreasonable. App. Br. 9-12; Reply Br. 2. In particular, Appellants assert that while the claimed "data distribution unit" may use or even generate a route, it would be inconsistent with the plain meaning of the claim term as well as the present Specification to construe that claim term as a distribution route. App. Br. 11-12. Further, Appellants contend that the Examiner's combination of Blicker and Tomikawa does not teach a data distribution unit generation unit configured to generate the data distribution unit, as required by independent claim 42. *Id.* at 13. In particular, Appellants argue that while Tomikawa's distribution route generation apparatus may teach the claimed "data distribution unit," the Examiner does not cite to a textual portion of Tomikawa that teaches the claimed "data distribution unit generation unit." Reply Br. 2.

Appellants rely upon the same arguments presented for the obviousness rejection of independent claim 42 to rebut the obviousness rejections of independent claims 70, 78-82, and 84. App. Br. 14.

II. ISSUE

Has the Examiner erred in determining that the combination of Blicker and Tomikawa teach "a data distribution unit generation unit

configured to generate the data distribution unit[,]” as recited in independent claim 42, and similarly recited in independent claims 70, 78-82, and 84?

III. ANALYSIS

*35 U.S.C. § 103(a) Rejection—Combination of Blicker and Tomikawa
Claims 42, 70, 78-82, and 84*

Based on the record before us, we do not discern error in the Examiner’s obviousness rejection of independent claim 42, which recites, *inter alia*, “a data distribution unit generation unit configured to generate the data distribution unit[.]” We also do not discern error in the Examiner’s obviousness rejection of independent claims 70, 78-82, and 84, which recite a similar claim limitation.

We begin our analysis by first considering the scope and meaning of the claim terms “a data distribution unit generation unit” and “the data distribution unit,” which must be given their broadest reasonable interpretation consistent with Appellants’ disclosure. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *see also In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989) (stating that during examination “claims must be interpreted as broadly as their terms reasonably allow”). As support for the disputed claim terms, Appellants direct us to the Specification at page 16, line 32 through page 17, line 2. *See, e.g.*, App. Br. 3-7. The relevant portions of Appellants’ Specification are reproduced below:

The data distribution unit generation unit can be configured for the generation of the data distribution unit when, within the communication session, data are to be transmitted to the at least one second data communication terminal and so far no data distribution unit exists in, or is available in, the second communication network. In other words, this means that the

data distribution unit is generated only when and for example only if it is actually required.

Spec. 16:32-17:2. Appellants' Specification also discloses the following:

- The units realizing the distribution functions, for example the data distribution unit, forward the received media data to the participants and the communication terminals, respectively, which are located in their communication network.

Spec. 18:23-26.

- The data distribution unit 312 does not necessarily have to be a physically independent server, but can be realized by means of software. The software can run, for example, on a computer which unites all media distribution functions of a communication network for all communication sessions running there. Furthermore, the software can also be implemented on a computer, on which push-to-talk server units of the respective communication network are realized.

Spec. 31:18-25.

Upon reviewing the cited textual portions of Appellants' Specification, we do not find any explicit or special definition set forth for the claim terms "a data distribution unit generation unit" and "the data distribution unit." Therefore, we resort to their ordinary and customary meaning as would be understood by one with ordinary skill in the art. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (claim terms are "generally given their ordinary and customary meaning"). We conclude that one of ordinary skill in the art would have understood that the disputed claim terms may be broadly, but reasonably construed as follows: (1) "a data distribution unit generation unit" is computer hardware; and (2) "the data distribution unit" is software running on a computer that

establishes communication connections between terminals located in a communication network for the purpose of transmitting data therebetween. With these claim constructions in mind, we turn to the merits of the Examiner's obviousness rejection.

The Examiner takes the position that Tomikawa's distribution route generation apparatus, which comprises a collection device, a generation device, and an output device, constitutes the claimed "data distribution unit generation unit." Ans. 9 (citing to ¶¶ [0014-15] and [0041]). The Examiner also takes the position that the application program implemented by Tomikawa's distribution route generation apparatus creates distribution routes that are used to transmit data from one node to another node, and, therefore, constitutes the claimed "data distribution unit." *Id.* We agree with the Examiner.

Consistent with our claim construction above, one of ordinary skill in the art would have recognized that because Tomikawa's distribution route generation apparatus comprises a collection of devices (¶¶ [0015] and [0041]), it may be generally categorized as computer hardware. Moreover, upon receiving a data distribution request, one of ordinary skill in the art would have understood that Tomikawa's distribution route generation apparatus initiates software that generates distribution routes (*see, e.g.*, ¶ [0014]—"an application layer"), which in turn establish communication connections between nodes located in a communication network for streaming data therebetween. As a result, the Examiner has presented sufficient evidence to warrant a finding that Tomikawa teaches the disputed claim limitation.

We are not persuaded by Appellants' argument that while Tomikawa's distribution route generation apparatus may teach the claimed "data distribution unit," the Examiner does not cite to a textual portion of Tomikawa that teaches the claimed "data distribution unit generation unit." Reply Br. 2-3. As discussed above, the Examiner provides ample evidence indicating that Tomikawa teaches both the claimed "data distribution unit generation unit" and "the data distribution unit." It follows that the Examiner has not erred in concluding that the combination of Blicher and Tomikawa renders independent claims 42, 70, 78-82, and 84 unpatentable.

Claims 44-52, 55-57, 71-76, and 83

Appellants do not provide separate and distinct arguments for patentability with respect to dependent claims 44-52, 55-57, 71-76, and 83. App. Br. 14. Therefore, we accept Appellants' grouping of these dependent claims with their underlying base claim. *See id.* Consequently, dependent claims 44-52, 55-57, 71-76, and 83 fall with independent claims 42 and 70, respectively. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Remaining 35 U.S.C. § 103(a) Rejections

Claims 43, 53, and 77

Appellants contend that neither Mangal nor Itzkovitz cure the above-noted deficiencies in the Examiner's proffered combination of Blicher and Tomikawa. App. Br. 13-14. As discussed above, there are no such deficiencies in the combination of Blicher and Tomikawa for either Mangal or Itzkovitz to remedy. It follows that the Examiner has not erred in concluding that: (1) the combination of Blicher, Tomikawa, and Mangal renders dependent claim 43 unpatentable; and (2) the combination of

Appeal 2010-009190
Application 11/470,493

Blicker, Tomikawa, and Itzkovitz renders dependent claims 53 and 77 unpatentable.

IV. CONCLUSION

For the foregoing reasons, the Examiner has not erred in rejecting claims 42-53, 55-57, and 70-84 as being unpatentable under 35 U.S.C. § 103(a).

V. DECISION

We affirm the Examiner's decision to reject claims 42-53, 55-57, and 70-84.

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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