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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WEN ZHAO and ISABEL MAHE

Appeal 2012-009255
Application 11/559,018
Technology Center 2600

Before JEAN R. HOMERE, DANIEL N. FISHMAN, and
CATHERINE SHIANG, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 4–9, 12, 13, 16–19, and 22–29. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.¹

¹ Claim 19 recites a computer-readable storage medium. In the event of further prosecution, we recommend the Examiner determine whether claim 19 and corresponding dependent claims encompass transitory media and therefore, non-statutory subject matter. *See Ex parte Mewherter*, Appeal No. 2012-007692 (PTAB May 08, 2013) (precedential-in-part).

STATEMENT OF THE CASE

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejection, and the Examiner's response to Appellants' arguments. We concur with Appellants' conclusion that the Examiner erred in combining Bridgelall (US 2002/0085516 A1, pub. July 4, 2002) and Quinn (US 2002/0137472 A1, pub. Sept. 26, 2002) to teach "the channel control module to turn off power to a WWAN transceiver of the mobile computing device," as recited in claim 1.²

The Examiner relies on Bridgelall primarily. *See* Ans. 5–6. Because Bridgelall does not teach the disputed claim limitation, the Examiner modifies the Bridgelall system by incorporating Quinn's teachings. *See* Ans. 6, 11–12.

We agree with Appellants the Examiner's proposed modification of Bridgelall would result in a system that is unsatisfactory for Bridgelall's stated purpose of providing automatic and seamless roaming between the WLAN and WWAN networks. *See* App. Br. 12–14. As pointed out by Appellants, Bridgelall states its invention is directed toward:

automatic and seamless vertical roaming between a WLAN and a WWAN by detecting second network availability for switching over while maintaining an active voice or data connection on the first network so that the existing connection is maintained and the transition is continuous.

See App. Br. 12 (citing Bridgelall ¶ 10).

Further, as pointed out by Appellants, Bridgelall's paragraphs 75 and 77 describe the switching process, which is opposite from the Examiner's

² Appellants raise additional arguments. Because the identified issue is dispositive of the appeal, we do not need to address the additional arguments.

proposed modification of disabling the transceiver in Bridgelall. *See* App. Br. 12–13. Indeed, Bridgelall is entitled “Automatic And Seamless Vertical Roaming Between Wireless Local Area Network (WLAN) And Wireless Wide Area Network (WWAN) While Maintaining An Active Voice Or Streaming Data Connection: Systems, Methods And Program Products.” Bridgelall, Title. Contrary to the Examiner’s unsupported assertion (Ans. 6), one skilled in the art would not have modified the Bridgelall system to incorporate Quinn’s teachings of disabling the transceiver, because that modification would have defeated the very purpose of Bridgelall—seamless roaming between WLAN and WWAN.

Accordingly, we are constrained by the record to not sustain the Examiner’s rejection of claim 1, and claims 4–9, 12, 13, 16–19, and 22–29 for similar reasons.³

DECISION

The Examiner’s decision rejecting claims 1, 4–9, 12, 13, 16–19, and 22–29 is reversed.

REVERSED

msc

³ If prosecution reopens, we recommend the Examiner review Quinn and determine whether it is appropriate to rely on Quinn as the primary reference to reject claim 1.