



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

Table with columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO., EXAMINER, ART UNIT, PAPER NUMBER, NOTIFICATION DATE, DELIVERY MODE. Includes application details for Ning SO and examiner PHUNG, LUAT.

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@verizon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* NING SO

---

Appeal 2014-002523  
Application 12/961,688  
Technology Center 2400

---

Before CARL W. WHITEHEAD JR., JEFFREY S. SMITH, and  
JOHN F. HORVATH, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant is appealing the Final Rejection of claims 1–20 under 35 U.S.C. § 134(a). Appeal Brief 1. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

*Introduction*

The invention is directed to multilayered interworking (the ability for two or more protocols, systems virtual layers to operate with one another). Specification, paragraph 1.

*Representative Claim (disputed limitations emphasized)*

1. A method comprising:
  - assigning a traffic path to a first transport trail if the first transport trail is determined to be suitable for assignment, wherein the traffic path is associated with traffic path parameter information;
    - preempting the assignment of the traffic path to the first transport trail in response to a change in at least one of a transport trail bandwidth parameter, a transport trail reservation threshold parameter, and a transport trail administrative cost parameter associated with the first transport trail;*
    - selecting a second transport trail based on associated transport trail parameter information; and*
    - assigning the traffic path to the second transport trail if the second transport trail is determined to be suitable for assignment.

*Rejections on Appeal*

Claims 1–4, 6–15, and 17–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Doverspike (US Patent Application Publication Number 2002/0097671 A1; published July 25, 2002). Final Rejection 3-15.

Claim 5 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Doverspike and Madhwaraj (US Patent Number 7,532,574 B1; issued May 12, 2006). Final Rejection 15.

Claim 16 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Doverspike and Gilmartin (US Patent Application Publication Number 2008/0037553 A1; issued February 14, 2008). Final Rejection 15-16.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed June 26, 2013), the Reply Brief (filed

Appeal 2014-002523  
Application 12/961,688

December 11, 2013), the Answer (mailed October 15, 2013) and the Final Rejection (mailed March 6, 2013) for the respective details. We have considered in this decision only those arguments Appellants actually raised in the Briefs.

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. We adopt as our own (1) the findings and reasons set forth by the Examiner in the Action from which this appeal is taken and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellant's Appeal Brief, except where noted.

Appellant argues that "Doverspike never discloses changed parameters or preempting the assignment of a traffic path to a transport trail based on changes to the parameters in the current transport trail, because the service paths and restoration paths are pre-computed ahead of time, and then stored at the nodes for later use." Appeal Br. 10 (citing Doverspike paragraph 38 ("describing the process whereby the restoration path is computed and the restoration path information is stored in the destination node of the service path")). Appellant further argues, "[n]either the restoration path nor the service path are computed or re-assigned based on a change in any parameters associated with the transport trail." Appeal Br. 10–11 (citing Doverspike paragraphs 18–22). Appellant states that "Doverspike fails to teach or suggest *preempting* the assignment of the traffic path to the first transport trail *in response to a change in as least one parameter*" as required in claim 1. Appeal Br. 9–10.

The Examiner finds:

Doverspike does not specifically disclose *preempting the assignment of the traffic path to the first transport trail in*

*response to a change in at least one of a transport trail bandwidth parameter, a transport trail reservation threshold parameter, and a transport trail administrative cost parameter associated with the first transport trail.* However Doverspike discloses shortest path algorithm excludes links not meeting cost or size/bandwidth requirements from being assigned to service path (para. 21). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to implement the shortest path algorithm as disclosed by Doverspike such that a link not meeting requirements will be excluded, i.e., preempted, from the solutions, thus ensuring delivery of quality service.

Final Rejection 4-5.

We do not find Appellant's arguments persuasive. Claim 1 requires preemption to transpire in response to a change in at least one of several parameters wherein one of the parameters is cost based. Doverspike selects a service path in response to a communication request and computes a path between the source and destination that minimizes some cost metric while providing the required size for the connection request. *See* Doverspike paragraph 21. We agree with the Examiner that an artisan would be able to employ Doverspike's algorithm to determine the shortest path to ensure quality of service in the event of cost parameter changes.<sup>1</sup>

Appellant contends that in a related patent application, the Office conceded that Doverspike failed to teach or suggest the disputed preemptive limitation of claim 1. Appeal Brief 11. We do not find Appellant's

---

<sup>1</sup> "As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *KSR Int'l v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Appeal 2014-002523  
Application 12/961,688

argument persuasive.<sup>2</sup> Therefore, we sustain the Examiner's rejection of claim 1, as well as, independent claims 11 and 12 commensurate in scope.

Appellant does not separately argue with particularity the limitations of claims 2, 4, 6, 7, 8, 9, 10, 14, 15, 17, 19, and 20 apart from merely asserting that these claims recite further features that are not taught or suggested by cited prior art. Appeal Brief 11–14, 16, 21–25. Such conclusory assertions without supporting explanation or analysis particularly pointing out errors in the Examiner's reasoning fall well short of persuasively rebutting the Examiner's prima facie case of obviousness. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). We therefore sustain the Examiner's obviousness rejection of claims 2, 4, 6, 7, 8, 9, 10, 14, 15, 17, 19, and 20.<sup>3</sup>

Appellant argue that claim 3 is patentable over Doverspike because “there is nothing in Doverspike that suggests that a link with more channels

---

<sup>2</sup> *In re Giolito*, 530 F.2d 397, 400 (CCPA 1976) (“We reject appellants' argument that the instant claims are allowable because similar claims have been allowed in a patent. It is immaterial whether similar claims have been allowed to others”) (internal citations omitted).

<sup>3</sup> Should there be further prosecution of this application, the Examiner may wish to review the claims for compliance under 35 U.S.C. § 101 in light of the preliminary examination instructions on patent eligible subject matter. *See* “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*” Memorandum to the Examining Corps, June 25, 2014. Claims 9 and 10 recite “a computer readable medium.” The broadest reasonable interpretation of the “computer readable medium” language of claims 9 and 10, when read in light of Appellants' Specification (paragraph 14), is inclusive of transitory propagating signals. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential).

Appeal 2014-002523  
Application 12/961,688

would have a higher placement priority.” Appeal Brief 12. Claim 3 recites “wherein the placement priority associated with the traffic path is higher than the placement priority associated with any other traffic paths.”

Doverspike discloses in paragraph 21, “[s]electing a service path in response to the communication request, accordingly, may be accomplished by computing a path between the source and destination that minimizes some cost metric and which has the required size for the connection request.” We do not find Appellant’s argument persuasive and agree with the Examiner’s findings that Doverspike’s shortest path algorithm discloses prioritizing traffic paths as claimed. *See* Final Rejection 5.

Appellant argues that claim 13 is patentable over Doverspike because “Doverspike fails to teach or suggest *preempting* the assignment of the traffic path to the first transport trail *in response to a change in at least one* parameter or identified level of service parameter information. Appeal Brief 19. We do not find Appellant’s arguments persuasive. Doverspike selects a service path in response to a communication request and computes a path between the source and destination that minimizes some cost metric while providing the required size for the connection request. *See* Doverspike paragraph 21. Thus, Doverspike discloses preempting the traffic path in response to at least one parameter or identified service level parameter, and as noted above, it would have been obvious for an artisan to employ Doverspike’s algorithm to determine the shortest path to ensure quality of service in the event of a change in the cost parameter. We sustain the Examiner’s obviousness rejection of claim 13, as well as, claim 18 commensurate in scope.

Appellant argues that claims 5 and 16 are patentable over the combinations of Doverspike/Madhwaraj and Doverspike/Gilmartin

Appeal 2014-002523  
Application 12/961,688

respectively, however, we do not find Appellant's arguments persuasive because the Appellant's arguments are merely nominal.<sup>4</sup>

#### DECISION

The Examiner's obviousness rejections of claims 1–20 are 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). *See* 37 C.F.R. § 41.50(f).

#### AFFIRMED

---

<sup>4</sup> *See* 37 C.F.R. § 41.37(c)(1)(iv) (“The arguments shall explain *why the examiner erred* as to each ground of rejection contested by appellant.) (emphasis added); *see also In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art”).