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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/295,820	12/06/2005	Shabbir Khan	6057-55800	1459
35690	7590	10/31/2016	EXAMINER	
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398			LEE, ANDREW CHUNG CHEUNG	
			ART UNIT	PAPER NUMBER
			2411	
			NOTIFICATION DATE	DELIVERY MODE
			10/31/2016	ELECTRONIC

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SHABBIR KHAN and ALEXANDER COHEN

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Appeal 2014-005334  
Application 11/295,820  
Technology Center 2400

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Before MURRIEL E. CRAWFORD, MICHAEL W. KIM, and JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–6, 17–20, 22, 33–38, 49–54 and 65–82. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is illustrative:

1. A method, comprising:

A network device within a network receiving a digital transmission form from a source node, wherein the digital transmission form corresponds to a digital object to be forwarded

from the source node to a destination node, wherein the digital transmission form is wholly separate from the digital object, wherein the digital transmission form specifies at least one requested service to be performed in transmitting the digital object from the network device to the destination node, and wherein the at least one requested service specifies information relating to a time of transmission of the digital object by the network device;

the network device determining an availability of one or more nodes within the network to provide the at least one requested service;

the network device receiving at least one portion of the digital object from the source node; and

the network device transmitting the at least one portion of the digital object over the network to the one or more nodes based at least in part on the availability of the one or more nodes to provide the at least one requested service.

Appellants appeal the following rejection(s):

1. Claims 1–6, 17–20, 22, 33–38, 49–54, and 65–82 under 35 U.S.C. § 103(a) as unpatentable over Colby (US 2005/0193114 A1, pub. Sept. 1, 2005) in view of Menditto (US 6,981,029 B1, iss. Dec. 27, 2005).

#### ISSUE

Did the Examiner err in rejecting the claims because Colby does not disclose or suggest a network device receiving a digital transmission form from a source node?

## ANALYSIS

The Appellants argue that the Examiner erred because it is the client that sends the transmission form in Colby and not the network as required by claim 1. We agree.

The Examiner finds that the server depicted in Figures 1, 1b, and 2 is the source node and that this source node transmits a transmission form that corresponds to a digital object (Fin. Act. 3). The Examiner also finds that the client is the destination node (Fin. Act. 25). The Examiner relies on paragraphs 63-64 of Colby for teaching that the transmission form specifies at least one requested service. The Examiner finds that the teaching in Colby that a flow setup request specifies a content-type and filename extension is a teaching of a transmission form specifying a requested service (Fin. Act. 3).

The problem with the Examiner's finding is that the flow setup request that specifies a content-type and filename extension is a part of the request from the client not the server. Claim 1 requires that the digital transmission form be received by the network device *from a source node*. The Examiner has found that the server is the source node. However, the server of Colby does not transmit a flow setup request, but rather it is the client, which the Examiner finds is the destination node, that sends the flow setup request. Therefore, we will not sustain the Examiner's rejection of claim 1 and claims 2-6 dependent therefrom. We will also not sustain this rejection as it is directed to the remaining claims because each of these claims requires that the transmission form be transmitted from the source node.

Appeal 2014-005334  
Application 11/295,820

DECISION

The decision of the Examiner is REVERSED