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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID ALLAN and NIGEL BRAGG

Appeal 2014-009196
Application 13/547,326
Technology Center 2400

Before JOHN A. EVANS, CATHERINE SHIANG, and JOYCE CRAIG,
Administrative Patent Judges.

EVANS, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of Claims 1–21. App. Br. 4. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.²

¹ The Appeal Brief identifies Rockstar Consortium US LP, as the real party in interest. App. Br. 1.

² Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed February 12, 2014, "App. Br."), the Reply Brief (filed August 18, 2014, "Reply Br."), the Examiner's Answer (mailed June 16, 2014, "Ans."), the Final Action (mailed August 23, 2013, "Final Act."), and the Specification (filed July 12, 2012, "Spec.") for their respective details.

STATEMENT OF THE CASE

The claims relate to a method and apparatus for accommodating duplicate MAC addresses. *See* Abstract.

Claims 1, 11, and 21 are independent. The claims have not been argued separately and therefore stand or fall together. 37 C.F.R. § 41.37(c)(1)(iv). An understanding of the invention can be derived from a reading of exemplary Claim 1, which is reproduced below with some formatting added:

1. A method of allocating Internet Protocol (IP) addresses to client devices, the method comprising:

receiving requests for IP addresses for a plurality of client devices, each client device being associated with a respective Media Access Control (MAC) address, each client device also being associated with a respective facility having a respective default subnet and at least one respective different subnet; and

allocating respective IP addresses to each of the plurality of client devices based, at least in part, on the respective MAC addresses of the plurality of client devices, the allocated respective IP address for at least one of the plurality of client devices being associated with the respective default subnet of the respective facility associated with the at least one of the plurality of client devices, and the allocated respective IP address for at least one other of the plurality of client devices being associated with the at least one respective different subnet of the respective facility of the at least one of the plurality of client devices.

References and Rejections

The Examiner relies upon the prior art as follows:

De Jaegher, <i>et al.</i>	US 2005/0198495 A1	Sept. 8, 2005
Saunderson, <i>et al.</i>	US 2006/0248229 A1	Nov. 2, 2006
Meier, <i>et al.</i>	US 7,356,009 B1	Apr. 8, 2008
Allan, <i>et al.</i>	US 8,224,946 B2	Filed Apr. 24, 2009

The claims stand rejected as follows:

1. Claims 1–21 stand rejected on the ground of nonstatutory obviousness-type double patenting over Claims 1–19 of U.S. Patent No. 8,224,946. Final Act. 5.
2. Claims 1, 6–11, and 16–20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Saunderson and Meier. Final Act. 5–11.
3. Claims 2, 3, 12, and 13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Saunderson, Meier, and De Jaegher. Final Act. 11–14.

Allowable Subject Matter

The Examiner indicates Claims 4, 5, 14, 15, and 21 are free of the prior art and would be allowable should Appellants overcome the double patenting rejections. Final Act. 14.

ANALYSIS

We have reviewed the rejections of Claims 1–21 in light of Appellants’ arguments that the Examiner erred. We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in

the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We consider Appellants' arguments *seriatim*, as they are presented in the Appeal Brief, pages 5–8.

CLAIMS 1–21: DOUBLE PATENTING

Appellants submit a terminal disclaimer was filed in order to obviate the double patenting rejections. App. Br. 4. The Examiner finds, notwithstanding Appellants' statement to the contrary, that no terminal disclaimer has been filed in this case. Ans. 3.

Our review indicates the Application file comprises a Terminal Disclaimer over US 8,224,946. In view thereof, we do not sustain the double patenting rejection.

CLAIMS 1, 6–11, AND 16–20: OBVIOUSNESS OVER SAUNDERSON AND MEIER

Appellants argue these claims as a group in view of the limitations of Claim 1. App. Br. 7.

Associated with the same facility.

Appellants submit Claim 1 recites, *inter alia*, “a respective facility having a respective default subnet and at least one respective different subnet” and further recites “the allocated respective IP address for at least one other of the plurality of client devices being associated with the at least one respective different subnet of the respective facility of the at least one of the plurality of client devices.” App. Br. 6. Appellants contend the Examiner finds Saunderson does not teach these limitations and Appellants traverse the Examiner's finding that Meier so teaches. *Id.*

As Appellants characterize Meier, “a home subnet is associated with a home access point, and the guest home subnet is associated with the parent access point.” *Id.* However, Appellants contend that Meier does not teach “that each of the foreign subnets and the home subnet are associated with the same access points or the same respective facility.” *Id.* Appellants characterize Claim 1 as reciting “each of the foreign subnets and the home subnet are associated with the same access points or the same respective facility.” According to Appellants, Meier teaches “a home subnet and a foreign subnet are related to different access points,” but Meier fails to teach “that each of the foreign subnets and the home subnet are associated with the same *access points* or the same respective facility.” Reply Br. 3 (emphasis added).

With respect to “access points,” Appellants’ arguments are not commensurate in scope with the claims, which do not recite “access points.” *See In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (“[A]ppellant’s arguments fail from the outset because . . . they are not based on limitations appearing in the claims.”).

The claims do not define “facility,” but that term is defined in the Specification, at least by implication (“[u]se of a DHCP server is advantageous since *it is a central facility* and can therefore coordinate subnets that span multiple access nodes”). Spec. ¶ 33 (emphasis added). *Iredeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed. Cir. 2004) (“[e]ven when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the

meaning may be found in or ascertained by a reading of the patent documents” (citation and internal quotation marks omitted)).

The Examiner finds Saunderson teaches a DHCP server storing a table of MAC addresses, where each client device is also associated with a respective facility having a respective default subnet, e.g., a client VLAN having default subnet A, or a server VLAN having default subnet B, each with an “allowed range of administrator configured IP addresses for each subnet.” Final Act. 5–6. The Examiner combines Saunderson with Meier, which teaches a respective facility having at least one subnet that is different from the default subnet. *Id.* at 6. Appellants present no persuasive explanation or evidence to rebut the Examiner’s findings.

For these reasons, we are not persuaded the Examiner errs.

Meier not compatible with Saunderson

Appellants contend Meier is not compatible with Saunderson because Meier teaches a client device is assigned the same IP address regardless of the subnet to which it is attached, while Saunderson teaches the IP address assigned to a client device changes when the device is attached to a different subnet. App. Br. 7; *see* Reply Br. 4.

The Examiner finds one of ordinary skill would have been motivated modify the system of Saunderson with the teachings of Meier because the combination would allow seamless, transparent roaming as client devices transition to different portions of the network. Ans. 5. Moreover, the Examiner explained that clients in Saunderson would have continued to benefit from receiving the same IP each time they connected to the same local subnet. *Id.* at 6. Thus, the Examiner provides some articulated

reasoning with rational underpinning for an artisan of ordinary skill to have modified the system of Saunderson with the teachings of Meier.

For these reasons, we are not persuaded the Examiner errs. Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claims 1, 6–11, and 16–20.

CLAIMS 2, 3, 12, AND 13: OBVIOUSNESS OVER
SAUNDERSON, MEIER, AND DE JAEGER

Appellants argue these claims as a group in view of the limitations of Claims 2 and 11. App. Br. 8.

The Examiner finds the combination of Saunderson and Meier fails to teach or suggest that, of a plurality of client devices, at least two have the same MAC address. Final Act. 11. The Examiner finds De Jaegher teaches that, where two devices have the same MAC address, they are allocated respective IP addresses, each associated with a different VLAN. *Id.* The Examiner finds Saunderson teaches that each VLAN has its own subnet. *Id.*

Appellants contend De Jaegher teaches MAC address duplicates are often resolved by VLAN segregation, but that De Jaegher fails to teach how to accomplish such VLAN segregation. App. Br. 8.

We do not find Appellants to be persuasive because the Examiner has relied upon Saunderson to teach that each VLAN has its own subnet. *See* Final Act. 11. “[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

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Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of claims 2, 3, 12, and 13.

DECISION

The rejection of Claims 1–21 under the grounds of non-statutory double patenting is REVERSED.

The rejection of Claims 1–3, 6–11, 12, 13, and 16–20 under 35 U.S.C. § 103 is 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).

AFFIRMED-IN-PART