



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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/202,790	08/23/2011	Thomas P Chu	Chu 18-42-US-PCT	2001
46363	7590	11/01/2016	EXAMINER	
Tong, Rea, Bentley & Kim, LLC ALCATEL-LUCENT USA INC. 12 Christopher Way Suite 105 Eatontown, NJ 07724			SHIVERS, ASHLEY L	
			ART UNIT	PAPER NUMBER
			2477	
			NOTIFICATION DATE	DELIVERY MODE
			11/01/2016	ELECTRONIC

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):

docketing@trbkaw.com
ipsnarocp@nokia.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS P. CHU and RAMESH NAGARAJAN

Appeal 2015-002836¹
Application 13/202,790
Technology Center 2400

Before JEAN R. HOMERE, JASON V. MORGAN, and JUSTIN BUSCH,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ Appellants identify the real party in interest as Alcatel-Lucent USA Inc.
App. Br. 3.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–9 and 12–21, which are all of the claims pending in this appeal. Claims 10 and 11 are objected to as being dependent upon a rejected claim, but the Examiner has indicated they would otherwise be allowable if rewritten in independent form. App. Br. 5; Fin. Act. 21–23. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants' invention is directed to a method and apparatus for distributing content to a plurality of user devices arranged in a tree structure. Spec. 1:22–28, Fig. 1. In particular, the user devices (102) are grouped in a plurality of nodes/regions (110), each containing one or more regional trees (111). For each regional tree, based on the number of unused ports therein, and the order of a selected user device, a determination is made on whether to include the user device (102) in the regional tree (111) or to create a new region (110) for the selected user device (102). Abstr, Spec. 28:5–32.

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. A method for determining a media distribution tree for use in distributing content to a plurality of user devices, comprising:
using a processor and a memory for:
grouping the user devices into a plurality of regions; determining, for each of the regions, a respective regional tree to be formed by the user devices grouped into the region, wherein, for at least one of the

regions, determining the regional tree to be formed by the user devices grouped into the region comprises:

selecting one of the user devices grouped into the region; determining, based on an order of the selected one of the user devices and based on one of a number of unused ports of the regional tree or an order of a regional root node of the regional tree, whether to position the selected one of the user devices within the regional tree of the region or to create a new region for the selected one of the user devices; and connecting the regional trees to determine thereby the media distribution tree.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Padmanabham et al.	US 2004/0143672 A1	July 22, 2004
Liu et al.	US 2005/0201405 A1	Sept. 15, 2005
Dube et al.	US 2006/0153100 A1	July 13, 2006
Hibino et al.	US 2007/0116050 A1	May 24, 2007
Breslau et al.	US 2008/0212584 A1	Sept. 04, 2008
Bandholz et al.	US 2009/0219835 A1	Sept. 03, 2009

Rejections on Appeal

Claims 1–6, 8, 9, and 19–21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hibino, Dube, and Bandholz.

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hibino, Dube, Bandholz, and Padmanabham.

Claims 12–14, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hibino, Dube, Bandholz, and Breslau.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hibino, Dube, Bandholz, and Liu.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Hibino, Dube, Bandholz, Padmanabham and Breslau.

ANALYSIS

We consider Appellants’ arguments *seriatim* as they are presented in the Appeal Brief, pages 13–22, and the Reply Brief, pages 2–8.²

Appellants argue that the combination of Hibino, Dube, and Bandholz does not teach or suggest “determining . . . whether to position the selected one of the user devices within the regional tree of the region or to create a new region for the selected one of the user devices,” as recited in independent claim 1. App. Br. 13; Reply Br. 2. In particular, Appellants argue Hibino discloses selecting the number of nodes corresponding to the maximum number of connections of a broadcasting station apparatus in an order of the widest effective bandwidth. App. Br. 14–17 (citing Hibino

² Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed Sept. 11, 2014), the Reply Brief (filed Dec. 9, 2014) and the Answer (mailed Nov. 18, 2014) for their respective details. We have considered in this Decision only those arguments Appellants actually raised in the Briefs. Any other arguments 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) (2014).

¶¶ 106, 109). According to Appellants, while the cited portions of Hibino indicate the position of the user device relative to the tree as a whole, they do not help determine whether to place the device in a regional tree or not. Reply Br. 3. Further, Appellants argue the Examiner's reliance upon Bandholz does not cure the noted deficiencies of Hibino. App. Br. 18.

These arguments are not persuasive because they are not responsive to the specific findings made by the Examiner. In particular, the Examiner finds that Hibino discloses using the maximum number of connections and the widest effective bandwidth to determine whether to position a node of user devices in the broadcasting station apparatus. Ans. 3–4, 23–24; Fin. Act. 3–4 (citing Hibino ¶¶ 105–12). Further, the Examiner relied upon Dube's disclosure of dividing a node into geographical clusters to modify Hibino, and to thereby teach the determination of the whether to place the user device at the regional tree level. *Id.* at 4 (citing Dube ¶ 29).

We find nowhere in Appellants' briefs any response regarding the Examiner's finding that the cited disclosure of Dube complements Hibino and Bandholz to teach the disputed limitation. Instead, Appellants mischaracterize the Examiner's rejection as relying on only Hibino and Bandholz for the cited teaching without accounting for the Examiner's reliance upon Dube.³ Accordingly, we are not persuaded the Examiner erred in rejecting claim 1.

Regarding claims 2–9 and 12–21, because Appellants reiterate substantially the same arguments as those previously discussed for

³ *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.”)

Appeal 2015-002836
Application 13/202,790

patentability of claim 1 above, claims 2–9, and 12–21 fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

For the above reasons, we affirm the Examiner’s rejections of claims 1–9 and 12–21.

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