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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHAN ALLAN ARSENAULT, DAVID WILLIAM CLARK, ERIC JOHN WOLF, and SEAN MACLEAN MURRAY¹

Appeal 2015-004252
Application 13/138,031
Technology Center 2400

Before JOHN F. HORVATH, NABEEL U. KHAN, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–23, 26–29, and 57–62, which constitute all pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant identifies the real party in interest as BCE INC. App. Br. 3.

Introduction

Appellants state their invention relates to “enabling end-user equipment at an end-user premise to effect communications when an ability of the end-user equipment to communicate via a communication link connecting the end-user equipment to a communications network is disrupted.” (Spec 1:11–15.) Claim 1 is representative:

1. A method for effecting a communication over a communications network, said method comprising:

determining that an ability of first end-user equipment at a first end-user premise to communicate via a first communication link connecting the first end-user equipment to the communications network is disrupted;

establishing a wireless communication link between the first end-user equipment and second end-user equipment at a second end-user premise upon the ability of the first end-user equipment to communicate via the first communication link being determined to be disrupted; and

causing information pertaining to the communication to be exchanged between the first end-user equipment and the communications network via the wireless communication link and a second communication link connecting the second end-user equipment to the communications network.

App. Br. 20 (Claims App’x) (disputed requirement emphasized).

Rejections

Claims 1, 6–12, 14–17, 19–23, 26–29, and 57–62 stand rejected under 35 U.S.C. § 102(b) as anticipated by Pregont (US 2007/0032230 A1; Feb. 8, 2007). (Final Act. 4–12.)

Claims 2–5 stand rejected under 35 U.S.C. § 103(a) as obvious over Pregont and Dorenbosch (US 2002/0164996 A1; Nov. 7, 2002). (Final Act. 12–14.)

Claims 13 and 18 stand rejected under 35 U.S.C. § 103(a) as obvious over Pregont and Stevens (US 2007 /0053306 A1; Mar. 8, 2007). (Final Act. 14–16.)

ANALYSIS

Appellants argue the Examiner errs in rejecting claim 1 by finding Pregont teaches the disputed “determining that an ability of a first end-user equipment at a first end-user premise to communicate . . . is disrupted” requirement. (App. Br. 9–12.) Appellants contend that in finding Pregont discloses this limitation, the Examiner interprets “disrupted” inconsistently with its ordinary meaning as used in Appellants’ claims and Specification. (*Id.* at 10–11.) Appellants also contend the Examiner errs in finding that Pregont’s process of performing a call relay teaches determining an ability to communicate is disrupted as claimed, because in Pregont’s call relay process there is no communication ability of the end-user equipment to disrupt until *after* the call relay process has completed. (*Id.* at 11–12.)

The Examiner answers by finding one of ordinary skill in the art would understand step 503 of Figure 5 in Pregont (“Establish data session And relay the first call”) “recites the limitation of ‘determining that an ability [. . .] is disrupted’ where a determination is made that a second call needs to be made.” (Ans.15–16.)

We agree with Appellants that, under a broad but reasonable interpretation, in view of the Specification, “disrupted” in claim 1 has its ordinary, dictionary meaning. We agree it is not possible to disrupt something that does not yet exist. Thus, claim 1 requires that, during the performance of the disputed “determining” requirement, the “ability . . . to

communicate” that “is disrupted” must be an ability to communicate that is in place at the time of the determining.

In response to the Examiner’s finding in the Answer that Pregont’s Figure 5 teaches the disputed requirement, Appellants argue the Examiner errs because Pregont teaches “receiving a *notification* that a call is to be relayed; this is *not* a determination that an ability of first end-user equipment to communicate over a first communication link is disrupted.” (Reply Br. 2.) We agree. Until the call relay is made in Pregont, the end-user device has no “ability . . . to communicate” that can be or “is disrupted” as claimed.

Accordingly, we do not sustain the rejection of claim 1. We also do not sustain the rejection of independent claims 29 and 57, both of which include a version of the disputed requirement, or of any of the dependent claims, 2–23, 26–28, and 58–62.

We note, in an *ex parte* appeal, the Board “is basically a board of review—we review . . . rejections made by patent examiners.” *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). “The review authorized by 35 U.S.C. Section 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance.” *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999). The Board’s primary role is to make our decision based on the findings and conclusions presented by the Examiner. *See* 37 C.F.R. § 41.50(a)(1) (“The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner”).

We express no opinion as to whether any of the pending claims would have been be obvious in view of additional explanation and/or references,

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and we leave any such further consideration to the Examiner. Although the Board has authority to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See Manual of Patent Examining Procedure* (MPEP) § 1213.02.

DECISION

For the above reasons, we reverse the Examiner's rejection of claims 1–23, 26–29, and 57–62.

REVERSED