



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.
13/243,357	09/23/2011	Jeffrey William DAWSON	86503-324C	2002
21028	7590	11/09/2016	EXAMINER	
Gowling WLG (Canada) LLP 160 ELGIN STREET SUITE 2600 OTTAWA, ON K1P 1C3 CANADA			EBRAHIM, ANEZ C	
			ART UNIT	PAPER NUMBER
			2467	
			NOTIFICATION DATE	DELIVERY MODE
			11/09/2016	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):

Patprosec@gowlingwlg.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY WILLIAM DAWSON

Appeal 2015-004332
Application 13/243,357
Technology Center 2400

Before MICHAEL J. STRAUSS, HUNG H. BUI, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–4, 16, 17, 22, 23, 25, 27–31, 41, 43–46, 59, 63 and 64.¹ Claims 5–15, 18–21, 24, 26, 32–40, 42, 47–58, and 60–62 are canceled. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm-in-part.

THE INVENTION

The claims are directed to differentiated priority level communications. Spec., Title. Claims 1 and 59, reproduced below, are illustrative of the claimed subject matter:

1. A method comprising:
 - a. receiving priority information from a trusted source, the priority information being indicative of an association between at least one identifier and a respective priority level;
 - b. determining a particular identifier associated with data received from a communication entity, the particular identifier having been previously provided to the communication entity by the trusted source and being time-varying, the at least one identifier including the particular identifier;
 - c. determining a particular priority level associated with the data based on the particular identifier and the priority information;
 - d. prioritizing at least a portion of the data on a basis of the particular priority level; and

¹ The Examiner erroneously omits claims 25, 59, and 64 from the listing of rejected claims appearing in the Disposition of Claims section of the Final Action. Final Act. 1. Furthermore, although multiple pending and canceled claims are included in the list of claims withdrawn from consideration, we find no indication that any claims fall into such category. *Id.*

- e. forwarding at least the portion of the data over a data network.

59. A method for transmitting data for transport over a network, comprising the steps of:

- conveying a request for an identifier associated with a priority level to a server that provides priority information to a network access component, the priority information being indicative of an association between a plurality of identifiers and respective priority levels;
- receiving a particular identifier from the server in response to the request, the plurality of identifiers including the particular identifier;
- generating data for transmission over a data network;
- and
- transmitting the data along with the particular identifier to the network access component for prioritization by the network access component.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Headley	US 2002/0194260 A1	Dec. 19, 2002
Kohno	US 2005/0262258 A1	Nov. 24, 2005
Anand	US 2006/0133418 A1	June 22, 2006
Tan	US 2007/0002837 A1	Jan. 4, 2007
Inamura	US 2007/0204316 A1	Aug. 30, 2007
Zeldin	US 2007/0268506 A1	Nov. 22, 2007
Matthews	US 2008/0124086 A1	May 29, 2008
Yasrebl	US 2009/0296566 A1	Dec. 3, 2009

REJECTIONS

The Examiner made the following rejections:

Claim 1–4, 22, 23, 25, 27–31, 41, 43, and 44–46 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1, 6–9, 14, 25, 26, 28, 30, 31, 36, 38–40, 44, 48, 50–53² of copending Application No. 12/343,758.

Claims 1, 2, 4, 16, 17, 22, 23, 28–30, 41, 43, 45, and 46 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Anand and Yasrebl. Final Act. 14–19.

Claims 3 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Anand, Yasrebl, and Kohno. Final Act. 19–21.

Claim 27 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Anand, Yasrebl, and Zeldin. Final Act. 21.

Claim 31 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Anand, Yasrebl, and Matthews. Final Act. 21–22.

Claim 44 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Anand, Yasrebl, and Headley. Final Act. 22–23.

Claims 59 and 64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Anand and Inamura. Final Act. 23–24.³

² We observe the listing of claims of the '758 application forming the basis of the provisional double patenting rejection (Ans. 3) is inconsistent with the claims listed in in the Claim Comparison Table (Ans. 4–12.) In particular, the list of claims of the '758 application (i) includes claim 27 which does not appear in the Table and (ii) omits claim 31 which does appear in the table. Furthermore the listing incorrectly includes claims “50–43” instead of “50–53.”

³ We note the Final Rejection formally indicates that “Claim 63 is rejected under 35 U.S.C. §103(a) as being unpatentable over Anand in

Claim 63 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Anand, Inamura, and Tan. Final Act. 24–25.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s arguments the Examiner has erred. We agree with Appellant’s conclusions regarding the rejection of claims 1 and 28 under 35 U.S.C. §103(a). However, in connection with the rejection of claim 59 under 35 U.S.C. §103(a), we disagree with Appellant’s conclusions and we adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 23–25) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellant’s Appeal Brief (Ans. 7–9) and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

Provisional Double Patenting Rejection

We note Appellant has not presented any arguments challenging the propriety or the substance of the rejection of claims 1–4, 22, 23, 25, 27–31, 41, 43, and 44–46 under the judicially created doctrine of obviousness-type double patenting. Final Act. 3–13. Thus, any such arguments are deemed to be waived and we summarily sustain the

view of [Inamura]” rather than claims 59 and 64 which are substantively addressed immediately therebelow. Final Act. 23. We find the error in listing claim 63 instead of claims 59 and 64 to be harmless.

provisional double patenting rejection. *See Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008).

The 35 U.S.C. § 103(a) Rejections

Claims 1 and 28

The Examiner finds the “trusted source” recited in claim 1, is taught or suggested by Anand’s TCP/IP network 102; by which filter 440 of server 400 receives both (a) priority information by providing for a network administrator to associate an IP address received from network 102 with a priority and (b) IP source address information from a client 108. Final Act. 14; Ans. 3–5. In particular, the Examiner “notes that the trusted source is broad enough that it does not necessarily read on [a] single device but [also on a] larger entity [,] in this case[,] the network.” Ans. 4.

Appellant contends “[a] key question is whether the cited combination of references teaches that the source of the priority information for prioritizing data from a given client is also the entity that assigns the identifier to that client.” App. Br. 9. Appellant argues “a collection of worldwide networks and gateways cannot be considered a trusted source.” Reply Br. 4.

We agree with Appellant. A source is “a place or thing from which something comes or derives; point of origin.”⁴ For example, Appellant’s Specification discloses “server 120 serves as a trusted source of information to the network access component 105.” Spec.

⁴ Morris, W., The American Heritage Dictionary of the English Language. 1235. Houghton Mifflin Company (1981).

11:11–12. That is, server 120 is a particular node on the network, not the entirety of the network including all nodes and communication links. Thus, the Examiner’s interpretation concluding “the trust[ed] source is the network itself” (Ans. 4) is unduly broad and inconsistent with the Specification.

Accordingly, on the record before us, we do not sustain the rejection of independent claim 1 under 35 U.S.C. §103(a) and, for the same reason, do not sustain the rejection of independent claim 28, which includes similar limitations. Furthermore, based on their dependencies from claim 1, we do not sustain the rejections of claims 2–4, 16, 17, 22, 23, 25, and 27 and, based on their dependencies from claim 28, we do not sustain rejections of claims 29–31, 41, and 43–46 under 35 U.S.C. §103(a). We note Appellant raises additional contentions of error but we do not reach them as our resolution of this contention is dispositive of the appealed rejections of claims 1–4, 16, 17, 22–25, 28–31, 41, and 43–46 under 35 U.S.C. § 103(a).

Claim 59

Appellant contends Anand and Inamura fail to teach or suggest “conveying a request for an identifier associated with a priority level,” as required by claim 59. App. Br. 15. Appellant argues “[Inamura,] at best[,] discloses that ‘the monitoring station transmits an identifier of the monitoring camera 101 to each gateway’ [0026].” App. Br. 14. Appellant further argues

Inamura teaches that a monitoring station may transmit an identifier to a monitoring camera; Inamura also teaches that the monitoring station may *separately* transmit a

message to the gateway “together with a video data request of the monitoring camera” (see ¶0035). Thus, even *if* Inamura were somehow interpreted as requesting an identifier, Inamura would *still* fail to teach conveying a request for an identifier *associated with a priority level*, as Inamura’s identifier is not at all associated with a priority level.

App. Br. 15 (footnote omitted.)

The Examiner responds by finding;

Anand teaches in Para [0045–0047], receiving at the interface server a request, in response to the request[,] getting the response as an IP address [that] is received from the server and [the] server store[s] the IP address in the filter list, wherein the server stores the IP address and priority information and receiving at the interface server of the a data to be forwarded over a data network.

Ans. 7. The Examiner further finds “Imamura in Para [0034-0035] [0056], teaches [the] system includes a wireless monitoring camera, and network, when [the] wireless monitoring camera connects to the wireless network [it requests] a wireless identifier in the network and priority identifier, when the network receives this request.” Ans. 9.

Appellant’s contention is unpersuasive of Examiner error. Imamura discloses gateway 122 sends message 422 containing a data request, priority level, and IP address thereby teaching or suggesting an identifier *associated with a priority level* and Anand teaches or suggests receiving a particular identifier in response to a request. Final Act. 23. Thus, the combination of Anand and Imamura teaches or suggests the disputed limitation. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091,

1097 (Fed. Cir. 1986). Accordingly, in the absence of persuasive rebuttal to the Examiner's findings, including the Examiner's Response to Appellant's arguments, Appellant's contention of error is unpersuasive and we sustain the rejection of claim 59 under 35 U.S.C. § 103(a) together with the rejections of dependent claims 63 and 64 which are not argued separately with particularity.

DECISION

The Examiner's decision to provisionally reject claims 1–4, 22, 23, 25, 27–31, 41, 43, and 44–46 on the ground of nonstatutory obviousness-type double patenting over claim 1, 6–9, 14, 25, 26, 28, 30, 31, 36, 38–40, 44, 48, and 50–53 of co-pending Application No. 12/343,758 is affirmed.

The Examiner's decision to reject claims 1–4, 16, 17, 22, 23, 25, 27–31, 41, and 43–46 under 35 U.S.C. §103(a) is reversed.

The Examiner's decision to reject claims 59, 63, and 64 under 35 U.S.C. §103(a) 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