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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AHMAD M. JRAD, GERARD P. O'REILLY,
HIMANSHU PANT, and STEVEN H. RICHMAN

Appeal 2015-004753
Application 11/838,349
Technology Center 2600

Before ALLEN R MACDONALD, MICHAEL J. STRAUSS, and
LARRY J. HUME, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–3, 5–10, 12–16, 18, 20–22, 24, 26, and 30–37. Claims 4, 11, 17, 19, 23, 25, and 27–29 are canceled. This application had a prior decision on appeal (Appeal 2011-006241) affirming the rejections of all claims. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

The claims are directed to signaling a call from an originating calling or “caller” terminal to a called or “callee” terminal. Spec., Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for establishing a call from a caller to a callee, comprising the steps of:

monitoring call establishment signaling associated with a request by a caller to establish a call from a first terminal of the caller to a first terminal of the callee;

in response to at least one condition in the network, determining a location of each of the at least one condition in the network; and

routing the call establishment signaling toward a second terminal of the caller based on the location of each of the at least one condition in the network.

REFERENCES

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

Castell et al.	US 2002/0098831 A1	July 25, 2002
Huomo et al.	US 2003/0022671 A1	Jan. 30, 2003
Burritt et al.	US 2004/0235509 A1	Nov. 25, 2004
Barlow et al.	US 7,106,848 B1	Sept. 12, 2006
Cermak et al.	US 7,773,974 B1	Aug. 10, 2010

REJECTIONS

The Examiner made the following rejections:

Claims 1, 8, 15, 21, 30, and 35 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Burritt. Final Act. 4–8.

Claims 2, 5, 9, 12, 20, 26, 31, 32, 36, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burritt. Final Act. 9–13.

Claims 3 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burritt and Cermak. Final Act. 13–15.

Claims 6, 7, 13, 14, 18, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burritt and Castell. Final Act. 15–17.

Claims 16, 22, and 34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Burritt and Huomo. Final Act. 17–19.

Claim 33 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Burritt and Barlow. Final Act. 20.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments the Examiner erred. We disagree with Appellants’ conclusions. 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. 2–20) and (2) the reasons set forth by the Examiner in the Examiner’s Answer in response to Appellants’ Appeal Brief (Ans. 2–23) and concur with the conclusions reached by the Examiner. We highlight the following arguments seriatim as they are presented in the Appeal Brief, pages 15–24, for ease of reference including section headings corresponding to those used by Appellants.

1. “Monitoring Call Establishment Signaling”

Appellants contend “Burrirt merely disclose[s] monitoring of an established call, not monitoring of call establishment signaling” as required by claim 1. App. Br. 12. According to Appellants, Burrirt’s call answer detection occurs *after* establishment of a call and, therefore, is not the monitoring of call establishment signaling. *Id.* at 13. Furthermore, even if call answer detection is interpreted as disclosing monitoring of call establishment signals, Appellants argue Burrirt fails to disclose subsequent routing *of that same* message or signaling as recited by claim 1, i.e., routing *the* call establishment signaling “toward a second terminal of a caller or based on the location of each of at least one condition in the network, much less toward a second terminal of a caller based on the location of each of at least one condition in the network.” *Id.* at 14.

The Examiner responds by concluding there is no requirement for the claimed “call establishment signaling” to be a single signal, i.e., a requirement the signaling that is the subject of the monitoring step of claim 1 is the same signaling as must be routed toward a second terminal according to the subsequent routing step of claim 1. Ans. 4. To the contrary, the Examiner finds “the claimed ‘call establishment signaling’ refers to multiple different signals and the multiple different signals would be considered as the same ‘call establishment signaling’ as long as the signals are directed towards the establishment of the call between a caller and a callee.” *Id.*; *see generally* Ans. 4–8. The Examiner further finds Burrirt’s call answer detection (corresponding to the claimed monitoring step) occurs before call connection is established while Burrirt’s dropped call detection (disclosing determining a condition in the network) and reestablishment of the call using any phone owned by the user (disclosing the routing step of claim 1) occur

after initial call connection establishment. Ans. 10–13. Because, according to the Examiner, claim 1 does not require the latter two steps to occur prior to call establishment, these limitations of claim 1 are disclosed by Burrirt even though occurring after call establishment.¹ *Id.* at 10.

Appellants' contention is unpersuasive of Examiner error. Consistent with our prior Decision in connection with the subject application², we agree with the Examiner in concluding claim 1 does not limit call establishment signaling to only signaling occurring prior to establishment of any initial call connection. *Id.* For example, signaling in connection with Burrirt's reestablishment of a dropped call is nonetheless "call establishment signaling" even though occurring after an initial call has been established (i.e., the "dropped" call) in response to earlier detecting a call answer condition. *See* Ans. 7, 10, 14–16. Furthermore, we agree with the Examiner in concluding claim 1 does not require the call establishment signaling be a single specific signal conveying, for example, a particular message, or that a particular message or signaling be both monitored and, in response to a network condition, that particular message or signaling be routed toward a second terminal. *See* Ans. 3–7, 20–22. As explained by the Examiner,

¹ "The examiner interprets these limitations as occurring after the call connection has been established since . . . the claim limitations do not explicitly limit and state that the steps are occurring before any call connection is established and since the call establishment signaling in the monitoring and the routing step are directed towards different signals as disclosed by the [A]ppellant[s'] Specification." Ans. 10.

² Decision in Appeal No. 2011-006241 mailed January 13, 2014 at page 6 agreeing with Examiner the claimed call establishment signaling is not limited to initial call establishment signaling and affirming the anticipation rejection of a claim similar to claim 1 of the subject application.

Appellants' Specification itself discloses plural, separate call establishment signaling rather than a single "call establishment signaling" as argued. *Id.* at 21. That is, "signaling" is broadly interpreted such that it is not necessarily specific to a particular signal or message.

Appellants reply to the Examiner's response by arguing there is no reasonable basis for the Examiner's assertion which is based on one potential mode of operation of commutating call establishment signaling. Reply Br. 2–4. However, we disagree and find the Examiner's interpretation to be reasonable in view of the Specification. We note, when construing claim terminology during prosecution before the Office, claims are to be given their broadest reasonable interpretation consistent with the Specification, reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Other than attorney argument, Appellants provide insufficient evidence to persuade us the disputed call establishment signaling must either consist of a single message or represents only that signaling occurring prior to any initial call completion and no other.

2. *"Routing" Feature Based on Findings Related to "Monitoring" Feature*

Appellants contend Burritt fails to disclose the routing step of claim 1 because, rather than routing the call establishment signaling, when Burritt detects the call has been answered, a command causes switching system 100 to combine two legs of the call. App. Br. 15. The Examiner responds by finding Burritt's adjunct determines from which connection location the call had been dropped and whether on only one or both sides and, in response provides reconnection signaling to reestablish communication. Ans. 17.

The Examiner again concludes the disputed call establishment signaling is broadly construed as “any signaling adapted for completing a call from a caller terminal to a callee terminal which is the same as that taught by Burritt which discloses performing call reestablishment signaling to the second terminal address of the calling party.” *Id.* at 17–18.

We again find no error. Instead, we agree with the Examiner that, under a broad but reasonable interpretation, Burritt’s reestablishment signaling discloses the disputed routing step of claim 1.

3. “Monitoring” or “Routing” Features Based on Findings Related to “Routing” Feature

Appellants contend:

Burritt discusses reconnection of a dropped call, but fails to teach or suggest monitoring of any signaling associated with reestablishment of the dropped call or routing signaling associated with call reestablishment toward a second terminal of the caller based on the location of each of at least one condition in the network [as required by claim 1].

App. Br. 18. The Examiner respond by finding:

[Burritt’s] adjunct 120 detects whether the reconnection was successfully based on whether the adjunct 120 detects the terminal answering the request to establish the signal and if not goes on to the next address of the terminal in the hunt group and as such, the adjunct 120 therefore monitors the reconnection establishment signaling.

Ans. 19. The Examiner further finds the reestablishment is based on the location of the network condition for the reasons discussed *supra. Id.; see also* Ans. 17.

We agree with the Examiner. We agree because, again, Appellants’ arguments are based on an unduly narrow proposed claim construction

requiring call establishment signaling be limited to a particular message used to initially establish a call from a first terminal of a caller to a first terminal of the callee and no other related messages or signaling. As we decline to adopt such a narrow construction, Appellants' arguments based on such a construction are not commensurate in scope with claim 1 and, therefore, are unpersuasive of error. Instead, we find the Examiner's interpretation of the claim limitations and mapping of the disclosures of Burritt to the disputed claim limitations to be reasonable and agree Burritt discloses these limitations.

4. Application of Burritt Reference

Appellants contend "the Examiner's use of two different portions of Burritt as disclosing the same feature (again, the call establishment signaling) of Appellants' claim 1 is not a proper basis for the rejection of Appellants' claim 1." App. Br. 19. In particular, Appellants argue the Examiner improperly relies on Burritt's call answer detection for disclosing the call establishment signaling of the disputed monitoring step but different signaling associated with connection reestablishment for disclosing the call establishment signaling recited by the routing step of claim 1. *Id.* The Examiner responds by concluding claim 1 is not limited to a single call establishment signaling and, therefore, Appellants' argument is not commensurate in scope with the claim. Ans. 21. We agree for the reasons discussed *supra*.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the rejections of independent claim 1 and, for the same reasons, independent claims 8, 15, and 21 under 35 U.S.C. § 102(b) as being anticipated by Burritt together with the rejections of dependent

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claims 30 and 35 which are not separately argued. We further sustain the rejection of dependent claims 2, 3, 5–7, 9, 10, 12–14, 16, 18, 20, 22, 24, 26, and 31–34, 36, and 37 under 35 U.S.C. § 103(a), these dependent claims also not argued separately.

DECISION

We affirm the Examiner's decision rejecting claims 1–3, 5–10, 12–16, 18, 20–22, 24, 26, and 30–37.

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