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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTTI-VIEKKO SAKARI PIIPPONEN, KALLE AUGUST
RAISKILA, PASI JOHANNES RINNE-RAHKOLA, TOMMI JUHANI
ZETTERMAN, and HEIKKI ILMARI BERG

Appeal 2015-004977
Application 12/810,865
Technology Center 2600

Before ST. JOHN COURTENAY III, THU A. DANG, and NORMAN H.
BEAMER, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–6, 8–10, 12–17, 19, and 20, which are all of the pending claims. Claims 7, 11, and 18 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

A. THE INVENTION

According to Appellants, the invention “relate[s] generally to wireless communication systems, methods, devices and computer programs” and, more specifically, “relate[s] to radio technology, multiradio scheduling and software defined radio (SDR)” (Spec. 1, ll. 8–11).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary:

1. A method, comprising:
 - instantiating a plurality of radio protocols via a multiradio controller, and
 - operating the plurality of radio protocols with an underlying physical layer, where each instantiation of a same radio protocol is embodied in a same code module and where each instantiation has associated data stored in a memory, where the operating comprises simultaneously executing each instantiation of the same radio protocol so that a portion of resources are shared between different instantiations of the plurality of radio protocols and different instantiations of the plurality of radio protocols do not interfere with each other, where each instantiation is executed so as to divide communication traffic among the instantiations and then to recombine the divided communication traffic into a single effective stream of communication traffic,
 - wherein the each instantiation of the same radio protocol includes instantiation of one of a plurality of activated and ready for use radio protocols, and
 - wherein the simultaneously executing comprises executing the first instantiation and the second instantiation on respective simultaneous active connections.

C. REJECTIONS

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

Po et al.	US 2005/0025170 A1	Feb. 3, 2005
Sela	US 2006/0291483 A1	Dec. 28, 2006
Silverman et al.	US 2007/0140161 A1	June 21, 2007
Hassan et al.	US 2009/0141660 A1	June 4, 2009
Hu et al.	US 2011/0039503 A1	Feb. 17, 2011

Claims 1–3, 6, 8, 10, 12–14, 17, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hassan and Po.

Claims 4, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hassan, Po and Silverman.

Claims 5, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hassan, Po and Hu.

Claims 9, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hassan, Po, Hu and Sela.

II. ISSUE

The issue before us is whether the Examiner erred in finding the combination of Hassan and Po teaches or would have suggested “simultaneously executing each instantiation of the same radio protocol so that . . . different instantiations of the plurality of radio protocols *do not interfere with each other*” (claim 1, emphasis added).

III. ANALYSIS

According to Appellants, “Hassan merely discloses carrying out various functions with drivers 216 and the front end radio hardware 202,” but “fails to specifically disclose or suggest any information that different instantiations of a plurality of radio protocols do not interfere with each other,” as required by the claims (App. Br. 18). Further, Appellants contend “Po is silent as to any information regarding interference” (*id.*), and thus, “Po fails to cure the above-discussed deficiencies in Hassan” (App. Br. 19).

After reviewing the record on appeal, we find the preponderance of evidence supports Appellants’ position.¹ Even though the Examiner relies on Hassan (Final Act. 2–3, citing Hassan ¶¶ 42–46) and adds in the Answer that, in Po, “the four channels add to 12 MB indicates that the channels are successfully transmitting and not interfering” (Ans. 4, citing Po ¶ 110), we do not find any teaching or suggestion in the referenced portions of “simultaneously executing each instantiation of the same radio protocol so that . . . different instantiations of the plurality of radio protocols do not interfere with each other” as recited in claim 1, and similarly recited in

¹ We note that the claim language at issue is a negative limitation that sets forth that the simultaneous execution of instantiations of the same radio protocol does not have interference between the different instantiations. However, negative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation. *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344, 1351 (Fed. Cir. 2012). Here, the Specification describes that execution of the instantiations are such that “different instantiations of radio protocols do not interfere with each other” (Spec. 10, ll. 19–29). We note the contested negative limitation also is recited in claim 1, as originally filed.

claims 10 and 12 (*id.*). That is, we do not find any disclosure or even a suggestion of interference between instantiations or the prevention thereof, as required by claim 1, 10, and 12.

To affirm the Examiner's proffered combination would require us to resort to speculation, unfounded assumptions, or hindsight reconstruction. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). We do not resort to hindsight reconstruction, speculation, or assumptions to cure the deficiencies in the proffered combination in order to support the Examiner's rejection.

Because we find at least one of the dispositive arguments advanced by Appellants is supported by a preponderance of the evidence, we need not reach the merits of Appellants' other arguments.

Accordingly, we are constrained on this record to reverse the Examiner's 35 U.S.C. § 103 rejection of independent claims 1, 10, and 12, and claims 2, 3, 6, 8, 13,14, 17, and 19 depending respectively therefrom over Hassan and Po. The Examiner does not show how the Silverman, Hu or Sela overcome the deficiencies of Hassan and Po. Therefore, we also reverse the Examiner's 35 U.S.C. §103 rejections of claims 4, and 15 over Hassan and Po, in further view of Silverman; of claims 5, and 16 over Hassan and Po, in further view of Hu; and of claims 9, and 20 over Hassan and Po, in further view of Hu and Sela.

V. CONCLUSION AND DECISION

We reverse the Examiner's rejection of claims 1–6, 8–10, 12–17, 19, and 20 under 35 U.S.C. § 103(a).

REVERSED