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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT ALLEN WALSTON

Appeal 2015-006550
Application 12/993,511¹
Technology Center 2400

Before JAMES R. HUGHES, JOHNNY A. KUMAR, and
CARL L. SILVERMAN, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 1–19. Final Act. 2. We have jurisdiction under 35
U.S.C. § 6(b).

We affirm.

¹ The real party in interest is identified as ARRIS Group, Inc. App. Br. 2.

STATEMENT OF THE CASE

Appellant's invention relates to initializing a dual mode device, such as a cable modem. Abstract; Spec. 1, 1.10 through 2, 1.28. Claim 1 is exemplary of the matter on appeal (disputed limitations emphasized):

1. A computer implemented method for initializing a multi-mode device, the method comprising:
 - a. supplying power to the *multi-mode device*;
 - b. *retrieving a network type flag from a nonvolatile memory of the multi-mode device*;
 - c. *operating the multi-mode device using a corresponding network type*, wherein the corresponding network type is selected from at least a first network type or a second network type.

App. Br. 13 (Claims Appendix).

REJECTIONS

Claims 1, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Walston (US 2006/0015918 A1; Jan. 19, 2006) ("Walston '918"). Final Act. 5–6.

Claims 2–4, 7, and 12–13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walston '918 and Walston (US 2005/0198685 A1; Sept. 8, 2005) ("Walston '685"). Final Act. 7–9.

Claims 5–6 and 10–11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walston '918 and Li et al. (US 2005/0076385 A1; Apr. 7, 2005) ("Li"). Final Act. 9–10.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Walston '918) in view of Lo et al. (US 2008/0120713 A1; May 22, 2008) ("Lo"). Final Act. 10–11.

Claims 15–19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Walston '918, Walston '685, and Lo. Final Act. 11.

ANALYSIS

The § 102(e) rejection

Appellant argues Walston '918 does not disclose the claim 1 limitations *multi-mode device* and *retrieving a network type flag from a nonvolatile memory of the multi-mode device*, App. Br. 5–8.

According to Appellants:

Walston '918 does not disclose a multi-mode device at all. Instead, Walston '918 is directed to fast reinstallation of deployed devices and has nothing to do with the network a device operates upon. In particular Walston '918 discloses storing a frequency that was previously used by the device to successfully register with the network (see, e.g., Walston '918 at Abstract). This stored frequency is not a "network type flag" as required by claim 1, because a frequency alone cannot identify a "network type" (a type of network to which the device is connected).

Id. at 5.

Appellants further argue Walston '918 does not disclose that the nonvolatile memory can store a flag that indicates a network type associated with the device because “[w]hile Walston '918 does disclose storing a previously successful frequency, the stored frequency has no relation to whether the device is configured to operate on a first type of network (e.g.,

North American DOCSIS) or a second type of network (e.g., European DOCSIS (euroDOCSIS))” and “[c]ertainly Walston '918 does not disclose any such relationship.” *Id.* at 6.

The Examiner finds Walston '918 discloses that both a DOCSIS network and a EuroDOCSIS network are identified based on the frequency distribution of the network and discloses locking to a frequency stored in its memory cache. Ans. 3–5 (citing ¶¶ 15, 20, 22); *see also* Final Act. 5–6 (citing ¶¶ 16, 18; Fig. 1). In particular, the Examiner finds Walston '918 discloses:

one mode (**a single frequency to operate on**) out of a plurality of modes (**frequencies**) stored in a nonvolatile memory, wherein the network type is represented by the frequency identified in memory (**based on where the frequency is centered at**). The Examiner notes that the claim limitations are broad and only require retrieving a single network type flag, operating the device using a single network type and selecting one of two network types. The claims do not require selection of an actual identification of a EuroDOCSIS network or DOCSIS network, the claims only require selection of operating the device based on a single network type, therefore by accessing a frequency that belongs to either a DOCSIS network centered at 6 MHz or a EuroDOCSIS network centered at 8 MHz, either a first network type or a second network type is selected to operate the multi-mode device. Claim 2 of the instant application even recites that a network type flag corresponds to an actual downstream channel frequency characteristic, therefore Applicant's argument that “a frequency alone cannot identify a network type” is moot.

Ans. 3–4.

We are not persuaded by Appellant’s arguments and agree, instead, with the Examiner’s findings above. Appellant presents no persuasive argument that the Examiner findings and claim interpretations regarding the disputed claim limitations are unreasonable or overbroad. Claim terms in a

patent application are given the broadest reasonable interpretation consistent with the Specification, as understood by one of ordinary skill in the art. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

In view of the above, we sustain the rejection of claim 1. We also sustain the rejection of dependent claim 8, which is not argued separately. *See also* Final Act. 6.

Appellants argue independent claim 9 requires “BOTH a **network type flag and a downstream channel frequency**” and “[t]he Office cannot simultaneously claim that the stored channel frequency satisfies both the network type flag and the stored downstream channel frequency.” App. Br. 8–9.

The Examiner finds the Walston '918 cache stores scanned frequencies and new frequencies, wherein the frequencies represent a network type, discussed *supra*. Ans. 6. In particular, the Examiner finds Walston '918 discloses:

the memory stores configuration information comprising a network type flag (**the initial frequency centered at either 6 MHz or 8MHz stored in memory**) and a downstream channel frequency (**a newly scanned and stored frequency centered at either 6 MHz or 8MHz depending on where the new location of the multi-mode device is placed (see again Paragraphs 0015-0016)**).

Id.

We are not persuaded by Appellants’ arguments and agree, instead, with the Examiner’s findings above. As discussed, *supra*, the Walston '918 frequency is used as a network type flag, and also employs a new frequency. Therefore, we sustain the rejection of independent claim 9.

The § 103(a) rejections

Regarding independent claim 15, Appellant relies on similar arguments discussed *supra*, for claims 1 and 9. App. Br. 9–11. The Examiner finds Walston '918 teaches the limitations of independent claim 15 except restarting the multi-mode device and relies on Walston '685 for this limitation. Final Act. 7–8, 11; Ans. 6 (citing Walston '685, ¶ 16).

We are not persuaded by Appellant's arguments and agree, instead, with the Examiner's findings that the combination of Walston '918 and '685 teach all the limitations of claim 15.

In view of the above, we sustain the rejection of claim 15, and dependent claims 16–19 as these claims are not argued separately. We also sustain the rejection of dependent claims 2–7 and 10–14 as these claims depend from independent claims 1 or 9, discussed *supra*, and are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We affirm the Examiner's decision rejecting claims 1, 8, and 9 under 35 U.S.C. § 102(b).

We affirm the Examiner's decision rejecting claims 2–7 and 10–19 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED