



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.
13/517,281	07/09/2012	Dávid Jocha	4015-8179	4038
24112	7590	11/10/2016	EXAMINER	
COATS & BENNETT, PLLC 1400 Crescent Green, Suite 300 Cary, NC 27518			MENDAYE, KIDEST H	
			ART UNIT	PAPER NUMBER
			2457	
			MAIL DATE	DELIVERY MODE
			11/10/2016	PAPER

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.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID JOCHA, ANDRAS KERN,
and ANDRAS CSASZAR

Appeal 2015-006745
Application 13/517,281
Technology Center 2400

Before KARA L. SZPONDOWSKI, MICHAEL M. BARRY, and
AARON W. MOORE, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 16–34. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM-IN-PART.

STATEMENT OF THE CASE

Appellants' invention is directed to providing requested feedback to a path computation element. Spec. 5. Claim 16, reproduced below with the disputed limitations in *italics*, is illustrative of the claimed subject matter:

16. A method for use in a Path Computation Client of a node in a network, the method comprising:

 sending a request message to a Path Computation Element of the network for computation of a path;

 receiving a response message from the Path Computation Element comprising information identifying a calculated path;

 attempting to set up a connection based on the calculated path;

receiving, from the Path Computation Element, a request for feedback on a result of the attempt to set up the connection;

 reporting the result of the attempt to the Path Computation Element.

REJECTIONS

Claim 30 stands rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 3–4.

Claims 16–20, 22–28, and 30 stand rejected under 35 U.S.C § 102(b) as being anticipated by Douville et al. (EP 2 009 848 A1; published Dec. 31, 2008) (“Douville”). Final Act. 4–9.

Claims 21 and 29 stand rejected under 35 U.S.C § 103(a) as being unpatentable over the combination of Douville and Chen et al. (US 2009/0245253 A1; published Oct. 1, 2009) (“Chen”). Final Act. 10–11.

Claims 31–34 stand rejected under 35 U.S.C § 103(a) as being unpatentable over the combination of Douville and Lee et al. (US 2009/0110395 A1; published Apr. 30, 2009) (“Lee”). Final Act. 11–12.

ANALYSIS

§ 101 Rejection

Appellants contend:

Applicant and Examiner came to agreement on amendments that would overcome this rejection. Those amendments were submitted in Applicant's After Final response dated Aug. 13, 2014, and were subsequently admitted by the Examiner (*see Amendment After Final or under 37 C.F.R. 1312 initialed by the examiner, mailed Sept. 23, 2014*).

App. Br. 11.

We see no indication from the record that Appellants' amendments were admitted by the Examiner or that the Examiner has withdrawn the § 101 rejection. Although we acknowledge the Examiner's initials on the September 23, 2014 Amendment After Final, the Advisory Action mailed on the same day, indicates that the proposed amendments "will not be entered." Adv. Act. 1. Moreover, the Examiner's Answer does not indicate that the § 101 rejection was withdrawn. Ans. 2 ("Every ground of rejection set forth in the Office action dated August 05, 2013 from which the appeal is taken is being maintained by the examiner . . .").

Accordingly, on this inconsistent record, we summarily sustain the Examiner's 35 U.S.C. § 101 rejection as to claim 30.

§ 102 Rejections

Appellants contend Douville does not disclose "receiving, from the Path Computation Element, a request for feedback on a result of the attempt to set up the connection," as recited in independent claim 16 and commensurately recited in independent claims 22, 23, and 30. App. Br. 6-7, 10. Rather, Appellants argue Douville discloses the Path Computation

Client (“PCC”) sends an *unsolicited* acknowledgement ACK back to the Path Computation Element (“PCE”). App. Br. 6–9.

The Examiner finds “[w]hen the PCE replies to the requested path, [the] **PCE includes a request for notification** whether the proposed path is used to set up a connection successfully or not, using (PcNtf message) which contains Request Parameter (RP) object to refer to a particular path computation request.” Ans. 5, citing Douville ¶¶ 18–25.

On the record before us, we are unable to ascertain sufficient support for the Examiner’s findings in Douville. In particular, the Examiner fails to identify where Douville discloses the request for notification in the PCE reply to the requested path. We agree with Appellants (Reply Br. 2–3) that the notification message described in Douville and relied upon by the Examiner relates to the acknowledgment sent from the PCC to the PCE. (*See* Douville ¶¶ 19–25). The disputed limitation, on the other hand, relates to the PCC receiving a request for feedback from the PCE. We are unable to identify within the cited portion of Douville any disclosure of the disputed limitation.

Moreover, the Examiner’s findings that “[i]f Douville’s PCC had not received a request for response message from the path computing device, the PCC would not have a reason to send an acknowledgement message or connection failed result back to PCE,” (Ans. 5) fails to address Appellants’ argument that the notification message (PCNtf message) may be solicited or unsolicited. *See* App. Br. 9.

Therefore, on this record, we do not sustain the anticipation rejection of independent claims 16, 22, 23, and 30. For the same reasons, we do not sustain the Examiner’s rejection of dependent claims 17–20 and 24–28.

§ 103 Rejections

Because there is no evidence before us that the additional references cited by the Examiner for the obviousness rejections cure the deficiency of Douville, for the same reasons as set forth above, we do not sustain the Examiner's rejection of dependent claims 21, 29, and 31–34.

DECISION

The Examiner's 35 U.S.C. § 101 rejection of claim 30 is affirmed.

The Examiner's 35 U.S.C. § 102(b) rejection of claims 16–20, 23–28, and 30 is reversed.

The Examiner's 35 U.S.C. § 103(a) rejection of claims 21, 29, and 31–34 is reversed.

AFFIRMED-IN-PART