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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO. Includes details for application 13/665,561 and 25537 7590, listing inventor Christopher Nicholas DELREGNO and examiner CHO, HONG SOL.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER NICHOLAS DELREGNO and
MATTHEW WILLIAM TURLINGTON

Appeal 2015-006748
Application 13/665,561
Technology Center 2400

Before CARLA M. KRIVAK, JASON V. MORGAN, and
KARA L. SZPONDOWSKI, *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 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

Appellants' invention is directed to a method and system for selectively metering network traffic, and in particular, to resizing a network tunnel based on criteria associated with incoming traffic to the network. Spec. ¶¶ 1, 2. Claim 1, reproduced below, is representative of the claimed subject matter:

1. A method comprising:

determining, during a sampling period, network traffic that matches a predetermined class of service criteria of a network service provider;

determining, based on the sample, a frequency or a relevancy of network traffic matching the predetermined class of service criteria;

calculating, based on the frequency or relevancy, a minimal amount of bandwidth to reserve for tunneling subsequent network traffic associated with the predetermined class of service criteria over a network of the service provider; and

initiating, based on the calculation, a resizing of a network tunnel associated with the subsequent network traffic.

REJECTIONS

Claims 1, 3–6, 9–11, 13–16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Turlington et al. (US 2010/0002724 A1; published Jan. 7, 2010) (“Turlington”) and Takeda (US 2002/0055999 A1; published May 9, 2002).

Claims 2, 7, 8, 12, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Turlington, Takeda, and Tse-Au (US 6,816,456 B1; issued Nov. 9, 2004).

ANALYSIS

After considering each of Appellants' arguments, we agree with the Examiner. We refer to and adopt the Examiner's findings and conclusions as set forth in the Examiner's Answer and in the action from which this appeal was taken. Ans. 3–4; Final Act. 2–5. Our discussions here will be limited to the following points of emphasis.

Issue: Did the Examiner err in finding the combination of Turlington and Takeda teaches or suggests “determining, during a sampling period, network traffic that matches a predetermined class of service criteria of a network service provider,” as recited in independent claims 1 and 11?

Appellants contend “*Takeda* does not describe ‘reserving a tunnel to support particular QoS (Quality of Service) levels for traffic associated with a particular application.’” App. Br. 7. Therefore, Appellants argue:

[N]o realistic reason has been provided which would impel a person of ordinary skill in the art to look to the finding a matching pair of inflow and outflow packet feature data, as disclosed in *Takeda*, and somehow insert this arrangement of *Turlington et al.* in order to carry out [the disputed limitation.]

Id. at 7–8; *see also* Reply Br. 4–5.

We are not persuaded by Appellants' arguments and agree with the Examiner's findings. Ans. 3–4; Final Act. 2–5. The Examiner relies on Turlington for all of the limitations in claims 1 and 11 except capturing network traffic matching the predetermined class of service criteria, for which the Examiner relies on Takeda. Final Act. 2–3. Turlington describes sampling traffic flow rates at regular intervals in order to make adjustments to the bandwidth as necessary. Turlington ¶¶ 15, 21. Takeda describes

matching feature data of an inflow packet to feature data of an outflow packet. Takeda ¶ 84. The Examiner concludes:

[I]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the system of Turlington with the teaching of Takeda for the benefit of providing efficient utilization of network resources by reserving a tunnel to support particular QoS levels for traffic associated with a particular application class.

Final Act. 3.

Appellants argue the reasoning provided by the Examiner is not described in Takeda. App. Br. 7. While the Examiner must establish that “there was an apparent reason to combine the known elements in the fashion claimed,” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007), the apparent reason to combine references need not come from the references themselves. *See DyStar Testilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1368 (Fed. Cir. 2006). The proper inquiry is whether the Examiner has articulated adequate reasoning based on a rational underpinning to explain why a person of ordinary skill in the art would have been led to combine Turlington and Takeda. *See KSR*, 550 U.S. at 418. In this case, the Examiner has provided a reasoning (providing efficient utilization of network resources by reserving a tunnel) with rational underpinnings (to support particular QoS levels for traffic associated with a particular application class). *See* Final Act. 3; *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Appellants have not persuasively rebutted the Examiner’s findings, nor have Appellants provided evidence that combining the teachings was “uniquely challenging or difficult for one of ordinary skill in the art,” or that such a combination “represented an unobvious step over the

Appeal 2015-006748
Application 13/665,561

prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of independent claims 1 and 11. For the same reasons, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of dependent claims 2–10 and 12–20.

DECISION

For the above reasons, the Examiner’s rejection of claims 1–20 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