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SHERIDAN ROSS P.C. 1560 BROADWAY, SUITE 1200 DENVER, CO 80202			DUNCAN, TIMOTHY P	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NISHANT KRISHNA

Appeal 2015-007796
Application 13/599,177
Technology Center 2100

Before MARC S. HOFF, NATHAN A. ENGELS, and JOHN D. HAMANN,
Administrative Patent Judges.

ENGELS, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims 1–17 and 21–23. Claims 18–20 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

ILLUSTRATIVE CLAIM

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method comprising:
 - determining, from a first communication device, if a second communication device needs to have a software upgrade, wherein the determination if the second communication device needs to have a software upgrade is also based on a number of hops between the first communication device and the second communication device;
 - in response to determining that the second communication device needs to have the software upgrade, downloading, from the first communication device, the software upgrade onto the second communication device;
 - in response to downloading the software upgrade onto the second communication device, the second communication device determining if a third communication device needs to have the software upgrade; and
 - in response to determining that the third communication device needs to have the software upgrade, downloading, from the second communication device, the software upgrade to the third communication device.

THE REJECTIONS

Claims 1–17 and 21–23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable in view of *Lamba et al.* (US 2011/0029965 A1; Feb. 3, 2011) and *Bill* (US 2008/0037442 A1; Feb. 14, 2008) in combination with various other references of record. *See App. Br. 5.*

ANALYSIS

Appellant contends that the Examiner erred in finding the combination of *Lamba* and *Bill* teaches or suggests “wherein the

determination if the second communication device needs to have a software upgrade is also based on a number of hops between the first communication device and the second communication device,” as recited in independent claims 1 and 10. App. Br. 6. The Examiner finds that Lamba teaches distributing software upgrades among nodes within a network (Ans. 4 (citing Lamba ¶ 17)) and cites Bill’s disclosure that the “span of a network represents the maximum number of hops between any two devices within the wireless mesh network” (Ans. 4 (quoting Bill ¶ 30)). The Examiner explains that because Bill suggests the maximum number of hops defines a network and Lamba only distributes software to nodes that are within a network, modification of Lamba to include Bill’s teachings would include determining whether a node is within a network based on the number of hops. Ans. 4–5.

According to Appellant, “[w]hile Lamba does disclose determining if a second communication device needs to have a software upgrade” (App. Br. 7), neither Lamba nor Bill discloses basing such a determination on a hop count between communication devices (App. Br. 8). Further, Appellant argues both Lamba and Bill teach sending data content regardless of any hop count between two devices. App. Br. 8.

We agree with Appellant. Even if a network is defined by a maximum number of hops, we find nothing in Bill or Lamba that teaches or suggests using the number of hops as part of a determination of whether a device needs a software upgrade as claimed. Because neither Lamba nor Bill suggests determining whether a device needs an update based on the number of hops between two devices, we do not sustain the Examiner’s

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rejection of independent claims 1 and 10, as well as dependent claims 2–9,
11–17 and 21–23.

DECISION

We reverse the Examiner's rejections of claims 1–17 and 21–23.

REVERSED