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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SANDRA HOME

Appeal 2016-000399
Application 13/480,567¹
Technology Center 2600

Before LARRY J. HUME, LINZY T. McCARTNEY, and SCOTT E. BAIN,
Administrative Patent Judges.

HUME, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ According to Appellant, the real party in interest is Telefonaktiebolaget LM Ericsson (publ). App. Br. 1.

STATEMENT OF THE CASE²

The Invention

Appellant's disclosed and claimed inventions are "related to the re-registration [of] at least two mobiles at the same time in a home location register (HLR) from one mobile switching center-visitor location register (MSC-VLR) to another MSC-VLR." Spec. ¶ 1 ("TECHNICAL FIELD").

Exemplary Claims

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphasis* added to contested limitations):

1. A mobile switching center-visitor location register (MSC-VLR) of a wireless telecommunications network having a home location register (HLR), at least a second MSC-VLR and a plurality of mobiles, the MSC-VLR comprising:

a network interface unit configured to communicate with the network; and

a processing unit that is in communication with the network interface unit, the processing unit being configured to, in response to the second MSC-VLR going out of service,

produce a bulk re-registration message that is sent to the HLR through the network from the network interface unit, the bulk re-registration message identifying the second MSC-VLR to the HLR and causing the HLR to re-register at least two mobiles, which are registered in the HLR for the second MSC-VLR, to the MSC-VLR.

² Our decision relies upon Appellant's Appeal Brief ("App. Br.," filed May 26, 2015); Reply Brief ("Reply Br.," filed Oct. 8, 2015); Examiner's Answer ("Ans.," mailed Aug. 11, 2015); Final Office Action ("Final Act.," mailed Dec. 26, 2014); and the original Specification ("Spec.," filed May 25, 2012).

Prior Art

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Palviainen US 2008/0004014 A1 Jan. 3, 2008

Jiang US 2010/0190492 A1 July 29, 2010

Rejections on Appeal

R1. Claims 1–4, 6–9, 11–14, and 16–19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Palviainen. Final Act. 2.³

R2. Claims 5, 10, 15, and 20 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Palviainen and Jiang. Final Act. 10.

ISSUES AND ANALYSIS

We agree with particular arguments advanced by Appellant with respect to claims 1–20 for the specific reasons discussed below. We highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

³ We note the Examiner's explicit statement of the rejection (Final Act. 2) omits claims 13, 17, and 18 from Rejection R1, and erroneously indicates claim 27 is subject to Rejection R1. However, the Examiner addresses the rejection of claims 13, 17, and 18 in the detailed rejection. *See* Final Act. 7 and 9. We further note claim 27 is not present in this Appeal. *See* App. Br. 8–11 ("CLAIMS APPENDIX"). We find these omissions and misstatements to be harmless error.

1. § 102(b) Rejection R1 of Claims 1–4, 6–9, 11–14, and 16–19

Issue 1

Appellant argues (App. Br. 4–6; Reply Br. 1–3) the Examiner's rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Palviainen is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art discloses a "mobile switching center-visitor location register (MSC-VLR) of a wireless telecommunications network having a home location register (HLR), at least a second MSC-VLR and a plurality of mobiles" that includes, *inter alia*, the limitations of "a processing unit . . . configured to, in response to the second MSC-VLR going out of service, produce a bulk re-registration message . . . identifying the second MSC-VLR to the HLR and causing the HLR to re-register at least two mobiles," as recited in claim 1?

Analysis

Appellant contends:

The [claimed] bulk re-registration message is sent to an HLR and causes the HLR to re-register at least two mobiles for a second MSC-VLR, which is going out of service, to the MSC-VLR. Notably, the bulk re-registration message "identif[ies] the second MSC-VLR to the HLR." In contrast, no such bulk re-registration message is taught by Palviainen . . . [because] Palvianin's [sic] MAP-Update location request does not identify the **failed** MSCNLR . . . [because] the MAP-UpdateLocation request identifies just the **target** MSC/VLR 110 to the HLR.

App. Br. 4–5.

In response, the Examiner indicates, for the first time, that "Palviainen *inherently discloses* that the MAP-Updated Location request to the HLR

(Home Location Register) 120 identifies the failed MSC/VLR 710 to the HLR 120, and this is not based on Examiner speculation as suggested by the Appellant, but based on Palviainen[']s disclosure and the knowledge of a person of ordinary skill in the art." Ans. 5 (emphasis added).

The Examiner explains this purported inherency of the disclosure by pointing to Palviainen's teaching of a listing of International Mobile Subscriber Identities (IMSI) that identify mobile stations to the network, "and that a after a complete list or update is produced, a file is sent to a back-up server such as target MSC/VLR 110 (see paragraph 31). Thus, target MSC/VLR 110 is aware of the mobile stations served by source MSC/VLR 100." Ans. 6. The Examiner further finds Palviainen "discloses that in a scenario where the source MSC/VLR fails, the network operator re-homes the base stations associated with the failed source MSC/VLR 100 to be serviced by the target MSC/VLR 110 (see paragraph 32). Thus, the target MSC/VLR 110 is made aware that source MSC/VLR 100 has failed." *Id.*

We disagree with the Examiner's factual findings and finding of anticipation of claim 1. We disagree because claim 1 requires that the bulk re-registration message identify the second MSC-VLR to the HLR, which we find Palviainen's MAP-UpdateLocation request does not do.

We agree with Appellant's argument that "*Palviainen's* [sic] MAP-UpdateLocation request appears to identify the **target** MSC/VLR 110 to the HLR, it does not identify the **failed** MSC/VLR, as required by claim 1." Reply Br. 2. We also agree with Appellant's argument that, even assuming, *arguendo*, the HLR can identify the source MSC/VLR using a list of IMSI's, "using the list of IMSI's in connection with the MAP-UpdateLocation

request to identify the source MSC/VLR is not the same as the MAP-UpdateLocation request itself identifying the source MSC/VLR to the HLR, as required by claim 1." *Id.*

Therefore, based upon the findings above, on this record, we are persuaded of at least one error in the Examiner's reliance on the disclosure of the cited prior art to disclose the disputed limitation of claim 1, such that we find error in the Examiner's resulting finding of anticipation. Therefore, we cannot sustain the Examiner's anticipation rejection of independent claim 1, and independent claims 6, 11, and 16 which recite the disputed limitation in commensurate form. For the same reasons, we cannot sustain the anticipation Rejection R1 of claims 2–4, 7–9, 12–14, and 17–19, which variously depend therefrom.

2. § 103 Rejection R2 of Claims 5, 10, 15, and 20

In light of our reversal of the rejections of independent claims 1, 6, 11, and 16, *supra*, we also reverse obviousness Rejection R2 under § 103 of claims 5, 10, 15, and 20, which variously and ultimately depend therefrom. On this record, the Examiner has not shown how the additionally cited secondary reference to Jiang overcomes the aforementioned deficiencies of Palviainen, as discussed above regarding claim 1.

CONCLUSIONS

(1) The Examiner erred with respect to anticipation Rejection R1 of claims 1–4, 6–9, 11–14, and 16–19 under 35 U.S.C. § 102(b) over the cited prior art of record, and we do not sustain the rejection.

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(2) The Examiner erred with respect to obviousness Rejection R2 of claims 5, 10, 15, and 20 under 35 U.S.C. § 103(a) over the cited prior art combination of record, and we do not sustain the rejection.

DECISION

We reverse the Examiner's decision rejecting claims 1–20.

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).

REVERSED