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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JÖRG HUSCHKE, MAI-ANH PHAN, and GHYSLAIN PELLETIER

Appeal 2016-000930
Application 13/380,231
Technology Center 2400

Before ST. JOHN COURTENAY III, THU A. DANG, and LARRY J. HUME, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an 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 reverse.

The Invention

The disclosed and claimed invention on appeal relates to notification mechanisms that allow a user equipment to distinguish notifications for different MBSFN areas and different MBMS Control Channels. Abstract.

Illustrative Claim

> 1. A method performed in a node of a cellular communication system, said node providing communication services to a plurality of user equipments in a cell of said cellular communication system and [L1] *said node supporting broadcast information services in multiple Multimedia Broadcast Multicast Services single frequency network (MBSFN) areas which include said cell, said method comprising*:
>
> [L2] *broadcasting, by the node, information on* ***identifiers*** *of at least some of said multiple MBSFN areas to identify respective area-specific Multimedia Broadcast Multicast Services (MBMS)* ***control channels (MCCHs)***; and,
>
> [L3] *transmitting, by the node, a MBMS notification message associated with one of said multiple MBSFN areas based on said broadcasted information to the user equipments in said cell for notifying changes of information in the one of said multiple MBSFN areas*.

(Contested limitations lettered and emphasized).

Rejection

Claims 1–20 are rejected under 35 U.S.C. § 102 (a) as being anticipated over Miho Maeda et al. ("Maeda") (US 8,811,252 B2, iss. Aug. 19, 2014, PCT pub. June 25, 2009). See Final Act. 4.

ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. Although the Final Rejection relies on a machine translation of the cited Japanese reference ("Maeda"), both Appellants and the Examiner rely on the English translation (US Pat. 8,811,252 B2) in the Briefs and Answer. Therefore, we find the machine

translation accuracy issues, as raised by Appellants, are now moot. (App. Br. 9).

We focus our analysis on contested limitation L2, "broadcasting, by the node, information on ***identifiers*** of at least some of said multiple MBSFN areas to identify respective area-specific *Multimedia Broadcast Multicast Services (MBMS)* ***control channels (MCCHs)****; . . . .*" (Claim 1, emphasis added).

Appellants contest limitation L2 in the Appeal Brief (10–13) and Reply Brief (4–7). Appellants argue the cited sections of the reference do not disclose the "broadcasting" step L2 of method claim 1, because the "cited text does not disclose "broadcasting information on **identifiers** [*i.e., plural identifiers*] of at least some of said multiple MBSFN areas to identify respective area-specific Multimedia Broadcast Multicast Services (MBMS) **control channels (MCCHs)** (emphasis added)." (App. Br. 13, emphasis added).

Appellants urge (*id.*), "that claim 1's broadcasting step recites **multiple MCCHs** whereas Miho's [(i.e., Miho *Maeda's*]) cited text recites only **a singular MCCH** and this is with respect to [Maeda's] teachings related to (b) which is related to a transmission step for point-to-point dedicated communication data and is not relevant to the claimed broadcasting step." (Emphasis added).

In rejecting claim 1, the Examiner finds Maeda's cell and base station expressly or inherently disclose a "node," as recited in claim 1. (Final Act. 4–5). In the Final Action (5) we find the Examiner's mapping

regarding contested limitation L2 is unclear.[1] The Examiner points to, *inter alia*, Maeda's **paging signal,** and/or **MTCH and MCCH** channel identifiers as disclosing the "identifiers" recited in limitation L2: "broadcasting, by the node, information on [plural] identifier**s** of at least some of said multiple MBSFN areas to identify respective area-specific Multimedia Broadcast Multicast Services (MBMS) **control channels (MCCHs**); . . . ." (Claim 1) (emphasis added).

In the Answer (3) the Examiner only points to MTCH and MCCH as anticipating the contested limitation L2 "identifiers," citing Maeda (col. 11, ll. 1–15). We turn to the description in this cited portion of Maeda (*id.*):

> [pro]vide both a unicast cell service and an MBMS dedicated cell service, and a mobile terminal currently receiving broadcast type data transmitted from the MBMS dedicated cell makes a notification of an MBMS receiving state via the unicast cell or the MEMS/Unicast-mixed cell and the communication system transmits **a paging signal** destined for the mobile terminal currently receiving broadcast type data transmitted from the MBMS dedicated cell on a basis of a tracking area (Tracking Area) in which the mobile terminal is tracked, the tracking area being determined on a basis of information transmitted from the mobile terminal. Therefore, the mobile terminal can specify MBMS data (***an MTCH*** and ***an MCCH***) which the mobile terminal receives or is receiving, and the communication system can transmit a paging signal to the mobile terminal for which an MBMS service is provided from the MBMS transmission dedicated cell.

(Emphasis added).

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[1] *See* 37 C.F.R. § 1.104(c)(2)("When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.").

As recited in claim 1, the plural "***identifiers***" (L2) are "*to identify respective area-specific Multimedia Broadcast Multicast Services (MBMS)* ***control channels (MCCHs)***." Maeda describes a "MCCH" as follows: "A multicast ***control channel*** (Multicast ***control channel***: MCCH) is a downlink channel for point-to-multipoint transmission." (Col. 5, ll. 25–26) (emphasis added). [2]

As argued by Appellants (App. Br. 13), we find **a single control channel MCCH identifier** ("***an MCCH***") is described in Maeda, in the portion cited by the Examiner (col. 11, l. 12), instead of *plural identifiers* to "identify . . . control channels (MCCHs)," as required by limitation L2 of claim 1, and as argued by Appellants. (*See* Appeal Br. 10–13; Reply Br. 4–7).

The Examiner clarifies the mapping in the Answer: "the data received by [the] mobile terminal which data [is] MBMS data (an MTCH and MCCH i.e. control channels); see lines 1- 15 of col. 11" (Ans. 3).

However, we find the Examiner has not fully developed the record to explain how the MTCH meets the claim 1 requirement of an identifier "to identify *respective area-specific Multimedia Broadcast Multicast Services (MBMS)* ***control channels (MCCHs);*** . . . ." (Claim 1). We find Maeda describes a "MTCH" as a downlink channel for *transmission of traffic data* from the network to a mobile terminal, *and not as a control channel* ("MCCH"), as claimed. (Claim 1). [3]

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[2] For purposes of this appeal, we consider the acronyms "MCCH" and "MTCH" as terms of art. See Spec. (1, e.g., Figs. 16, 22, and 23 *et seq.*).

[3] Maeda (col. 5, ll. 44–46) describes a MTCH as follows: "A multicast traffic channel (Multicast Traffic channel: MTCH) is a downlink channel for transmission of traffic data from the network to a mobile terminal."

Therefore, on this record, we find a preponderance of the evidence supports Appellants' contentions regarding contested limitation L2 of claim 1. For essentially the same reasons argued by Appellants, as discussed above, we find the Examiner has not shown anticipation of at least contested limitation L2 over Maeda. (Claim 1). [4] Because we agree with at least one of the dispositive arguments advanced by Appellants, we need not reach the merits of Appellants' other arguments.

Accordingly, we reverse the Examiner's § 102 rejection of independent claim 1, and the §102 rejection of independent claims 5, 6, 7, 17, and 19, which each recite contested limitation L2 using similar, commensurate language. Because we have reversed each independent claim on appeal, we also reverse each associated dependent claim rejected under the anticipation rejection over Maeda.

DECISION

We reverse the Examiner's decision rejecting claims 1–20 under § 102.

REVERSED

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[4] Because a rejection under § 103 is not before us on appeal, we express no opinion as to whether these claims would have been obvious over Maeda considered alone, or in combination with one or more additional references. We leave any such further consideration to the Examiner. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* Manual of Patent Examining Procedure (MPEP) § 1213.02.