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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MICHEL BARBEAU and VINOD KUMAR CHOYI

Appeal 2016-003088
Application 11/327,304
Technology Center 2400

Before BRUCE R. WINSOR, LINZY T. McCARTNEY, and
NATHAN A. ENGELS, *Administrative Patent Judges*.

PER CURIAM.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims
1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

BACKGROUND

Claim 1 recites the following:

1. A method comprising:

establishing a first internal communication tunnel between a first mobile node and a first internal home agent via a security gateway, including communicating a first internal care-of address registration request from the first mobile node to the first internal home agent, and communicating a first internal care-of address registration reply from the first internal home agent to the first mobile node;

establishing a second internal communication tunnel between a second mobile node and a second internal home agent via the security gateway;

extending the first internal communication tunnel to form a first route-optimized internal communication tunnel between the first mobile node and a correspondent node, wherein

said extending comprises communicating a first internal route-optimization binding update from the first internal home agent to the correspondent node;

creating a binding entry for the first internal home agent paired with an internal address of the security gateway to tunnel packets destined for the first internal home agent to the security gateway; and

bridging, at the security gateway, the communication between the first mobile node and the second mobile node such that the first internal communication tunnel and the second internal communication tunnel are not needed to convey the communication between the first mobile node and the second mobile node.

App. Br. 13–14.

The Examiner rejected claims 1–17 under 35 U.S.C. § 103(a) as unpatentable over Nakata,¹ Leung,² and Adrangi³. Final Act. 3–15.

The Examiner rejected claims 18–21 under 35 U.S.C. § 103(a) as unpatentable over Nakata, Leung, Adrangi, and Boden⁴. *Id.* at 15–17.

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellants’ arguments, and we disagree with Appellants that the Examiner erred. To the extent consistent with the analysis below, we adopt the Examiner’s findings, reasoning, and conclusions set forth in the Final Rejection and Answer. Appellants have waived arguments Appellants failed to timely raise or properly develop. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2); *In re Lovin*, 652 F.3d 1349 (Fed. Cir. 2011).

Appellants argue “[i]f Nakata does not contain a ‘second internal home agent,’ as conceded by examiner, then it cannot teach a ‘second internal communication tunnel.’” App. Br. 8. Appellants therefore assert the “bridging” limitation of claim 1 “cannot be accomplished if elements of the ‘second internal communication tunnel’ are not present in Nakata.” *Id.* Appellants further argue paragraph 11 of Nakata, as cited by the Examiner, does not teach or suggest a “second internal communication tunnel.” *Id.* at 8–9. Instead, Appellants assert this paragraph merely discloses associating

¹ Nakata et al. (US 2006/0182083 A1; published Aug. 17, 2006).

² Leung et al. (US 2004/0202126 A1; published Oct. 14, 2004).

³ Adrangi et al. (US 2004/0120328 A1; published June 24, 2004).

⁴ Boden et al. (US 7,099,319 B2; issued Aug. 29, 2006).

or binding a mobile node's home address (HoA) and care of address (CoA) at a correspondent node (CN) and storing the HoA and CoA in a home agent (HA). *See id.*

We find Appellants' arguments unpersuasive. The Examiner found a combination of Nakata's and Leung's disclosures, not Nakata's disclosure alone, teaches or suggests "establishing a second internal communication tunnel between a second mobile node and a second internal home agent via the security gateway." *See* Final Act. 3–5; Ans. 2–4. In particular, the Examiner found Nakata teaches "a second communication tunnel" because Nakata "teaches that two mobile node[s] may create security associations with a security gateway thereby establishing respective first and second internal communication tunnels." Ans. 3 (citing Nakata ¶¶ 17, 18); Final Act. 3–4 (citing Nakata ¶¶ 11, 23). The Examiner found Nakata does not explicitly teach "a second internal home agent" but found "a second internal home agent . . . is well known in the art for load and balancing purposes," as evidenced by Leung, which discloses multiple home agents. Final Act. 5 (citing Leung ¶ 15); Ans. 3. The Examiner concluded "it would have been obvious to a person of ordinary skill . . . to combine . . . [Leung's] second internal home agent . . . in the system of Nakata by using a Home Agent Director . . . to further enhance the system reliability and efficiency by distributing registration requests to one of a plurality of Home Agents." Final Act. 5 (emphasis added). We find Appellants' argument that Nakata alone does not teach or suggest this limitation unpersuasive, as "one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *see* Ans. 4.

Additionally, Appellants argue the Examiner erred in combining Nakata, Leung, and Adrangi because “the *systems as a whole* would not be compatible” and would not function as does the claimed invention. Reply Br. 3–4; *see* App. Br. 10. In particular, Appellants assert Leung’s system of home agent pools would not apply to Nakata and Adrangi because “Leung is not directed toward a security system and therefore would not use the ‘security gateway’ allegedly taught in Nakata.” *See* App. Br. 10. Next, Appellants assert that because Nakata’s system has only two mobile nodes outside the network, Nakata’s system would not need Leung’s home agent pool. *See id.*; Reply Br. 3. Lastly, Appellants assert that because Adrangi’s system does not teach the “bridging” limitation of claim 1, Adrangi’s alleged teachings of a “first internal care-of-address registration request” and “registration reply” would be incompatible with Nakata’s system, which would attempt to bridge the systems. *See* App. Br. 10.

We find Appellants’ arguments unpersuasive. Appellants’ arguments rest on the assertion that one of ordinary skill in the art would be forced to combine Nakata’s, Leung’s, and Adrangi’s systems as a whole to establish a *prima facie* case of obviousness. *See id.*; Reply Br. 3–4. But one of ordinary skill in the art is “a person of ordinary creativity, not an automaton,” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007), and accordingly would recognize that it would be unnecessary to combine prior art systems as a whole. Rather, one of ordinary skill in the art would “be able to fit the teachings of the [cited art] . . . together like pieces of puzzle.” *Id.* at 420.

In any event, “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the

primary reference. . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *Keller*, 642 F.2d at 425. Here, the Examiner found Nakata teaches the claimed invention, except that Leung evidences that “a second home internal agent” was old and well known, and Adrangi teaches communicating a care-of-address registration request and reply between a mobile node and an internal home agent. *See* Final Act. 3–6 (citing Nakata ¶¶ 4, 11, 13, 14, 17, 21–23; Leung ¶ 15; Adrangi ¶ 25); Ans. 4–5. It was against this backdrop the Examiner found one of skill in the art would have been motivated to combine the above aspects of Leung and Adrangi with the teachings of Nakata. *See* Final Act. 3–6; Ans. 4–5. Appellants’ arguments have not persuaded us the Examiner’s findings or conclusion of obviousness are erroneous.

Lastly, Appellants assert the Examiner employed impermissible hindsight bias by concluding that “[t]he establishing of the first and second internal communication tunnels are not patentably distinct” and “[h]aving a second or multiple Home Agents is mere duplication of the working parts of a system and . . . involves only routine skill in the art” *See* Reply Br. 2 (emphases omitted). Appellants further assert the citation of Leung to show that having multiple agents is not novel is additional evidence of impermissible hindsight bias. Reply Br. 2. We find Appellants’ assertions unpersuasive because Appellants have provided no persuasive evidence or reasoning to support these assertions. *See In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974) (“Attorney’s argument in a brief cannot take the place of evidence.”); *cf.* 37 C.F.R. § 41.37(c)(1)(iv); *Lovin*, 652 F.3d at 1357.

For the above reasons, Appellants have not persuaded us the Examiner erred in combining Nakata, Leung, and Adrangi to teach or suggest claim 1. Accordingly, we sustain the Examiner's rejection of independent claim 1, the rejection of independent claim 17, which was argued together with claim 1 (*see* App. Br. 8–11; Reply Br. 2–4), and the rejections of dependent claims 2–16 and 18–21, which were not argued separately with particularity beyond the arguments advanced for claims 1 and 17. *See* App. Br. 11; Reply Br. 2–5.

DECISION

For the above reasons, we affirm the rejection of claims 1–21.

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