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Clements Bernard Walker PLLC 4500 Cameron Valley Parkway Suite 350 Charlotte, NC 28211			ELMEJJARI, ABDELILLAH	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JEFFREY SCOTT MOYNIHAN
and MATTHEW W. CONNOLLY

Appeal 2017-005966
Application 13/868,343¹
Technology Center 2400

Before ERIC B. CHEN, BARBARA A. BENOIT, and
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Technology

The application relates to “optical networking” and “suppressing invalid defect detection when Out-Of-Frame (OOF) conditions occur.”

Spec. ¶ 1.

Illustrative Claim

Claim 1 is illustrative and reproduced below with certain limitations at issue emphasized:

¹ Appellants state the real party in interest is Ciena Corp. App. Br. 2.

1. A method for processing a report of a defect during an Out-Of-Frame (OOF) condition, comprising:

detecting the OOF condition at a downstream node;

detecting an indication of the defect caused by the OOF condition;

suppressing a report associated with the indication of the defect;

determining whether the OOF condition is clear;

if the OOF condition is clear, determining whether the indication of the defect is still present such that the defect is a valid defect; and

if the indication of the defect is not present, cancelling the report after the OOF condition is clear and before the OOF condition becomes a Loss Of Frame (LOF) condition or a Loss of Signal (LOS) condition since the defect is an invalid defect caused by the OOF condition which is now cleared.

Rejections

Claims 1–8 and 10–19 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Smith et al. (US 2013/0051792 A1; Feb. 28, 2013) and Giorgetta et al. (US 7,035,292 B1; Apr. 25, 2006). Final Act. 3–7.

Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Smith, Giorgetta, and Guylain Barlow, *A G.709 Optical Transport Network Tutorial*, JDSU White Paper. Final Act. 7.

ISSUE

Did the Examiner err in finding Giorgetta teaches or suggests “if the OOF condition is clear, determining whether the indication of the defect is still present,” as recited in claim 1?

ANALYSIS

Claim 1 recites “if the OOF condition is clear, determining whether the indication of the defect is still present.” Independent claim 12 recites a commensurate limitation.

The Examiner finds Giorgetta teaches or suggests this limitation:

When in an OOF condition, this block moves back to the in-frame condition upon detecting two successive error-free framing patterns. This implementation of the frame check circuit clears OOF within the required 250 ms interval. Failure to obtain a frame within 3 ms (OOF persists for 3 ms) results in a Loss-of-Frame (LOF).

Ans. 4 (quoting Giorgetta 22:37–42, emphasis omitted).

Appellants argue the Examiner’s quoted language and citation “does teach ‘the OOF condition is clear,’ but [it] does not teach any of the remaining aspects There is simply no suggestion to check if the defect is present after the OOF condition clears.” Reply Br. 2; *see also* App. Br. 9–10.

We agree with Appellants. The Examiner finds Giorgetta’s Loss-of-Frame (LOF) teaches the claimed “defect.” Ans. 3–4. The Examiner further finds that LOF arises only if “OOF persists for 3 ms.” *Id.* at 4. Thus, the LOF condition only arises if the OOF condition exists. The Examiner also finds that the OOF condition can be cleared but makes no finding about when LOF is cleared. *Id.* Although it is theoretically possible that the LOF condition might remain after the OOF condition was cleared (e.g., if LOF was used to indicate a loss had *ever* occurred rather than a loss was *currently*

occurring), nothing in the Examiner’s findings shows “determining whether [LOF] is still present” if the OOF condition is clear.²

Accordingly, we do not sustain the Examiner’s rejection of independent claims 1 and 12, and their dependent claims 2–11 and 13–20.

DECISION

For the reasons above, we reverse the decision rejecting claims 1–20.

REVERSED

² In the event of further prosecution, the Examiner may wish to consider whether the “if” clauses in claim 1 are conditional method steps such that claim 1 can be met without triggering either of the conditions. *See Ex parte Schulhauser*, Appeal No. 2013-007847, 2016 WL 6277792, at *3–4 (PTAB Apr. 28, 2016) (precedential); *Cybersettle, Inc. v. Nat’l Arbitration Forum, Inc.*, 243 F. App’x 603, 607 (Fed. Cir. 2007) (unpublished) (“If the condition for performing a contingent step is not satisfied, the performance recited by the step need not be carried out in order for the claimed method to be performed.”); *Applera Corp. v. Illumina, Inc.*, 375 F. App’x 12, 21 (Fed. Cir. 2010) (unpublished).