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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JOEL WENGER and CORINNE LE BUHAN

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Appeal 2018-002421  
Application 14/342,270  
Technology Center 2600

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Before CAROLYN D. THOMAS, JASON V. MORGAN, and  
JASON M. REPKO, *Administrative Patent Judges*.

REPKO, *Administrative Patent Judge*.

DECISION ON APPEAL

Under 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–16. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was held on August 13, 2019. We reverse.

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<sup>1</sup> Appellant identifies the real party in interest as NAGRAVISION S.A. Appeal Br. 2.

## THE INVENTION

Appellant's invention relates to utility-meter communications. Spec. 1:11–13.<sup>2</sup> Utility meters measure electricity, water, or gas consumption. Spec. 8:12–15. In one embodiment, a data concentrator collects data from the utility meter and adds it to a report. Spec. 12:10–14. This data may include a difference between two consumption indices. Spec. 11:7–10; 11:23–12:4. Also, the report identifies a utility provider and the meter. Spec. 12:20–24. The destination data concentrator sends the report to the identified utility provider. Spec. 12:10–14. According to Appellant, the invention allows consumers to receive a utility from a first provider during the day and another provider in the evening. Appeal Br. 3 (citing Spec. 15:16–22, 13:9–14:14).

Claims 1, 10, and 16 are independent. Claim 1 is reproduced below.

1. A method for managing utility meter communications within a network comprising a plurality of utility meters each associated and connected to a plurality of utility management centers through a plurality of intermediate data concentrators, each utility meter being identified by a utility meter identifier and being adapted to produce and send utility meter messages to a destination data concentrator identified by a destination data concentrator identifier, each destination data concentrator being adapted to produce and send reports to said management center identified by a management center identifier, said method comprising the steps of:

    sending utility meter messages from a utility meter to said destination data concentrator, each utility meter message including a metering data measurement reported by said utility meter, said utility meter identifier, said destination data concentrator identifier and said management center identifier;

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<sup>2</sup> Throughout this opinion, we refer to the Substitute Specification filed February 28, 2014.

determining metering counter differential consumption values, each based on a difference of two metering counter consumption indexes measured by said utility meter within a time period interval;

sending, from the destination data concentrator towards the utility management center to which said utility meter is associated, a report containing a collection of said metering counter differential consumption values together with the utility meter identifier to which the metering counter differential consumption values refer.

Appeal Br. 17.<sup>3</sup>

#### THE EVIDENCE

The Examiner relies on the following as evidence.

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Ransom	US 2005/0131583 A1	June 16, 2005
Borleske	US 2005/0240540 A1	Oct. 27, 2005
Di Martini	US 2008/0177678 A1	July 24, 2008
Cumeralto	US 2010/0026517 A1	Feb. 4, 2010

#### THE REJECTIONS<sup>4</sup>

The Examiner rejects claims 1–3, 14, and 16 under 35 U.S.C. § 103(a) as unpatentable over Di Martini. Final 4–10.

The Examiner rejects claims 4, 7, 8, 10–12, and 15 under 35 U.S.C. § 103(a) as unpatentable over Di Martini and Cumeralto. Final 11–17.

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<sup>3</sup> Throughout this opinion, we refer to the Final Office Action (“Final”) mailed October 13, 2016; the Advisory Action (“Advisory”) mailed on February 8, 2017; the Appeal Brief (“Appeal Br.”) filed May 30, 2017 as amended by the Supplemental Brief on August 14, 2017; the Examiner’s Answer (“Ans.”) mailed November 6, 2017; and the Reply Brief (“Reply Br.”) filed January 5, 2018.

<sup>4</sup> The Examiner withdrew the rejection under 35 U.S.C. § 112, which was presented in the Final Office Action. Ans. 2.

The Examiner rejects claims 5, 6, and 13 under 35 U.S.C. § 103(a) as unpatentable over Di Martini and Ransom. Final 17–19.

The Examiner rejects claim 9 under 35 U.S.C. § 103(a) as unpatentable over Di Martini and Ransom. Final 19.

## THE OBVIOUSNESS REJECTION OVER DI MARTINI

### *The Examiner's Findings*

The Examiner determines that the subject matter of independent claim 1 would have been obvious over Di Martini. Final 4. The Examiner finds that “Di Martini does not explicitly disclose that each utility meter message includes said management center identifier.” Final 5. According to the Examiner, “the cited disclosures of Di Martini suggest that it would have been obvious to one of ordinary skill in the art at the time of the invention to have inserted the data center identifier into the data message when the user’s utility meter transfers the data.” Ans. 7. The Examiner determines that doing so would reduce processing time and “electric power consumption.” Ans. 7.

### *Appellant's Contentions*

Appellant argues that Di Martini does not send messages containing three identifiers. Appeal Br. 4. Appellant argues that, because the data is made available to other entities in a different way than the claimed invention, Di Martini’s utility-meter messages do not need to include a management-center identifier. Reply Br. 3. Specifically, Appellant argues that Di Martini’s system is for a single utility. Appeal Br. 5. According to Appellant, Di Martini gathers data, transmits the data to a gateway and then to the utility. Reply Br. 3. Appellant argues that Di Martini merely makes

the data available to other entities through the back-office control center and does not need to send the message recited in claim 1. Reply Br. 3.

*Issue*

Under § 103, has the Examiner erred in rejecting independent claim 1 by finding that Di Martini would have taught or suggested sending the meter message recited in claim 1?

*Analysis*

Claim 1 recites, in part, “each utility meter message including a metering data measurement reported by said utility meter, said utility meter identifier, said destination data concentrator identifier and said management center identifier.” As for the “management center identifier,” claim 1 further requires “a plurality of utility meters each associated and connected to a plurality of utility management centers through a plurality of intermediate data concentrators,” and the management center is “identified by a management center identifier.”

The Specification provides a non-limiting example that illustrates this feature. In particular, Figure 1, below, shows a possible smart-grid network topology. Spec. 5:24.

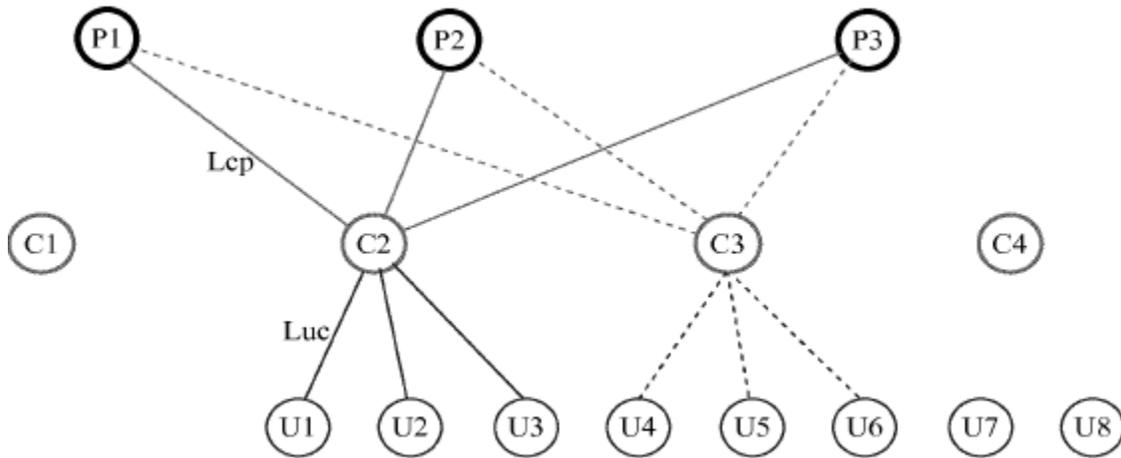


Figure 1 shows a schematic illustration of a star-shaped network of end-user utility meters (U1 to U8), data concentrators (C1 to C4), and utility-provider management centers (P1 to P3). Spec. 5:17–19. To identify a source and a destination in an open communication network, the messages sent over the network include the source utility-meter identifier, the destination data-concentrator identifier, and the utility-provider identifier. Spec. 12:20–24. An identifier may be a unique value associated with the equipment, a network-address identifier, among other things. Spec. 12:24–13:2. Although the claim is not limited to this example, it nevertheless informs our understanding of the recited management-center identifier.

The Examiner acknowledges that Di Martini’s messages lack a management-center identifier. Final 5. The Examiner, however, finds that Di Martini’s utility meters send data to an intermediate aggregator, which, in turn, sends metering data to the utility-management centers. Final 5 (citing Di Martini ¶¶ 20–22, 86). The Examiner concludes, without providing sufficient supporting evidence, that it would have been obvious to send the management-center identifier because doing so would eliminate “the need for the intermediate aggregator to search its database to find the Internet

address of the utility office to which to send the metering data for each of thousands, or even millions, of electric utility meters.” Final 5; *see also* Ans. 7.

But, as Appellant points out, Di Martini’s system is for a single utility. Appeal Br. 5. To be sure, Di Martini teaches that data is transferred “electronically to different back office control centers.” Di Martini ¶ 21, *discussed in* Ans. 4–5. Yet Di Martini explains that those back office control centers are “within *the* utility.” Di Martini ¶ 21 (emphasis added). This is unlike the claimed method, which involves “a plurality of utility management centers.”

In another embodiment, Di Martini teaches making data available to “multiple clients.” Di Martini ¶ 84, *discussed in* Ans. 11. For instance, Di Martini explains that the actual end users include the billing system, Independent System Operators (ISOs), meter reading agents, load research, among other entities. Di Martini ¶ 86, *cited in* Final 5. But Di Martini only makes the data available to these entities for later retrieval. Di Martini ¶ 84. So there would be no need for the intermediate aggregator to search a database to find these other entities, as the Examiner reasons. Final 5; *see also* Ans. 7. On this record, we agree with Appellant that the Examiner’s rationale for modifying Di Martini is unsupported. *See* Reply Br. 3–4. Because the Examiner has not provided supporting evidence, we are constrained to conclude that the Examiner’s determination rests on speculation, unfounded assumptions, or hindsight reconstruction of the claimed invention.

Thus, we agree with Appellant that the Examiner erred in rejecting independent claim 1 by finding that Di Martini would have taught or

suggested sending the meter message recited in claim 1. We do not sustain the rejection of claim 1, and for similar reasons, we do not sustain the rejection of claims 2, 3, and 14, which depend from claim 1. *See* Appeal Br. 4.

Like claim 1, claim 16 recites generating utility meter messages that contain a management center identifier for one of the plurality of centers. *See* Appeal Br. 22–23. So, for similar reasons, we also do not sustain the rejection of claim 16. *See* Appeal Br. 8 (discussing claim 16).

#### THE REMAINING OBVIOUSNESS REJECTIONS

Like claim 1, claim 10 recites generating utility meter messages that contain a management center identifier for one of the plurality of centers. In particular, claim 10 recites, in part, “a plurality of utility management centers, each utility management center being identified by a management center identifier” and utility meters adapted to “generate utility meter messages” comprising one management center identifier. Appeal Br. 19–20.

The additional reference, Cumeralto, is not relied upon to teach meter messages and the plurality of utility management centers, which is missing from Di Martini. *See* Final 15. So the Examiner does not show that Cumeralto cures the deficiency discussed above. Thus, we do not sustain the Examiner’s rejections of claim 10 for the same reasons discussed above in connection with claim 1.

For similar reasons, we also do not sustain the rejections of claims 7, 8, 10–12, and 15, which depend from claims 1 or 10 and are also rejected under Di Martini and Cumeralto. *See* Appeal Br. 8–15 (discussing claims 7, 8, 10–12, and 15).

We also do not sustain the rejections of dependent claims 5, 6, 9, and 13 for the same reasons discussed above in connection with claim 1. The Examiner did not rely on the additional references, Ransom and Borleske, to teach meter messages and the plurality of utility management centers, and, thus, the Examiner does not show that these references cure the deficiency discussed above. *See* Final 17–19.

### CONCLUSION

We reverse the Examiner’s decision to reject claims 1–16.

<b>Claims Rejected</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1–3, 14, 16	§ 103 Di Martini	None	1–3, 14, 16
4, 7, 8, 10–12, 15	§ 103 Di Martini, Cumeralto	None	4, 7, 8, 10–12, 15
5, 6, 13	§ 103 Di Martini, Ransom	None	5, 6, 13
9	§ 103 Di Martini, Borleske	None	9
<b>Outcome</b>		None	1–16

REVERSED