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THE FARRELL LAW FIRM, P.C. 290 Broadhollow Road Suite 210E Melville, NY 11747			GUADALUPE CRUZ, AIXA AMYR	
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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* ANSHUMAN NIGAM, JUNGSOO JUNG, JUNGMIN MOON,  
SUNHEUI RYOO, and SUNGJIN LEE

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Appeal 2018-002676  
Application 14/608,936  
Technology Center 2400

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Before JOHN A. JEFFERY, JAMES R. HUGHES,  
and NORMAN H. BEAMER, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 23–42. Claims 1–22 are cancelled. We have jurisdiction over the pending rejected claims under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Samsung Electronics Co, Ltd. (Appeal Br. 1.)

### CLAIMED SUBJECT MATTER

Appellant's disclosed and claimed invention is directed to supporting a Handover (HO) by a master evolved Node B (eNB) in a wireless communication system supporting dual connectivity of a User Equipment (UE) for the master eNB and a slave eNB. (Abstract.) Claim 23, reproduced below, is illustrative of the claimed subject matter:

23. A method by a master base station, comprising:

transmitting, to a target secondary base station, a request for allocating resources to handover a user equipment (UE) from a source secondary base station to the target secondary base station;

receiving, from the target secondary base station, an acknowledgment corresponding to the resource allocation request; and

transmitting, to the source secondary base station, a request for releasing resources associated with the UE, the resource release request including a data forwarding address.

Appeal Br. 12 (Claims Appendix).

### REJECTION

The Examiner rejected claims 23–42 under 35 U.S.C. § 102 as anticipated by Lee et al. (US 2016/0135103 A1, pub. May 12, 2016). (Final Act. 3–7.)

### ISSUE ON APPEAL

Appellant's arguments present the following issue:<sup>2</sup>

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<sup>2</sup> Rather than reiterate the arguments of Appellant and the findings of the Examiner, we refer to the Appeal Brief (filed Aug. 4, 2017) ("Appeal Br."); the Reply Brief (filed Jan. 9, 2018) ("Reply Br."); the Final Office Action

Whether the Examiner erred in finding Lee discloses the independent claim 23 limitation, “the resource release request including a data forwarding address.” (Appeal Br. 5–8.)

### ANALYSIS

Appellant argues the Examiner errs in finding Lee discloses the independent claim 23 requirement, “transmitting, to the source secondary base station, a request for releasing resources associated with the UE, the resource release request including a data forwarding address” — and in particular finding Lee discloses that such a request includes a data forwarding address. (Appeal Br. 5–8.)

The Examiner relies, *inter alia*, on the disclosure in Lee of a “context release” command which is illustrated as command 10 in Figure 12 of Lee, and described as follows:

10. Upon receiving the handover notification message, the MeNB transmits a UE context release message to the source SeNB. The UE context release message may include an UEX2 ID of an old eNB (source SeNB) and an UE X2 ID of a new eNB (MeNB).

(Final Act. 4; Lee Fig. 12, ¶ 150.) The Examiner finds that this command is transmitted to the source secondary base station, is associated with releasing UE resources to the target SeNB, and includes an ID of the target secondary base station. (Ans. 8.) The Examiner notes that the phrase “data forwarding address” is not defined in the Specification. (Ans. 9.) Indeed, that term is found nowhere in the Specification, including the original claims. The

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(mailed Jan. 12, 2017) (“Final Act.”); and the Examiner’s Answer (mailed Nov. 28, 2017) (“Ans.”) for the respective details.

Examiner finds that the broadest reasonable construction of that term encompasses the “UE X2 ID of a new eNB” referred to in the above-quoted paragraph of Lee. *Id.*

Appellant argues the Examiner errs because Lee discloses several steps between the acknowledgement step (Step 3 of Figure 110), which the Examiner finds satisfies the second limitation of claim 23, and the “UE CONTEXT RELEASE” step 10, which the Examiner finds satisfies the third limitation of claim 23. (Reply Br. 2–3.) However, claim 23, which claims a method *comprising* the recited steps, does not preclude such intervening steps. Indeed, the illustrative embodiment of the claimed subject matter described in the Specification includes intervening steps. (Spec. Fig. 2.)

Appellant also argues “[n]othing in relation to the ID’s in the cited paragraph [Lee paragraph 150] has anything to do with a data forwarding address, contrary to the rejection.” (Reply Br. 4.) This is unpersuasive attorney argument. *Meitzner v. Mindick*, 549 F.2d 775, 782 (CCPA 1977) (“Argument of counsel cannot take the place of evidence lacking in the record.”). We credit the Examiner’s unequivocal finding that the “UE X2 ID of a new eNB” in the UE CONTEXT RELEASE of step 10 of Lee Figure 12 satisfies the claim 23 requirement of a data forwarding address. (Ans. 8–9.)

Accordingly, we sustain the Examiner’s rejection of independent claim 23 as anticipated by Lee. We also sustain the anticipation rejections of claims 24–42. Appellant’s arguments directed to these rejections incorporate the above-discussed arguments regarding claim 23, and those rejections are not otherwise argued separately with particularity. (Appeal Br. 9–10.)

CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s) /Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
23-42	102	Lee	23-42	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED