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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte NIANSHAN SHI and WAIKWOK KWONG¹

Appeal 2018-005524
Application 14/443,432
Technology Center 2400

Before CARL W. WHITEHEAD JR., ADAM J. PYONIN, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a Decision on appeal pursuant to 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is listed as Telefonaktiebolaget LM Ericsson (publ). Appeal Brief 2.

STATEMENT OF THE CASE

Introduction

The Application is directed “to management of communication network measurements,” especially relating “to methods and arrangements for enabling a controller node to adjust communication settings based on UE measurements.” Specification 1:4–6. Claims 30–56 are pending, of which claims 30, 35, 42, 47, 54, and 56 are independent. *See* Response to Notice of Non-Compliant Appeal Brief, filed February 19, 2018. Claim 30 is reproduced below for reference (emphases added):

30. A method performed by a first communication network node of a communication network for obtaining measurement results from a wireless communication device in accordance with *a Layer 1 communication protocol that terminates in a base station and that provides for the communication of data between the wireless communication device and the base station*, the method comprising:

formulating a request for information related to measurements performed by the wireless communication device;

sending the request to a second communication network node; and

receiving, from the second communication network node, the requested information in accordance with the Layer 1 communication protocol.

References and Rejections

Claims 30, 31, 34–36, 39–44, 47–49, and 52–56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim (US 2011/0096677 A1; Apr. 28, 2011) and Appellants’ Admitted Prior Art (AAPA). Final Action 2–12.

Claims 32, 33, 37, 38, 45, and 46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim, AAPA, and Hwang (US 2005/0207359 A1; Sept. 22, 2005). Final Action 12–15.

Claims 50 and 51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kim’s Figures 3 and 5, AAPA, and Hwang. Final Action 15–17.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments, considering only those arguments Appellants actually raised in the Briefs. We adopt the Examiner’s findings and conclusions as our own, to the extent consistent with our analysis.

Claim 30 recites four devices: a first communication network node (encompassing a Radio Network Controller (RNC)); a wireless communication device (encompassing a mobile telephone/User Equipment (UE)); a base station; and a second communication network node (encompassing a NodeB cellular base station).² See Appeal Brief 10.

Appellants contend the Examiner’s “analysis ignores the fact that the Layer 1 communication protocol referred to in the claims is explicitly

² Although not dispositive to our Decision, presumably the “second communication network node” is not the same device as the recited “base station.” See *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) (“when an applicant uses different terms in a claim it is permissible to infer that he intended his choice of different terms to reflect a differentiation in the meaning of those terms”). In the event of further prosecution, the Examiner may wish to determine whether the requirement that the protocol terminates in a separate base station conforms with the written description and definiteness requirements of 35 U.S.C. § 112.

defined in claim 30 as the (physical layer) protocol that terminates at the Node B (base station) and that handles communications between the UEs and the Node B.” Appeal Brief 14. Appellants argue that, in comparison to the single Layer 1 communication protocol of claim 30, the communications in “Kim’s system are supported by at least two Layer 1 protocols, corresponding to the two different end-to-end links that make up the UE-to-RNC data path.” Appeal Brief 13. Particularly, Appellants argue:

What is missing is a suggestion that communications between Kim’s RNC and Kim’s Node B should be “in accordance with” a Layer 1 protocol that is for Kim’s UE-to-Node B communications. The present application’s disclosure of the existence of a Layer 1 communication protocol between a wireless device (UE) and a Node B provides no suggestion at all that communications between Kim’s Node B and RNC should in any way be “in accordance with” a Layer 1 protocol for UE-to-Node B communications.

Appeal Brief 17.

Claim 30 recites the requested information is received “in accordance with” the Layer 1 communication protocol. “The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is . . . an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017) (citations omitted); *see also* Reply Brief 7–8. We note Appellants’ Specification contrasts the usage of the phrase “in accordance with the Layer 1 communication protocol” and the usage of the phrase “on the Layer 1 communication protocol”: the latter is used for the messaging between the UE and the NodeB, the former for the messaging between the NodeB and the RNC. Specification 6:4–16. More importantly,

Appellants' Specification explains that "even if the *actual* Layer 1 communication protocol is terminated in the NodeB, by extracting the parts of the measurement results which have been delivered on the Layer 1 communication protocol, the NodeBs will thereby be enabled to forward measurement results *in accordance with* the Layer 1 communication protocol." Specification 6:12–16 (emphases added). Thus, consistent with the Specification, the claim term "in accordance with the Layer 1 communication protocol" includes extracting and forwarding information originally received on the Layer 1 communication protocol.

In light of the interpretation of "in accordance with" that corresponds with what and how the invention is described in the Specification, we agree with the Examiner that the combination of Kim and AAPA teaches or suggests the claim limitations. *See* Final Action 3–4. The Examiner correctly finds that "Kim inherently discloses obtaining measurement results from a wireless communication device in accordance with a Layer 1 communication protocol" and "Kim discloses in para[.] 77 that the base station generates (extracts) the UPH [UE Power Headroom] information from the received scheduling information and sends it to the RNC by including the UPH information in a configuration decision information message." Final Action 3–4 (emphasis omitted) (citing Kim, Figs. 3, 5); *see also* Appeal Brief 13. Based on the record before us, we are not persuaded the Examiner errs in finding Kim's teachings—in view of the Layer 1

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communication protocol teachings of AAPA—teaches or suggests the limitations of claim 30. *See* Final Action 4.

CONCLUSION

We sustain the Examiner’s rejection of independent claim 30. Appellants advance no further substantive arguments on the remaining claims. *See* Appeal Brief 17–19. Accordingly, we sustain the Examiner’s rejection of claims 31–56 for the same reasons. *See Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (The Board may treat arguments Appellants failed to make for a given ground of rejection as waived); *see also Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

DECISION

The Examiner’s Decision rejecting claims 30–56 is affirmed.

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