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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* NIMAL K. K. GAMAGE, RICHARD B. WHITNER and  
THOMAS G. BRATZ

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Appeal 2018-006246  
Application 15/012,801  
Technology Center 2400

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Before ALLEN R. MacDONALD, JASON V. MORGAN, and  
JOHN R. KENNY, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> Appellant indicates the real parties in interest are Ixia, the assignee of record of the present application, and Keysight Technologies, Inc., the owner of Ixia. Appeal Br. 2.

We AFFIRM-IN-PART.

CLAIMED SUBJECT MATTER

Claims 1 and 8 are illustrative of the claimed subject matter  
(emphasis, formatting, and bracketed material added):

1. A packet capture apparatus, comprising:
  - [A.] a data packet receiving interface;
  - [B.] a data packet forwarding interface;
  - [C.] a configuration interface; and
  - [D.] circuitry that implements a plurality of data packet forwarding paths between the data packet receiving interface and the data packet forwarding interface,
    - [a.] the circuitry configuring at least one of the plurality of data packet forwarding paths in *response to input* received via the configuration interface, and
    - [b.] the circuitry *adaptively reconfiguring* at least one of the plurality of data packet *forwarding paths*
      - i) in response to the input received via the configuration interface, and
      - ii) while data packets are being captured by the packet capture apparatus.
8. The packet capture apparatus of claim 1, wherein:
  - [E.] the circuitry implements a filtered data packet forwarding path, the filtered data packet forwarding path including a data packet filter; and
  - [F.] the circuitry is configured to receive input via the configuration interface and adaptively reconfigure *at least one parameter* of the data packet filter while data packets are being captured by the packet capture apparatus.

## REFERENCES<sup>2</sup>

The prior art relied upon by the Examiner is:

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Winchester	US 2006/0174032 A1	Aug 3, 2006
Rakshani	US 2008/0153541 A1	June 26, 2008

## REJECTION

The Examiner rejects claims 1–19 under 35 U.S.C. § 103 as being unpatentable over the combination of Rakshani and Winchester. Final Act. 2–7.

Appellant separately argues claims 1, 4, 8, 12, and 17. To the extent that Appellant discusses claims 2, 3, 4–7, 9–11, 13–16, 18, and 19, Appellant merely repeats or references (directly or indirectly) the arguments directed to claim 1. Such a repeated argument (or referenced argument) is not an argument for “separate patentability.” Thus, Appellant does not present separate arguments for claims 2, 3, 4–7, 9–11, 13–16, 18, and 19. Thus, the rejections of these claims turn on our decisions as to claims 1, 4, 8, 12, and 17. Except for our ultimate decision, we do not discuss the § 103 rejections of claims 2, 3, 4–7, 9–11, 13–16, 18, and 19 further herein.

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<sup>2</sup> All citations herein to these references are by reference to the first named inventor only.

OPINION

We have reviewed the Examiner's rejections in light of Appellant's Appeal Brief arguments that the Examiner has erred.

A.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103.

[Examiner determines:]

Rakshani in at least paragraph 115 discloses the following (emphasis added):

[0115] For an outgoing data communication (e.g., email, text message, web browsing, and/or non-real-time data), the 2<sup>nd</sup> baseband processing module 415 receives outbound non-real-time data 424 **from the wireline interface 420 and/or the host interface 418. The 2<sup>nd</sup> baseband processing module 415 converts outbound non[-]real-time data 424 into an outbound non-real-time data symbol stream 426 in accordance with one or more existing wireless communication standards, new wireless communication standards, modifications thereof, and/or extensions thereof (e.g., EDGE, GPRS, etc.) corresponding to a first frequency band (fb<sub>[1]</sub>) and/or a second frequency band.** The 2<sup>nd</sup> baseband processing module 415 may perform one or more of scrambling, encoding, constellation mapping, modulation, frequency spreading, frequency hopping, beam forming, space-time-block encoding, space-frequency-block encoding, and/or digital baseband to IF conversion to convert the outbound non-real-time data 424 into the outbound non-real-time data symbol stream 426. Depending on the desired formatting of the outbound non-real-time data symbol stream 426, the 2<sup>nd</sup> baseband processing module 415 may generate the outbound

non-real-time data symbol stream 426 as Cartesian coordinates, as Polar coordinates, or as hybrid coordinates.

In view of at least this passage, Rakshani indeed discloses adaptively reconfiguring data forwarding paths in a data packet capture apparatus while the apparatus is capturing packets. Therefore, Rakshani, rather alone or combined, indeed teaches or suggests the subject matters of “. . . adaptively reconfiguring at least one of the plurality of data packet forwarding paths i) in response to the input received via the configuration interface, and ii) while data packets are being captured by the packet capture apparatus”, as newly recited in claim 1.

The Office Action mistakenly equates the highlighted portion from Rakshani above, which discloses converting outbound text, data, email, etc., into symbols for transmission of a wireless interface, to the claimed adaptive reconfiguration of a data forwarding path in a packet capture apparatus in response to configuration input. The only input received in the passage quoted above from Rakshani is the data being converted into symbols, which is not the same as configuration input. In addition, the conversion of such data into symbols is not “adaptive reconfiguration of a data packet forwarding path” because the above-quoted passage indicates that the encoding is performed according to a wireless communications standard, such as EDGE or GPRS.

Appeal Br. 9–10 (further emphasis added).

We are unpersuaded by Appellant’s argument. First, we disagree with Appellant’s assertion that “[t]he *only input* received in the passage quoted above from Rakshani is the data being converted into symbols, which is not the same as configuration input.” Emphasis added. Paragraph 115 of Rakshani states that “[d]epending on the *desired formatting* of the outbound non-real-time data symbol stream 426, the 2<sup>nd</sup> baseband processing module

415 may generate the outbound non-real-time data symbol stream 426 as Cartesian coordinates, as Polar coordinates, or as hybrid coordinates.” Emphasis added. We determine that a particular formatting being “desired” is suggestive of an input to specify that desired format.

Second, we disagree with Appellant’s assertion that “the conversion of such data into symbols is not ‘adaptive reconfiguration of a data packet forwarding path’ because the above-quoted passage indicates that the encoding is performed according to *a wireless communications standard*, such as EDGE or GPRS.” Emphasis added. Appellant’s argument that “a” (singular) standard is used does not align with paragraph 115 of Rakshani stating as to the formatting that “[t]he 2<sup>nd</sup> baseband processing module 415 converts outbound non-real-time data 424 into an outbound non-real-time data symbol stream 426 in accordance with *one or more* existing wireless communication standards, new wireless communication standards, modifications thereof, and/or extensions thereof . . .” We determine that Rakshani’s teaching that “one or more” standards are supported and that a “desired” format is used, is suggestive of the format being changed from a first desired standard to a second desired standard, i.e., being adaptive.

Third, Appellant’s Specification states:

In addition to (or instead of) using input received via the configuration interface 306 to configure or reconfigure a data packet forwarding path, input received via the configuration interface 306 may indicate the data packet forwarding path(s) to which a consumer or application would like to register or subscribe. Or, input received via a configuration interface may be used to instantiate or decommission one or more data packet forwarding paths. For example, if a new or existing application *desires* to receive *a new or different type of data packet stream*,

the application can request the instantiation of a new data packet forwarding path.

Spec. 56 (emphasis added). We understand Appellant’s paragraph 56 to indicate that a new path is created by changing the type of data packet stream. We determine that Appellant’s “desire[d] . . . new or different type of data packet stream” is suggested by Rakshani’s “desired formatting of the of the outbound non-real-time data symbol stream.” Rakshani ¶ 115.

B.

Appellant also raises the following arguments in contending that the Examiner erred in rejecting claim 4 under 35 U.S.C. § 103.

Rakshani nowhere mentions a query interface that is able to *extract* data received at a non-real-time interface.

Appeal Br. 12 (emphasis added).

We are unpersuaded by Appellant’s argument. The argument is not commensurate with the scope of the claim language. We do not find an “extract” function in claim 4 (or the claims from which it depends). Claim 4 is not explicitly so limited, nor does Appellant explain how claim 4 would be inherently so limited, nor do we find alternative language that would similarly mandate the argued limitation.

C.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 8 under 35 U.S.C. § 103.

[C]laim 8 *recites* that the circuitry implements a filtered data packet forwarding path including a data packet filter and that the circuitry is configured to receive input via the configuration interface and *adaptively reconfigure at least one parameter* of the data packet filter while data packets are being captured by the packet capture apparatus. On page 6, the Office Action indicates

that paragraphs [0115] and [0148] Rakshani in combination with paragraph [0057] of Winchester disclose the claimed adaptively reconfigurable data packet filter. Paragraph [0115] of Rakshani is set forth above and *mentions nothing about* data packet filters or *adaptively reconfigurable packet filters*.

Appeal Br. 13 (emphasis added). While we disagree with Appellant's broad assertion that an "adaptively reconfigurable packet filter" is not suggested by Rakshani, claim 8 is limited to "adaptively reconfigure[ing] at least one *parameter* of the data packet filter" (emphasis added). We are persuaded there is insufficient articulated reasoning to support the Examiner's determination that Rakshani and Winchester suggest "adaptively reconfigure[ing] at least one *parameter* of the data packet filter." Therefore, we further conclude that there is insufficient articulated reasoning to support the Examiner's final conclusion that claim 8 would have been obvious to one of ordinary skill in the art at the time of Appellant's invention.

D.

Appellant raises the following argument in contending that the Examiner erred in rejecting claim 12 under 35 U.S.C. § 103.

In the above quoted passage, Rakshani indicates that communication device 10 can be various types of consumer electronic devices, *none of which would be understood to be a data packet capture probe*.

Appeal Br. 16 (emphasis added).

We are unpersuaded by Appellant's argument. We agree with the Examiner's determination:

[P]er broadest reasonable interpretation (BRI) and when it is not clearly defined in the claim body, "a physical, network-connectable, data capture probe" is being reasonably interpreted by the examiner as "a data capture component that can be

physically connected to the network”. With that being said, the examiner indeed relies on at least fig. 3, which discloses a wireline port 64 that is physically (e.g. wireline) connected to wireline connection 28, which in turn physically connected to non-real-time device 12, real-time device 14, and non-real-time/or real-time device 16 (see also fig. 1 ). Therefore, Rakshani indeed teaches or suggests the claimed features which recited in claim 12.

Ans. 20–21.

E.

Appellant raises essentially the same argument set forth for claim 8 in contending that the Examiner erred in rejecting claim 17 under 35 U.S.C. § 103.

We are persuaded by Appellant’s argument as discussed with claim 8 *supra*.

### CONCLUSIONS

The Examiner has not erred in rejecting claims 1–7, 9–16, 18, and 19 as being unpatentable under 35 U.S.C. § 103.

Appellant has established that the Examiner erred in rejecting claims 8 and 17 as being unpatentable under 35 U.S.C. § 103.

The Examiner’s rejection of claims 1–7, 9–16, 18, and 19 and as being unpatentable under 35 U.S.C. § 103 is **affirmed**.

The Examiner’s rejection of claims 8 and 17 as being unpatentable under 35 U.S.C. § 103 is **reversed**.

DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1-19	103	Rakshani, Winchester	1-7, 9-16, 18, 19	8, 17

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-IN-PART