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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUSTIN TIDWELL, EDUARDO SAMAME, and
CRAIG ENGEL

Appeal 2018-006888
Application 14/589,947
Technology Center 2400

Before ELENI MANTIS MERCADER, CARL L. SILVERMAN, and
MELISSA A. HAAPALA, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 34, 37–40, 57, 60–62, 64, 68–73, 75–79, and 81–83², which constitute all pending claims.

We affirm-in-part.

¹ Throughout this Decision, we use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42 (2018). Appellant identifies Time Warner Cable Enterprises LLC as the real party in interest. App. Br. 1.

² Claim 83 was rejected only under 35 U.S.C § 101 and this rejection is withdrawn. Ans. 1; Final Act. 2–4.

STATEMENT OF THE CASE

The invention relates to identifying and characterizing latency in a content delivery network. Abstract; Spec., 1:21–25, 4:22–30, Figs. 2a–5. Claim 34 reproduced below, is exemplary of the subject matter on appeal (emphasis added):

34. A computerized method for determining a system latency specific to an individual one of a plurality of computerized devices in a content delivery network, said method comprising:

collecting, at a network entity, data representative of one or more tuning records relating to one or more interactions of said individual one of said plurality of computerized devices with one or more digitally rendered content elements;

determining, based at least in part on said data representative of said one or more tuning records, a value for latency attributable to said individual one of said plurality of computerized devices;

sending a message to said individual one of said plurality of computerized devices at a first time, said message requiring a response from said individual one of said plurality of computerized devices;

receiving, in response to said message, said response indicating a second time; and applying at least one algorithm to:

determine a portion of a difference between said second and said first time, said portion of said difference attributable to a one-way traversal of said network to said individual one of said plurality of computerized devices;

combine said portion of said difference with said value for latency attributable to said individual one of said plurality of computerized devices to obtain a system latency for said individual one of said plurality of computerized devices; and

apply said system latency to said data representative of said one or more tuning records;

wherein said application of said system latency to said data representative of said one or more tuning records comprises adjusting a timestamp of said data representative of said one or more tuning records to account for said system latency, said timestamp comprising a time at which said collecting of said data representative of said one or more tuning records occurred; and

wherein said one or more interactions of said individual one of said plurality of devices comprise one or more tune events associated with said one or more digitally rendered content elements.

App. Br. 5 (Claims Appendix).

THE REJECTIONS³

Claims 79, 81, and 82 are rejected under 35 U.S.C. § 112(b) or 35 U.S.C. § 112 (pre-AIA), second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor, or for pre-AIA the applicant regards as the invention. Final Act. 4–5.

Claims 34, 38, 40, 57, 61, 68, and 71 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy (US 2003/0016627 A1; pub. Jan. 23, 2003) (“MeLampy”) and Townsend et al. (US 2002/0133513 A1; pub. Sep. 19, 2002) (“Townsend”). Final Act. 6.

Claims 37, 60, and 78 are rejected under pre-AIA 35 U.S.C.

³ The 35 U.S.C § 101 rejection of claims 34, 37–40, 57–62, 64, 68–79, and 81–83 is withdrawn. Ans. 1; Final Act. 2–4.

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§ 103(a) as being unpatentable over MeLampy, Townsend, and Kalmanje et al. (US 2009/0228569; pub. Sep. 10, 2009) (“Kalmanje”). Final Act. 12–13.⁴

Claims 39, 62, 64, 69, and 82 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy, Townsend, and Maharajh et al. (US 8,855,469 B2; iss. Oct. 7, 2014) (“Maharajh”). Final Act. 14.

Claims 71–73 and 79 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy, Townsend, Hanson et al. (US 8,244,909 B1; iss. Aug. 14, 2012) (“Hanson”) and Kalmanje). Final Act. 15–18.

Claim 75 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy, Townsend, and Luong (US 2011/0283311 A1; pub. Nov. 17, 2011) (“Luong”). Final Act. 18.

Claim 76 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy, Townsend, and Chang et al. (US 2010/0199299 A1; pub. Aug. 5, 2010) (“Chang”). Final Act. 18–20.

Claim 77 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over MeLampy, Townsend, and Kim (US 2006/0017846 A1; pub. Jan. 26, 2006) (“Kim”). Final Act. 20.

⁴ Although the Examiner includes claim 74 in this rejection, as noted by Appellant, claim 74 was canceled. *See* Appeal Br. 21.

ANALYSIS

The § 112, paragraph 2, rejection of claims 79, 81, and 82

Regarding claim 79, Appellant argues the Examiner errs in finding that it is unclear what the recited “trick-mode capabilities” means and how the latency information (attributable to the computerized client device) is associated to the trick-mode capabilities. App. Br. 14 (citing Final Act. 4). Appellant argues one of ordinary skill in the art would understand that the Specification explains “trick-mode” operations include, “e.g., fast forward, rewind, pause, play, etc. . . .” *Id.* at 15 (citing Spec. 19:19–26, 30:25–26); Appellant also refers to a dictionary definition of trick-mode capabilities as “the capability to perform a trick-mode ([https://en.wikipedia.org/wiki/Trick mode](https://en.wikipedia.org/wiki/Trick_mode))”. Appellant refers to the Specification to describe how the latency is associated to the trick-mode capabilities, such latency attributable to the user device and remote control devices. *Id.* at 15–16 (citing Spec. 24:19–26).

Regarding claim 81, Appellant argues the Examiner errs in finding “the meaning of ‘*expected value*’ [] is unclear, and that it is also unclear how the record is compared to the expected value.” *Id.* at 16 (citing Final Act. 4–5). According to Appellant, one of ordinary skill in the art “would understand the recitation ‘*expected value*’ can mean a value that is expected (e.g., utilizing one or more statistical methods, as explicitly recited in Claim 81), and would further understand how the record is compared to the expected value,” for example, by utilizing statistical methods. *Id.* at 16–17 (citing Spec. 33:15–34:5).

Regarding claim 82 (which depends from independent claim 64), Appellant argues the Examiner errs in finding that that it is not clear how the “*attribute of interest*” is related to a “common demographic” of the plurality

of devices. App. Br. 17–18. According to Appellant, “[c]laim 64 recites ‘*generat[ing] a report, said generation comprising application of a filter to said data according to at least one attribute of interest associated with said individual one of said plurality of computerized devices*’, and Claim 82 recites that ‘*said at least one attribute of interest comprises a common demographic between said individual one of said plurality of devices and said plurality of devices*’ {emphasis added}.” *Id.* at 17. Appellant argues “that one possessing the ordinary level of skill in the pertinent art at the time the invention was made would understand the aforementioned claimed recitation, when the claim is read in light of the specification.” *Id.* at 17. In particular, Appellant asserts the Specification explicitly describes exemplars of such functionality:

Analyzation of the data, such as at the tuning record processing entity 200 and/or at the analyzation entity 206, may be utilized to generate reports. For example, these reports may relate to the number of requests by one or more subscribers, devices, households, geographic zones, demographics, etc., over a particular time period. In this way, second-by-second data regarding a plurality of users' interaction with content, which would generally tend to be too voluminous and detailed to be useful, may be accredited and summarized to produce useful data.

The tuning records provided thereto may comprise only those records which relate to the advertisements or content associated with that particular advertiser or content provider, or alternatively those associated with a particular demographic or psychographic or geographical region which the advertiser is attempting to access with its advertising

In one exemplary embodiment, a single report may be generated illustrating (across a certain demographic of viewers of an advertisement) the number of viewers which tuned away, and precise times during the advertisement when the viewers did so taking into account the latency associated with each viewer.

App. Br. 17(citing Spec., 20:4–9, 34:11–28).

Appellant argues that “one possessing the ordinary level of skill in the pertinent art at the time the invention was made would understand the aforementioned claimed recitation of ‘attribute of interest’ means an attribute, [for example], interest to an advertiser; and, in one exemplary embodiment (claimed in Claim 82), that attribute comprises a demographic (common to the individual one of the plurality of devices and the plurality of devices).” *Id.* at 17–18.

We are persuaded by Appellant’s arguments regarding indefiniteness of claims 79, 81, and 82. “[A] claim is indefinite when it contains words or phrases whose meaning is unclear.” *In re Packard*, 751 F.3d 1307 (Fed. Cir. 2014). As Appellant emphasizes, each of these claims sets forth the claimed subject matter with a reasonable degree of clarity and particularity, is further described in the Specification, and in this context, one of ordinary skill in the art would understand the claims with sufficient definiteness.

In view of the above, we do not sustain the 35 U.S.C. § 112 (pre-AIA), second paragraph, rejection of claims 79, 81, and 82.

We note that the Examiner states “[c]laims 81 and 83 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112(b) or 35 U.S.C. 112 (pre-AIA), 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.”

Final Act. 20. Additionally, we note that claim 83 (which depends from claim 81) is not currently rejected as the previous rejection of this claim under 35 U.S.C § 101 is withdrawn. Ans. 20.

The § 103 rejections⁵

*Rejection of claims 34, 38, 40, 57, 61, 68, and 71 over
MeLampy and Townsend*

*Rejection of claims 37, 60, and 78 over MeLampy, Townsend
and Kalmanje*

Appellant argues the Examiner errs in rejecting independent claims 34 and 57 over MeLampy and Townsend because the Examiner's claim interpretation of "tune event" and "tuning record" is unreasonably broad. App. Br. 18–19; Reply Brief. 4. Appellant argues, in view of the Specification, that the recitation "tune event" would be interpreted by one of ordinary skill in the art "to mean an event *deliberately* caused by a *tuner* of a receiver device used for viewing content." App. Br. 19. Appellant refers to the Specification (40:6–9, 19, and 24–30) to support their claim interpretation of "tune event":

A 'tune' event may comprise e.g., a linear broadcast channel change via a front panel function or remote on a DSTB, or selection of an IPTV stream on a PC or other IP-enabled device, or selection of a VOD or PPV program, or invocation of a VoIP call, or selection of a hyper/ink, or yet other types of activities.

records may be collected relating to: (i) requests to receive specific content elements (e.g., movie, game, etc.) at particular devices such as CPE 106, PMD, etc. (e.g., 'tune in' events), ... (iv)

⁵ Appellant argues the Examiner fails to sustain the proper examination burden for at least claims 64, 70, 71, and 73. App. Br. 23–25. As discussed *infra*, we disagree with this assertion. Moreover, to the extent Appellant wishes to pursue this issue, the appropriate procedure is through Petition. See 37 C.F.R. § 1.181; § 1.182.

requests to terminate viewing of specific content elements (e.g., 'tune away' events), (v) requests to terminate viewing altogether (e.g., 'tune out' events), etc."

App. Br. 18–19.

According to Appellants, MeLampy and Townsend do not teach the “tune event” and “tuning records” recited in claims 34 and 57. In particular, Appellant argues:

Townsend merely discloses synchronizing personal log notes (such as those made by attorneys or judges during court proceedings) with digitally recorded audio (of the proceedings) (see, e.g., Abstract and FIG. 11). At par. [0082], Townsend discloses changing time stamps of a note in a log sheet in order to synchronize the note with the playback of audio. However, one cannot reasonably assert that the log notes in Townsend be interpreted as the one or more *tuning* records as recited in Claims 34 and 57, at least in that the log notes of Townsend do *not* relate to one or more tune events, as required by each of Appellant's Claims 34 and 57.

For example, at pages 11-12 of the Final Office Action, with respect to the rejection of Claim 57, the Office asserts that, in Townsend, the *"tune-in record starts with user interaction such as presiding the button [sic] start recording of the digital signals and automatically creating a log of the recorded contents."* Appellant disagrees that such alleged disclosure in Townsend teaches or suggests the recitation of "tune-in event" of Claim 57. Nowhere does Townsend disclose "tuning-in" to *any* type of delivery mechanism (e.g., a physical channel such as a QAM-modulated RF channel) as Appellant has used that term in its specification, and hence the Office's position is clearly erroneous.

App. Br. 19.

The Examiner finds:

Claim 57 cites: "tuning record relates to an interaction of said individual one of said plurality of computerized devices with one or more digitally rendered content elements, said interaction

comprising at least one of: (i) a tune-in event, (ii) a tune-out event, and (iii) a tune-away event". The reference of Townsend teaches user interaction as pressing a button to start or to stop recording of media of the digital signals, [0042], [0043], Fig. 5 wherein the Examiner interprets, tune-in, out events as starting and stopping recording of digital signal. Ev[e]n limitations appearing in the specification but not recited in the claim are not read into the claim, examiner found out that the specification cites: "requests to receive specific content elements (e.g., movie, game, etc.) at particular devices such as CPE 106, PMD, etc. (e.g., "tune in" events) ... requests to terminate viewing altogether (e.g., "tune out" events)" in paragraph 95.

Ans. 4–5.

In the Reply Brief, Appellant argues “[n]owhere does Townsend disclose *"tuning-in"* to *any* type of delivery mechanism (e.g., a physical channel such as a QAM-modulated RF channel) as Appellant has used that term in its specification. Additionally, nowhere does Appellant's specification explicitly or inherently disclose that a *"tune-in"* event and *"tune-out"* can include, respectively, a starting and stopping of a recording.”

Reply Br. 4.

We are not persuaded by Appellant’s arguments and agree, instead, with the Examiner’s claim interpretation, findings, and conclusions.

During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). While we interpret claims broadly but reasonably in light of the Specification, we nonetheless must not import limitations from the Specification into the claims. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

We do not agree with Appellant’s interpretation of “tune event” to exclude the Townsend user interaction of pressing a button to start or stop recording of media of the digital signals. Here, the term “tune event” includes the button control of Townsend. *See* Townsend ¶¶ 42, 43; Fig. 5. We note that the Specification portions cited by Appellant do not exclude the use of a button control for recording (or playing) media. Moreover, the portions of the Specification cited employ open-ended language, such as “may comprise” and “or yet other types of activities.” *See* Spec., 40:6–9.

Under a broad and reasonable interpretation, Townsend teaches the claim 34 limitation “tune event”. Similarly, Townsend’s recording teaches the claim 57 “tuning record” limitations “tune-in,” “tune-out,” and “tune-away.”

Therefore, we sustain the rejection of claims 34 and 57, and claims 38, 40, 61, and 68 as these claims are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant argues the Examiner errs in rejecting independent claim 71⁶ over MeLampy and Townsend (relying on claim 34 limitations) because claim 71 includes features (for example, anonymize at least one record) not present in claim 34, and these features are not taught or suggested in MeLampy and Townsend. App. Br. 19–20. The Examiner does not address this argument and, we are persuaded by Appellant’s arguments.

Therefore, we do not sustain the rejection of claim 71 over MeLampy and Townsend.

⁶ Claim 71 is also rejected in a separate 35 U.S.C § 103 rejection over MeLampy, Townsend, *Hanson, and Kalmanje*, discussed, *infra*. *See also* Final Act. 15–16.

Appellant does not present separate arguments for the obviousness rejection of dependent claims 37, 60, and 78 over MeLampy, Townsend, and Kalmanje, but rather relies on the same arguments presented for independent claims 34 and 57. For the reasons stated above, we are not persuaded of error and, therefore, sustain the 35 U.S.C. § 103 rejection of claims 37, 60, and 78.

Rejection of Claims 39, 62, 64, 69, and 82 over MeLampy, Townsend, and Maharajh

Appellant argues claims 39, 62, 69, and 82 based on dependency to independent claims 34 and 55. App. Br. 21–22. In view of our decision to sustain the rejection of independent claims 34 and 57, discussed *supra*, we are not persuaded by Appellant’s arguments, and sustain the rejection of claims 39, 62, 69, and 82.

Appellant argues the Examiner errs in rejecting independent claim 64, based on independent claim 34 and dependent claim 39. App. Br. 21; *see* Final Act. 14. Appellant refers to claim 64 features not present in claim 34 or 39: “[f]or example, Claim 64 recites features relating to: (i) generating a report, the generation comprising application of a filter to the data according to at least one attribute of interest associated with the individual one of the plurality of computerized devices; and (ii) applying at least one routine to, *inter alia*, apply the system latency to the report and the at least one record.” *Id.*

Regarding claim 64, Appellant additionally argue “MeLampy, Townsend, and Maharajh each appear to be *wholly* silent with respect to both: (i) generating a report, where the generation includes application of a

filter to the plurality of data according to at least one attribute of interest associated with the individual one of the plurality of devices, and (ii) applying at least one routine to apply the system latency to the report and the at least one record, as recited in Appellant's Claim 64.” App. Br. 21–22.

In the Answer, the Examiner finds:

The limitation that are applicant's concern are rejected in claim 39 wherein Maharajh teaches media data records including replay, fast forward wherein the filtering the content, sorting into categories/attribute of interest and transmitting to mobile operators outside of the network, wherein the process of sorting into categories is generating a report, Figs. 14, 16 and 43, C 12: L30-54, C 41: L 23-34. The spec clearly shows the features that applicant argues: "content management may also include content filtering that may allow a user to setup various content based filters, content rating that may enable a user to view content rating and generate content ratings (e.g. using a star system, averaging ratings, through feedback), community polling through flexible format multiple choice questioning, personalization of content delivery (e.g. based on a user profile, a consumption profile, operator or wireless carrier input (based on data about the user that comes from the carrier), various personalization algorithms, recommendations, ratings, and the like)" C 48: L 22-40. The report is generated after filtering and sorting the content into categories wherein the categories are attribute of interest and this attribute of interest is transmitted to mobile operators outside of the network as cited in claim 69.

Ans. 5–6.

The only difference between claim 64 and claim 34 properly rejected in the final office action is claim 39 rejected and discussed above. Maharajh clearly teaches in claim 39 that the media data records are filtering the content, sorting into categories/attribute of interest wherein the process of sorting into categories is generating a report, Figs. 14, 16 and 43, C 12: L 30 - 54, C 41: L 23 - 34. One [of] ordinary level of skill in the

pertinent art at the time the invention was made should understand that generating a report based on the filtering process is not different from sorting the content into categories.

Id. at 7.

In the Reply Brief, Appellant argues, “even assuming *arguendo* that the foregoing disclosures of Maharajh (12:25–54) teach or suggest ‘*application of a filter to said data according to at least one attribute of interest associated with said individual one of said plurality of computerized devices*’ as recited in Appellant's Claim 64, one cannot reasonably assert that the search results of Maharajh teach or suggest the report in Appellant's Claim 64, because Claim 64 requires applying the system latency to the report.” Reply Br. 5. Appellant argues that the Maharajh portion cited by the Examiner (48:22–40) “does not relate in any way to generating a report, or applying the system latency to the report, which are each explicitly required by Appellant's Claim 64.” *Id.* Appellant further argues “[t]here is a salient difference between sorting search results (as disclosed in Maharajh) and generating a report (as recited in Appellant's Claim 64); one is not concurrent in scope or result with the other (e.g., one can sort search data and never generate a report, and conversely one can generate a report without sorting search data). *Id.* at 6.

We are not persuaded by Appellant’s arguments and agree, instead, with the findings of the Examiner. In the rejection of claim 39 (which depends from independent claim 34) and independent claim 64, we agree that the Maharajh filtering and sorting constitutes the claimed report. Additionally, the obviousness rejection of claim 34 (and dependent claim 39) and independent claim 64 is based on the *combination* of Maharajh with

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the latency teaching set forth in MeLampy... *See* Final Act. 7–8, 14. We, therefore, agree with the Examiner that MeLampy teaches applying system latency. *See* Final Act. 8 (citing Melampy ¶¶ 65, 66).

We note much of Appellant’s arguments are unsupported by factual evidence. Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); *Ex parte Belinne*, Appeal 2009-004693, 2009 WL 2477843, at *3–4 (BPAI Aug. 10, 2009) (informative).

Appellant also argues an unreasonably narrow teaching of the cited references and an overly demanding standard of obviousness. However, we note

[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

Keller, 642 F.2d 413, 425 (CCPA 1981).

Here, the Examiner provides sufficient evidence as required for obviousness. As stated by the Supreme Court, the Examiner’s obviousness rejection must be based on:

[S]ome articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The Examiner's findings are reasonable because the skilled artisan would "be able to fit the teachings of multiple patents together like pieces of a puzzle" because the skilled artisan is "a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 420–21.

Based upon the teachings of the references and the fact that each claimed element was well known in the art, we agree with the Examiner because the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results. *Id.* at 415–16. We note Appellant presents no persuasive arguments that the results are unpredictable. Moreover, as discussed *supra*, the Examiner additionally provided reasons why one of ordinary skill in the art would combine the references in the manner suggested.

On this record, Appellant does not present sufficient or persuasive evidence that the combination of the cited references was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 419–21).

In view of the above, we sustain the rejection of claim 64.

The rejection of claims 71–73 and 79 over MeLampy, Townsend, Hanson, and Maharajh

Appellant argues that

[e]ven assuming *arguendo* that [] Hanson meets the Claim 71 recitation of "*use of a one- way cryptographic hash*" (a point Appellant does not necessarily concede), nowhere that Appellant can find does Hanson disclose that such ostensible

one-way cryptographic hash is coupled with an opaque variable and used to anonymize the at least one record, as recited in Appellant's Claim 71. Hanson appears to be *wholly* silent with respect to anonymization.

App. Br. 22.

The Examiner finds:

Hanson teaches various quasi -cryptographic hash functions may be implemented in small implementation areas, and exhibit low computation time (i.e., low latency, Col. 1: L 48 - 60, Col. 14: L 63 - 67. Wikipedia defines opaque data type is a data type whose concrete data structure is not defined in an interface. Based on this definition Hanson teaches finding a path to forward the packet by performing flow hashing, because the network topologies allowing multiple diverse paths between source and destination nodes wherein such load sharing can be achieved through congestion-aware routing algorithms and/or multi-path routing, see abstract, C 1: L 14 - 23 and hash functions were applied because of the anonymous nodes; the hash functions determined the route to transmit the packets.

Ans. 8–9.

In the Reply Brief, Appellant argues the Examiner's proposed dictionary definition does not appear to support the Examiner's finding that Hanson teaches "*finding a path to forward the packet by performing flow hashing, because the network topologies allowing multiple diverse paths between source and destination nodes wherein such load sharing can be achieved through congestion-aware routing algorithms and/or multi-path routing.*" *Id.* at 7. Appellant disagrees with the Examiner that, in Hanson, "*hash functions 25 were applied because of the anonymous nodes*" because "[n]owhere that Appellant can find does Hanson teach or suggest anonymous nodes, and even assuming *arguendo* the disclosure of

anonymous nodes did exist in Hanson, Appellant's Claim 71 recites anonymization of the at least one record, which is not taught or suggested in the disclosure of Hanson. The "*flow hashing*" in Hanson is essentially to provide load balancing (see the Background section of Hanson), not anonymization." *Id.*

We are persuaded by Appellant's arguments regarding claim 71. Although the Examiner refers to Hanson for the teaching of anonymous nodes, the Examiner does not sufficiently explain how Hanson teaches the claim 71 limitation "*anonymize said at least one record via use of a one-way cryptographic hash coupled with an opaque variable.*" Emphasis added. In particular, even if Hanson teaches "anonymize said at least one record," the Examiner does not sufficiently explain that the anonymization is done via use of the hash.

In view of the above, we do not sustain the rejection of claims 71, and dependent claims 72, 73, and 79. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("[D]ependent claims are nonobvious if the independent claims from which they depend are nonobvious . . .").

The rejection of claims 75–77 over MeLampy, Townsend, Luong, Chang, and Kim

Regarding the rejection of claims 75–77 over MeLampy, Townsend, Luong, Chang, and Kim, Appellant relies on dependency to claims 34 and 57. App. Br. 23. In view of our decision, *supra*, to sustain claims 34 and 57, and the absence of additional persuasive arguments by Appellant, we also sustain the rejection of claims 75–77.

DECISION

Claims Rejected	Basis	Affirmed	Reversed
79, 81, and 82	35 U.S.C. § 112, 2		79, 81, and 82
34, 37–40, 57–62, 64, 68–79, and 82	35 U.S.C. § 103	34, 37–40, 57, 60–62, 64, 68–70, 75–78, and 82	71–73 and 79
Overall Outcome		34, 37–40, 57, 60–62, 64, 68–70, 75–78, and 82	71–73, 79, and 81

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