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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EYRAN LIDA and AVIV SALAMON

Appeal 2018-007092
Application 14/482,245
Technology Center 2400

Before JAMES R. HUGHES, DENISE M. POTHIER, and LARRY J. HUME, *Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Claims 1–20 are pending, stand rejected, are appealed by Appellant,[1] and are the subject of our decision under 35 U.S.C. § 134(a). *See* Final Act. 1–2; Appeal Br. 3.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM IN PART.

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[1] We use the word Appellant to refer to "applicant" as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Valens Semiconductor Ltd. *See* Appeal Br. 3.

[2] We refer to Appellant's Specification ("Spec."), filed Sept. 10, 2014 (claiming benefit of US 61/988,247, filed May 4, 2014); Appeal Brief ("Appeal Br."), filed Dec. 5, 2017; Supplemental Appeal Brief ("Supp. Appeal Br."), filed Jan. 9, 2018; and Reply Brief ("Reply Br."), filed Aug. 24, 2018. We also refer to the Examiner's Final Office Action ("Final Act."), mailed Dec. 1, 2017; and Answer ("Ans.") mailed June 28, 2018.

CLAIMED SUBJECT MATTER

The invention relates to "packet switching networks" "utilized for delivery of streaming media content." Spec. 1:14–15. More specifically, Appellant's invention relates to networks and methods for admitting streaming sessions based on capabilities, especially the latency variation, of a destination node. *See* Spec. 2:2–29; Abstract. Claims 1 and 12 are independent. Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A network configured to admit streaming sessions based on capabilities of their destinations, comprising:
>
> a processor configured to receive a request to establish a new streaming session over a new path, in presence of an existing streaming session; wherein the existing streaming session is established over an existing path, and the new path and the existing path pass through an output port of a switch;
>
> the processor is further configured to: receive capabilities of a destination of the new streaming session, and allocate a limit for a first allowable end-to-end latency variation of the new streaming session based on the capabilities;
>
> *the processor is further configured to estimate, before the new streaming session is established, an estimated end-to-end latency variation of the new streaming session, as if the new streaming session is established over the new path*; and
>
> the processor is further configured to: determine, by comparing the estimated end-to-end latency variation with the limit, a determination that the estimated end-to-end latency variation exceeds the limit, and reject the request based on the determination.

Appeal Br. 15 (Claims App.) (emphasis added).

REFERENCES

The prior art relied upon by the Examiner as evidence is:

Name	Reference	Date
Georgiadis et al. ("Georgiadis")	US 5,933,414	Aug. 3, 1999
Lida et al. ("Lida")	US 2011/0317587 A1	Dec. 29, 2011
Lee et al. ("Lee")	US 2012/0324120 A1	Dec. 20, 2012

REJECTIONS[3]

1. The Examiner rejects claims 1, 2, and 5–11 under 35 U.S.C. § 112(b) as being as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor regards as the invention. *See* Final Act. 6–7.

2. The Examiner rejects claims 1, 2, 4–12, and 14–20 under 35 U.S.C. § 103 as being unpatentable over Lida and Georgiadis. *See* Final Act. 7–21.

3. The Examiner rejects claims 3 and 13 under 35 U.S.C. § 103 as being unpatentable over Lida, Georgiadis, and Lee. *See* Final Act. 20–21.

ANALYSIS

The indefiniteness Rejection of Claims 1, 2, and 5–11

The Examiner rejects claims 1, 2, and 5–11 as being indefinite because independent claim 1 recites only "processor configured to" limitations. *See* Final Act. 6–7; Ans. 2. Appellant states "Appellant is ready to add the suggested limitations of 'a switch' and 'communication links[,']

[3] The Leahy-Smith America Invents Act ("AIA"), Pub. L. No. 112–29, 125 Stat. 284 (2011), amended 35 U.S.C. §§ 103 and 112. Because the present application has an effective filing date (May 4, 2014) after the AIA's effective date, this decision refers 35 U.S.C. §§ 103 and 112(b).

or any other similar limitations in order to overcome the 35 USC §112 rejection." Appeal Br. 6.

Appellant does not dispute the substance of the Examiner's rejection and, therefore, do not persuade us of error in the Examiner's indefiniteness rejection. Accordingly, we sustain *pro forma* the Examiner's indefiniteness rejection of claims 1, 2, and 5–11.

Obviousness Rejection of Claims 1, 2, 4–12, and 14–20

The Examiner rejects independent claim 1 (as well as independent claim 12, and dependent claims 2, 4–11, and 14–20) as being obvious over Lida and Georgiadis. *See* Final Act. 7–10; Ans. 3–11. Appellant contends that Lida and Georgiadis do not teach the disputed limitations of claim 1. *See* Appeal Br. 7–13; Reply Br. 2–5. Specifically, Appellant contends, *inter alia*, that Lida teaches "the RPE comput[ing] the routing calculations **AFTER** [creation of] the session" (Appeal Br. 8; *see* Appeal Br. 7–11) and "Georgiadis conveys the jitter control information in the header of transmitted packets," but "calculation[s] [performed] before a new streaming session is established cannot [be] convey[ed] . . . in the header of transmitted packets" (Appeal Br. 12). *See* Appeal Br. 7–13; Reply Br. 2–5.

We agree with Appellant that the Examiner-cited portions of Lida (*see* Lida ¶¶ 77, 80, 104, 166, 265; Figs. 18–20) and Georgiadis (*see* Georgiadis col 3, l. 66–col. 4, l. 9; Figs. 3–4) do not teach or suggest estimating end-to-end latency variation (jitter) of the new streaming session prior to the establishment of the new streaming session, comparing the estimated end-to-end latency variation with a latency variation limit, and rejecting a request to establish a new streaming session over a new path when the estimated end-to-end latency variation exceeds the limit as required by Appellant's claim 1.

See Appeal Br. 7–13; Reply Br. 2–5. Even if we were to concur with the Examiner that the Examiner-cited portions of Lida describe estimating end-to-end latency variation before establishing a new streaming session, which we do not, the cited portions of Georgiadis teach including jitter information in packet headers (*see* Appeal Br. 12 (citing Georgiadis, col. 1, ll. 7–19))—i.e., packets sent over an existing session. Further, as pointed out by Appellant (*see* Appeal Br. 12 (citing Geogiadis col. 3, ll. 1–9)), Geogiadis describes measuring delay and including delay information in the packet header, which "indicate(s) . . . the amount of delay that this packet has incurred" (Geogiadis col. 3, ll. 2–4) and which is used to limit or control jitter. *See* Geogiadis col. 2, l. 56–col. 3, l. 15. Here again, the call setup path has been determined and, thus, the call session has already been initiated. Georgiadis' express disclosure contradicts the Examiner's interpretation of Georgiadis (*see* Ans. 4–7) and makes the proposed combination incompatible. *See* Reply Br. 2–5. Indeed, the Examiner states that a new streaming session, according to Georgiadis, "will be accepted or rejected based on the incurred delay information of the existing streaming session." Ans. 6–7. The Examiner does not explain sufficiently how the cited portions of Lida in combination with Georgiadis at least suggest the disputed features of estimating end-to-end latency variation of a (new) streaming session and comparing the estimated end-to-end latency variation with a latency variation limit prior to the establishment of the streaming session as required by claim 1.

Consequently, we are constrained by the record before us to find that the Examiner erred in finding that the combination of Lida and Georgiadis renders obvious Appellant's claim 1. Independent claim 12 includes

limitations of commensurate scope. Claims 2, 4–11, and 14–20 depend from and stand with their respective base claims.

Obviousness Rejection of Claims 3 and 13

The Examiner rejects dependent claims 3 and 13 under 35 U.S.C. § 103 as being obvious over Lida, Georgiadis, and Lee. *See* Final Act. 20–21.

The Examiner does not suggest, and we do not find, that the additional cited reference, Lee, cures the deficiencies of Lida and Georgiadis (*supra*). Therefore, we reverse the Examiner's obviousness rejection of dependent claims 3 and 13 for the same reasons set forth for claim 1 (*supra*).

CONCLUSION

Appellant has not shown that the Examiner erred in rejecting claims 1, 2, and 5–11 under 35 U.S.C. § 112(b). Appellant has shown that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 103. We, therefore, sustain the Examiner's rejection of claims 1, 2, and 5–11, but do not sustain the Examiner's rejection of claims 3, 4, and 12–20.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 2, 5–11	112(b)		1, 2, 5–11	
1, 2, 4–12, 14–20	103	Lida, Georgiadis		1, 2, 4–12, 14–20
3, 13	103	Lida, Georgiadis, Lee		3, 13
Overall Outcome			1, 2, 5–11	3, 4, 12–20

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. § 41.50(f).

AFFIRM IN PART