UNITED STATES PATENT AND TRADEMARK OFFICE

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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 ANTONIUS DRIAAN MARIA STARING and
ANDRIES VAN WAGENINGEN

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Appeal 2018-007394
Application 13/379,437
Technology Center 2400

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Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
NABEEL U. KHAN, *Administrative Patent Judges.*

MacDONALD, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1, 3–8, and 10–12. Claims 2, 9, and
13–17 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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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 Koninklijke
Philips N.V. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A method of processing a data packet comprising a header part and a message part in a wireless communication system, said method comprising:

[A.] receiving, by a receiver from a transmitter, the data packet, *wherein the header part stores a value that indicates whether a type of the data packet is known or unknown to the receiver*; and

[B.] determining a size of the message part regardless of whether the type of the data packet is known or unknown to the receiver, *wherein the value stored in the header part is associated with the size of the message part according to a look-up table or a formula stored in a memory of the receiver.*

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Krumel	US 2002/0080771 A1	June 27, 2002
Calhoon	US 2005/0127868 A1	June 16, 2005
Yagyu	US 2005/0243757 A1	Nov. 3, 2005
Yonemoto	US 2007/0195767 A1	Aug. 23, 2007
Rajakarunanayake	US 2008/0285476 A1	Nov. 20, 2008
Kasralikar	US 2009/0003317 A1	Jan. 1, 2009

REJECTION

A.

The Examiner rejects claims 1 and 8 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kasralikar and Yagyu. Final Act. 2–7.

Appellant separately argues claim 1. Appellant does not present separate arguments for claim 8. Thus, the rejection of this claim turns on our decisions as to claim 1. Except for our ultimate decision, we do not discuss the § 103(a) rejection of claim 8 further herein.

B.

The Examiner rejects claims 3–7 and 10–12 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kasralikar and Yagyu in various combinations with other references. Final Act. 7–15.

Appellant does not present arguments for claims 3–7 and 10–12. Thus, the rejections of these claims turn on our decision as to claim 1. Except for our ultimate decision, we do not discuss the § 103(a) rejections of claims 3–7 and 10–12 further herein.

OPINION

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

A.

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

> Kasralikar and Yagyu, either alone or in combination, fail to teach, show or suggest Appellants' feature of "receiving, by a receiver from a transmitter, the data packet, wherein the header part stores a value that indicates whether a type of the data packet is known or unknown to the receiver," as recited in claim 1 (emphasis added). More specifically, Kasralikar only describes MAC header 310 and IP header 320 having prescribed fields conforming to the IEEE 802.3 standard. . . . ***None of the fields in FIG. 3 of Kasralikar are analogous to Appellants' recited header part.***

The Examiner, however, maintains his rejection. Allegedly, fields 311, 312, 314 in FIG. 3, and switch 201 in paragraphs [0039] and [0055] of Kasralikar disclose the above limitation. However, *none of those fields or the switch store a value that indicates whether a type of the data packet is known or unknown to the receiver, as required by Appellants' claim 1.*

In the "Response to Arguments" section of the Final Office Action, the Examiner refers to Appellants' disclosure in paragraph [0018] of the US published application. It is respectfully submitted that *the Examiner is expressly prohibited from importing limitations from the specification into the claims and arguing those limitations.* Appellants' claim language is clear and unambiguous on its face, and there is no need to refer to the specification to interpret claim terms: it is believed that the Examiner uses Appellants' specification for the sole purpose of reading the claims onto the prior art in this Final Office Action. Even under the concept of broadest reasonable interpretation as alleged by the Examiner, Kasralikar is deficient in teaching, showing or suggesting Appellants' feature of "receiving, by a receiver from a transmitter, the data packet, wherein the header part stores a value that indicates whether a type of the data packet is known or unknown to the receiver".

Appeal Br. 8–9 (emphasis added); *see also* Reply Br. 3.

The Examiner argues that Kasralikar discloses a stored indication of where the data packet is to be sent such as getting the information from the header where the packet needs to be sent. The Examiner then maps this onto "whether a type of the data packet is known or unknown to the receiver," as recited in claim 1. *An indicator of where the packet needs to be sent, under Kasralikar, has nothing to do with whether the data packet is known or unknown to the receiver.* Kasralikar merely indicates where the data packet is to be sent. But under Kasralikar, although a data packet may be sent, the receiver still has no indication of whether "a type of the data packet is known or unknown to the receiver," as recited in claim 1. *An indication of where to send a packet does not convey any information as to whether the data packet is known or unknown to the receiver.* Under Kasralikar, a data packet can be sent to a receiver that still

has no indication of whether the data packet is known or unknown. In communication systems, data packets are sent and received by various transmitters and receivers, respectively. ***The sending and receiving of data packets has absolutely nothing to do with whether the type of data packet is known or unknown to the receiver.*** Perhaps in some cases the data packet type does not need to be known by a receiver because it is going to be forwarded to another node. So it is not true that just because the data packet is sent to a receiver that the receiver automatically knows whether the data type is known or unknown. Thus, Kasralikar fails to disclose that "the header part stores a value that indicates whether a type of the data packet is known or unknown to the receiver," as recited in claim 1.

Appeal Br. 11–12 (emphasis added); *see also* Reply Br. 2–3.

We are unpersuaded by Appellant's argument. Kasralikar discloses a data packet 300 which is received by a switching device for redirection to a port. *See* Kasralikar ¶¶ 14, 19, 20, 40. Kasralikar further discloses that the data packet 300 includes a media access control (MAC) header 310, an Internet Protocol (IP) header 320, and a payload 340 of data. *See id.* ¶ 40. Kasralikar additionally discloses the various fields in MAC header 310 and IP header 320 are examples of a traffic type of data packet 300 which determines whether data packet 300 is to be redirected to a redirect port. *See id.* ¶ 41. Such fields include, *inter alia,* a Length/Type field 314 indicating at least one of a length or a protocol type of payload 340, and an IP destination address 312 indicating at least one destination to which the data packet is to be sent. *See id.* ¶ 40. The structure of data packet 300 is illustrated in Figure 3 of Kasralikar, reproduced below.
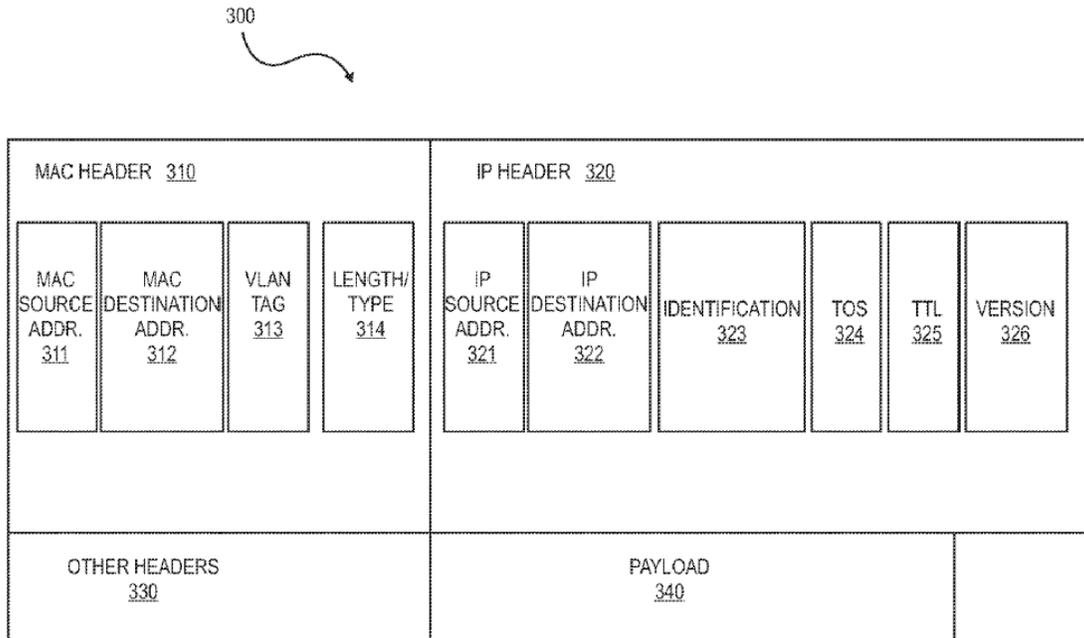
FIG. 3

Figure 3 of Kasralikar illustrates a structure of data packet 300 which is redirected to a port associated with a network service.

Id., Fig. 3.

As Kasralikar specifically describes that the Length/Type field 314 indicates a known protocol <u>type</u> of data packet 300, and more generally describes that the fields in MAC header 310 and IP header 320 identify a known traffic <u>type</u> of data packet 300, Kasralikar teaches header fields that indicate that the type of data packet 300 is known. Thus, we agree with the Examiner's finding that Kasralikar teaches or suggests "wherein the header part stores a value that indicates whether a type of the data packet is known or unknown to the receiver," as recited in claim 1. *See* Final Act. 3–4; *see also* Ans. 3–5.

Appellant's argument that Kasralikar's header fields are distinct from the aforementioned feature of claim 1 is not persuasive, as Appellant's

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argument fails to persuasively distinguish Kasralikar's header fields from the claimed "value [stored in a header part] that indicates whether a type of the data packet is known or unknown to the receiver." Further, we do not agree with Appellant that the Examiner improperly imported limitations from Appellant's Specification in rejecting claim 1. Instead, in citing Appellant's disclosure, the Examiner found that the disclosed value ranges for the claimed "value [stored in a header part]" were not recited in claim 1. *See* Final Act. 13; *see also* Ans. 4. Thus, rather than importing the disclosed value ranges from Appellant's Specification, the Examiner's finding makes clear the scope of the claimed "value [stored in a header part]" is not limited to the disclosed value ranges. Appellant's argument does not persuade us of any error in this finding.

<div align="center">B.</div>

Appellant also raises the following arguments in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

> [N]owhere does Kasralikar or Yagyu disclose "wherein the value stored in the header part is associated with the size of the message part according to a look-up table or a formula stored in a memory of the receiver" as recited in Appellants' claim 1.

> The Examiner concedes that "Kasralikar does not disclose the mechanism of wherein the size of the message part is determined via a look-up table or a formula stored in a memory of the receiver." The Examiner relies on Yagyu to supplement this deficiency in Kasralikar. In contrast to the Examiner's assertions, it is respectfully submitted that Yagyu also fails to teach, show or suggest Appellants' feature. According to paragraph [0138] and FIG. 15 of Yagyu, as relied upon in the Final Office Action, the packet size is compared with a reference value to determine the size or length of the payload. ***Yagyu's packet size and its reference value are not analogous to Appellants' value in a header part.*** Clearly, such alleged correspondence between

<div align="center">7</div>

Yagyu's packet tables 57, 58 and Appellants' look-up table or formula cannot be reasonably maintained. According to Appellants' claims, ***the same value is used for indicating the type of a data packet and determining the data packet's size.***

Appeal Br. 9, 10 (emphasis added); *see also* Reply Br. 4.

According to claim 1, the same value that is used for indicating the type of a data packet is also used for determining the size of the data packet. Yagyu describes a packet size determination unit, which is not revolutionary technology. Data packet sizes are routinely ascertained in communication systems. In Yagyu and Kasralikar, ***there is simply no individual or combined disclosure of one singular value used for both indicating the type of a data packet that is used and for determining the size of the data packet.***

Furthermore, Yagyu does not disclose that said value is stored ***in a header***. For example. Yagyu at paragraph [0047] merely describes, "FIG. 9A and FIG. 9B illustrate examples of the format of a packet header having an additional field for storing the tree ID information or the root bridge address information in order to identify the currently used transmission tree (emphasis added)." Yagyu merely describes that a packet header can have a field for storing tree ID information or root bridge address information for the express purpose of identifying the currently used transmission tree. ***Nowhere does Yagyu disclose a header with a one value that is used for both determining the size of the data packet and indicating whether the data type is known or unknown. No header in Yagyu stores such a value.***

Appeal Br. 12–13 (emphasis added); *see also* Reply Br. 4–5.

We are unpersuaded by Appellant's argument. Yagyu discloses a wireless base station 50. *See* Yagyu ¶ 138. Yagyu further discloses the wireless base station 50 includes a transmitting and receiving unit 51, a packet size determination unit 56, a short packet table 57, and a long packet table 58. *See id.* The packet size determination unit 56 is configured to determine the size or length of a packet or the payload of the packet based

on a prescribed reference value, where the short packet table 57 is used when the packet size is at or below the prescribed reference value, and the long packet table is used when the packet size is above the prescribed reference value. *See id.* A block diagram of the wireless base station 50 is illustrated in Figure 15 of Yagyu, reproduced below.
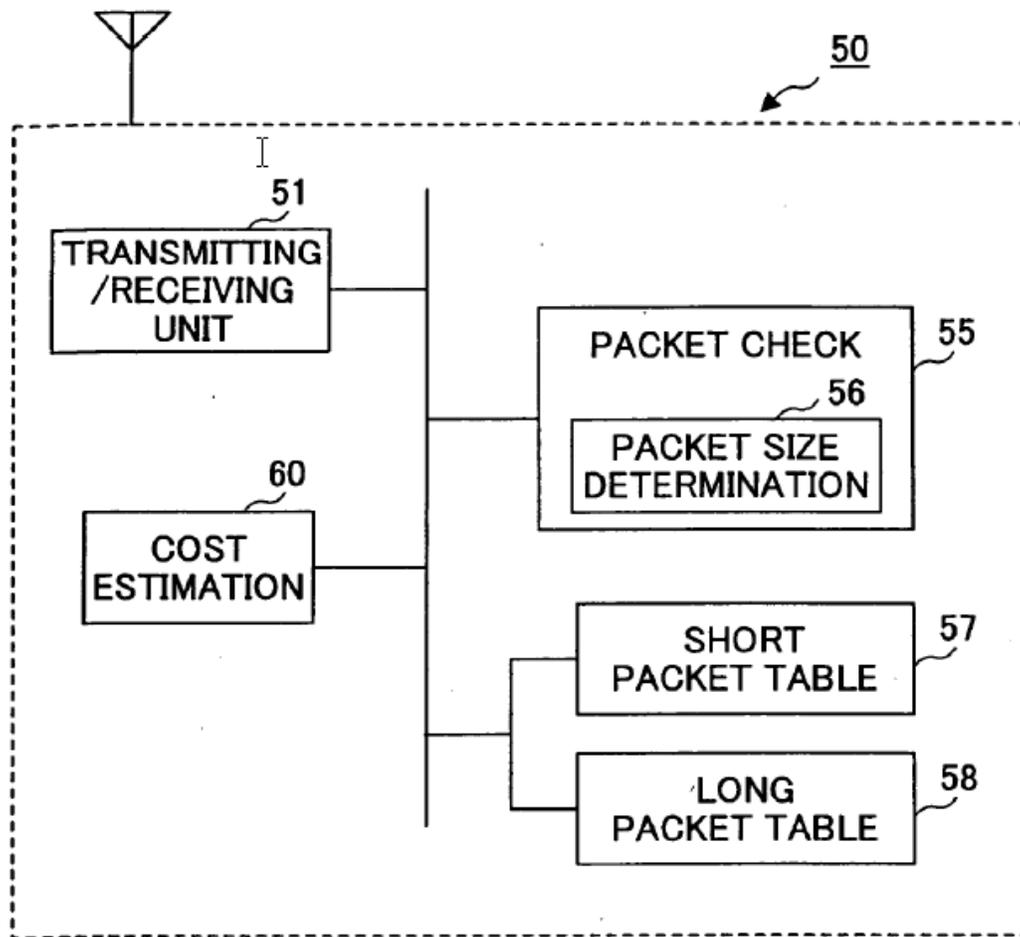
FIG.15

Figure 15 illustrates a block diagram of wireless base station 50.

Id., Fig. 15.

Thus, Yagyu discloses associating a packet size value with either a "short" size according to a short packet table or a "long" size according to a long packet table. Further, as previously described, Kasralikar discloses a header value associated with a size of a payload of a packet (*i.e.*, Length/Type field 314). Because Kasralikar discloses a size value stored in a header, and as Yagyu teaches associating a packet size value with a size according to a packet table, we agree with the Examiner's finding that the combination of Kasralikar and Yagyu teaches or suggests "wherein the value stored in the header part is associated with the size of the message part according to a look-up table or a formula stored in a memory of the receiver," as recited in claim 1.

Appellant's argument that Yagyu does not disclose that the size value is stored in a header is not persuasive because Kasralikar discloses a size value (*i.e.*, Length/Type field 314) stored in a header. Further, Appellant's argument that Yagyu and Kasralikar, whether considered individually or in combination, fail to disclose a single value used for both indicating a type of data packet and determining the size of the data packet is also not persuasive for at least two reasons. First, contrary to Appellant's argument, Kasralikar explicitly discloses that the Length/Type field 314 indicates <u>at least one of</u> a length or a protocol type of payload 340, and thus, Kasralikar <u>does</u> disclose a <u>single</u> value used for both indicating a type of data packet and determining a size of the data packet. Second, notwithstanding the individual teachings of Kasralikar, the combination of Kasralikar and Yagyu <u>also</u> teaches or suggests a <u>single</u> value used for both indicating a type of data packet and determining a size of the data packet. More specifically, as correctly found by the Examiner, the proposed combination includes the size determination

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technique disclosed in Yagyu within the switching device disclosed in Kasralikar, so that Kasralikar' header value, which indicates a type of data packet, is also utilized to determine a size of the data packet according to a look-up table as disclosed in Yagyu. *See* Final Act. 4–5.

CONCLUSION

The Examiner has not erred in rejecting claims 1, 3–8, and 10–12 as being unpatentable under 35 U.S.C. § 103(a).

The Examiner's rejection of claims 1, 3–8, and 10–12 and as being unpatentable under 35 U.S.C. § 103(a) is **affirmed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 8	103(a)	Kasralikar, Yagyu	1, 8	
3, 5, 10, 11	103(a)	Kasralikar, Yagyu, Yonemoto	3, 5, 10, 11	
4	103(a)	Kasralikar, Yagyu, Yonemoto, Rajakarunanayake	4	
6	103(a)	Kasralikar, Yagyu, Krumel	6	
7, 12	103(a)	Kasralikar, Yagyu, Yonemoto, Calhoon	7, 12	
Overall Outcome			**1, 3–8, 10–12**	

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).

<u>AFFIRMED</u>