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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* OLIVIER MARCO, NIYAS NAZAR SAIT, LUC REVARDEL,  
JONATHAN MARTIN, FLAVIEN DELORME, and  
NEDA NIKAEIN

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Appeal 2018-008954  
Application 14/848,687<sup>1</sup>  
Technology Center 2400

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Before MAHSHID D. SAADAT, ERIC S. FRAHM, and  
MICHAEL T. CYGAN, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

*Introduction*

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–18 (*see* Final Act. 5–14). We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> According to Appellants, NVIDIA Corporation is the real party in interest (App. Br. 3).

We affirm-in-part.

*Appellants' Disclosed Invention*

Appellants' disclosed and claimed invention relates to “a system and method of providing user-equipment-based quality of service enforcement and control for real-time traffic” (Spec. ¶ 1; *see also* Title; Abstract). More specifically, during times of high congestion, certain services such as voice-over-Internet-Protocol (VoIP) calls or gaming applications can be given high priority handling in a communication network (Spec. ¶ 2; Figs. 1–5). In some embodiments, Appellants disclose using standardized attention (AT) commands, which are available when using 3GPP access (Spec. ¶ 7), to control a quality-of-service (QoS) that prioritizes certain data packets (Spec. ¶ 47; Figs. 2, 5; claims 5, 7). The AT commands can be either standardized (claims 5, 7; Spec. ¶ 37) or proprietary (claims 5, 6; Spec. ¶ 37).

*Illustrative Claims*

Illustrative claims 1, 5, and 11 under appeal are reproduced below with bracketed lettering and *emphases* added:

1. A system for enforcing quality of service, comprising:  
a host configured to process a plurality of applications; and  
a modem coupled to said host and configured to interface  
with data networks and having [A] *a non-access stratum  
configured to prioritize real time data packets and selectively to  
discard data packets based on a defined criteria.*

App. Br. 15 (Claims Appendix).

5. A method of configuring internal quality of service,  
comprising:  
making a quality of service request from a radio interface  
layer;  
translating said quality of service request into *an AT  
command*;  
providing said AT command to *an AT command*

*interpreter;*

translating said AT command into a quality of service rule;

and

providing said quality of service rule to an internal quality of service controller.

App. Br. 15–16 (Claims Appendix).

11. A method of enforcing internal quality of service, comprising:

[B] *identifying data packets internal to a non-access stratum of a modem;*

associating a quality of service policy to said data packets internal to said non-access stratum of a modem; and

applying said quality of service policy to said data packets internal to said non-access stratum of a modem.

App. Br. 16 (Claims Appendix).

#### *Examiner's Rejections*

(1) The Examiner rejected claims 5–10 and 14 as being unpatentable under 35 U.S.C. § 112(b), as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention. Final Act. 5–6; Ans. 3–4. The Examiner determines (Final Act. 5–6; Ans. 3) the term “AT” used in the terms “AT command” and “AT command interpreter” is indefinite because there is no clear definition provided in Appellants’ Specification.

(2) The Examiner rejected claims 11–16 and 18 under 35 U.S.C. § 102(a)(1) as anticipated by Sajadieh (WO 2013/137872 A1; published Sept. 19, 2013). Final Act. 6–8; Ans. 4–6.<sup>2</sup>

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<sup>2</sup> Although the Examiner only lists claims 11–16 as being rejected in the heading of the statement of the rejection (*see* Final Act. 6; Ans. 4), the Examiner addresses claim 18 on the merits in the body of the rejection (*see*

(3) The Examiner rejected claims 5–10 under 35 U.S.C. § 102(a)(2) as anticipated by Kim (US 2017/0041854 A1; published Feb. 9, 2017). Final Act. 9–10; Ans. 7–8.

(4) The Examiner rejected claims 1–4 and 17 under § 103 as obvious over the Sajadieh and Khay-Ibbat (US 2014/0071888 A1; published Mar. 13, 2014). Final Act. 10–14; Ans. 8–9.

*Appellants’ Contentions*

(1) Appellants contend (App. Br. 5–7; Reply Br. 2–3) the Examiner erred in rejecting claims 5–10 and 14 as being unpatentable under 35 U.S.C. § 112(b), because (i) “the meaning of the terms ‘AT’ and ‘AT Command Interpreter’ found in pending Claims 5-7 is apparent to one of ordinary skill in the pertinent art (modems) at the time of the invention” (App. Br. 7); (ii) one of ordinary skill in the art would understand that the term AT, coined by Dennis Hayes, the inventor of the Hayes attention (AT) command set, is now used as a formal standard in the industry, and was introduced to the Telecommunications Industry Association/Electronics Industries Alliance (TIA/EIA) as standard (TIA/EIA-602) entitled “Data Transmission Systems and Equipment – Serial Asynchronous Automatic Dialing and Control” (Reply Br. 2–3); and therefore (iii) “one of ordinary skill in the modem art would *not* interpret the recitation of ‘AT command’ and ‘AT command interpreter’ in pending Claim 5 as Motorola’s

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Final Act. 8; Ans. 6), and also includes claim 18 in the listing of claims rejected as being anticipated by Sajadieh in the Answer (*see* Ans. 16, 20). Furthermore, Appellants present arguments to all claims 11–16 and 18 in the Appeal Brief (*see* App. Br. 7, 10) and Reply Brief (*see* Reply Br. 4). Therefore, we consider this as harmless error, and review the Examiner’s rejection of claims 11–16 and 18.

‘Asynchronous Task Command Interface’ in U.S. Patent No. 6,360,243 to Lindsley (‘Lindsley’) as the Examiner’s Answer purports” (Reply Br. 3).

(2) Appellants contend (App. Br. 7–10; Reply Br. 3–4) the Examiner erred in rejecting claims 11–16 and 18 as being anticipated by Sajadieh for numerous reasons, including (i) Sajadieh fails to disclose, inherently or expressly, “identifying data packets internal to a non-access stratum of a modem” (limitation [B]), as recited in claim 11 (App. Br. 9; Reply Br. 3–4); and (ii) although Sajadieh discloses a control plane including a NAS layer 5060 that supports session management, Sajadieh fails to disclose *identifying packets* internal to a NAS layer, as recited in claim 11 (App. Br. 8–9).

(3) Appellants contend (App. Br. 10–12; Reply Br. 4) the Examiner erred in rejecting claims 5–10 as being anticipated by Kim for numerous reasons, including (i) Kim fails to disclose, inherently or expressly, “AT commands,” as recited in claim 5 (App. Br. 11–12); and (ii) Kim’s service request message is not equivalent to the recited “AT command” (App. Br. 11); (iii) the “signal flow of Kim’s ACDC procedure clearly is not an AT command set (or interpreter)” (Reply Br. 4), as recited in claim 5; and (iv) even if the Examiner is correct that Lindsley’s ATCI is equivalent to the AT command set, Lindsley’s ATCI “does not disclose Kim’s signal flow for its ACDC procedure” (Reply Br. 4).

(4) Appellants contend (App. Br. 12–14) the Examiner erred in rejecting claims 1–4 and 17 as being obvious over the combination of Sajadieh and Khay-Ibbat for numerous reasons, including (i) Sajadieh fails to disclose non-access stratum data packets, as recited in limitation [A] of claim 1 (App. Br. 12–13); (ii) Khay-Ibbat fails to cure the deficiencies argued as to Sajadieh (App. Br. 13); and therefore (iii) the combination of Sajadieh and Khay-Ibbat fails to establish a prima facie case of, or a

conclusion of obviousness for, claim 1 (App. Br. 13–14).

*Issues on Appeal*

(1) Did the Examiner err in rejecting claims 5–10 and 14 as being unpatentable under 35 U.S.C. § 112(b) based on determining that the limitations “AT command” and “AT command interpreter” (claim 5) are indefinite for failing to particularly point out and distinctly claim the subject matter that Appellants regard as the invention?

(2) Did the Examiner err in rejecting claims 11–16 and 18 under § 102(a)(1) as being anticipated by Sajadieh, because Sajadieh fails to disclose limitation [B], as recited in claim 11?

(3) Did the Examiner err in rejecting claims 5–10 under § 102(a)(2), because Kim fails to disclose using “an AT command” and/or “an AT command interpreter,” as recited in claim 5?

(4) Did the Examiner err in rejecting claims 1–4 and 17 under § 103 as being obvious over the combination of Sajadieh and Khay-Ibbat, because the combination fails to disclose or suggest limitation [A], as recited in claim 1?

ANALYSIS

We have reviewed the Examiner’s rejections (Final Act. 5–14; Ans. 3–11) in light of Appellants’ contentions in the Appeal Brief (App. Br. 5–14) and the Reply Brief (Reply Br. 2–5) that the Examiner has erred, as well as the Examiner’s response to Appellants’ arguments in the Appeal Brief (*see* Ans. 12–21). We agree with Appellants’ first contentions listed above as to the rejection under § 112(b), and Appellants’ second and third contentions listed above as to the as to the anticipation rejection over Sajadieh and/or Kim. We disagree with Appellants’ fourth contentions listed above as to the as to the obviousness rejection over Sajadieh and

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Khay-Ibbat.

*Indefiniteness Rejection*

With regard to the rejection under 35 U.S.C. § 112(b), we agree with Appellants (App. Br. 5–7; Reply Br. 2–3) that one of ordinary skill in the art would be able to ascertain the meaning of the terms “AT command” and “AT command interpreter” as used in claim 5 on appeal.

With regard to the terms “AT” used in claim 5, we conclude the disputed term to be broad, but not indefinite. This conclusion is based on our reading of paragraphs 7, 35, 37, and 47 and claims 5 through 7 of Appellants’ Specification as originally filed, taken with Figures 2 and 5, which we find as revealing and persuasive as the extrinsic evidence cited by Appellants.

In view of Appellants’ Specification, as well as the extrinsic evidence cited by Appellants, we conclude that claims 5 through 10 and 14 particularly point out and distinctly claim the subject matter which Appellants regard as the invention. *See* 35 U.S.C. § 112(b). Furthermore, we conclude that “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted). The terms “AT command” and “AT command interpreter” are used in claim 5 on appeal to describe commonly known modem commands. However, the term “AT” is also broadly supported by the extrinsic evidence and the claims on appeal themselves as including or operating on any Hayes attention command. We agree with Appellants that “one of ordinary skill in the modem arts would clearly interpret the recitation of ‘AT command’ and ‘AT command interpreter’ in pending Claim 5 as Hayes’ (TIA/EIA-602) AT

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command set” (Reply Br. 2–3). Accordingly, we will not sustain the Examiner’s indefiniteness rejection of claims 5–10 and 14 under § 112(b).

*Anticipation Rejections*

*Anticipation of Claims 11–16 and 18 Over Sajadieh*

We have reviewed the Examiner’s rejection (Final Act. 6–8) in light of Appellants’ arguments (App. Br. 7–10; Reply Br. 3–4) that the Examiner has erred, as well as the Examiner’s response to Appellants’ arguments in the Briefs (Ans. 16–20). We concur with Appellants’ contentions (App. Br. 8–10; Reply Br. 4) that the Examiner erred in finding claims 11–16 and 18 anticipated by Sajadieh because Sajadieh fails to disclose, inherently or expressly, each and every element as set forth in claim 11, namely limitation [B], including “identifying data packets” in a non-access stratum (NAS) layer.

The Examiner is required to provide Appellants reasonable notice as to the basis of a rejection. The notice requirement is set forth by 35 U.S.C. § 132:

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

*See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d

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628, 631 (Fed. Cir. 1987). To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). “[A]bsence from the reference of any claimed element negates anticipation.” *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

The Examiner has the initial burden to set forth the basis for any rejection so as to put the patent applicant on notice of the reasons why the applicant is not entitled to a patent on the claim scope that he seeks — the so-called “*prima facie* case.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984) (the initial burden of proof is on the USPTO “to produce the factual basis for its rejection of an application under sections 102 and 103”) (quoting *In re Warner*, 379 F.2d 1011, 1016 (CCPA 1967)).

In the instant case, the Examiner’s notification to Appellants of the determination of the anticipation of independent claim 11 is found at pages 6 through 7 of the Final Rejection, as well as pages 4 through 5 and 16 through 19 of the Answer. Limitation [B] in claim 11 requires “identifying data packets internal to a non-access stratum of a modem.”

The Examiner maps the limitations of claim 11 to Sajadieh’s Figure 5 and paragraphs 18 and 21 through 24 in making the rejection (*see* Final Act. 6–7; Ans. 4–5, 16–19). More specifically, the Examiner maps limitation [B] to Sajadieh’s paragraph 22 (Final Act. 6; Ans. 4). And, the Examiner’s rejection (*see* Final Act. 5–6; Ans. 4–5) does not clearly address how or why Sajadieh’s (i) Multiple-Persona (MP) prioritizing/scheduler 5030 described in paragraph 22, which operates on QoS requirements of personas to manage

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traffic in the control plane (including NAS 5050); or (ii) “[t]he EPS session management (ESM) procedures within the NAS layer 5050” that are described in paragraph 22 as “tak[ing] into account the multiple personality dimension of the mobile device” discloses “identifying data packets internal to a non-access stratum of a modem” as recited in claim 11. Most importantly, the Examiner’s rejection (*see* Final Act. 6; Ans. 4) fails to directly address the limitation of “identifying data packets,” as recited in each of claims 11 and 12–16 depending therefrom. The Examiner’s attempt to clarify or correct this error in the Answer (*see* Ans. 16–19) also falls short. Just because Sajadieh discloses receiving MP control information identifying QoS requirements for personas in the mobile device (*see* Ans. 16) does not teach “identifying data packets internal to a non-access stratum of a modem,” as recited in claim 11.

The Examiner’s reasoning, that “Appellant’s specification also teaches NAS layer (paragraph 29) with EPS session management block to handle[] QoS requests (paragraph 35), which is similar to the Sajadieh invention” (Ans. 19), is speculative and unsupported by evidence in the record. Paragraph 35 of Appellants’ Specification describes that “QoS requests are handled in the NAS by an AT command interpreter” which then “initializes a protocol transaction using an EPS session management (ESM) block 313 to request the establishment of a dedicated EPS bearer,” but Sajadieh is silent as to, and the Examiner has not adequately shown Sajadieh discloses (implicitly or explicitly), “identifying data packets internal to a non-access stratum of a modem” as recited in each of claims 11–16. Although paragraph 19 of Sajadieh discloses that “the Non-Access Stratum (NAS) 4110 manages mobility support of the mobile and supports session management procedures,” paragraph 19 also discloses that:

*The Radio Resource Control (RRC) 4120 provides for the reception and processing of system information related to the non-access stratum (NAS) layer, reception and process of system information related to the access stratum (AS), paging, establishment, maintenance and release of RRC connections between the mobile device and the wireless 20 network, security functions including key management, establishment, configuration, maintenance and release of point to point radio bearers, mobility functions, QoS management functions, measurement reporting and NAS message transfer to/from NAS and to/from the mobile device message transfer to/from NAS and to/from the mobile device.*

Sajadieh ¶ 19 (emphases added). And, Sajadieh is silent as to whether any of the (i) session management procedures; (ii) processing of system information related to the NAS layer; or (iii) QoS management functions, operate to “identify[] data packets internal to a non-access stratum of a modem” as recited in each of claims 11–16.

We find no such disclosure in Sajadieh to support the Examiner’s position that the subject matter (e.g., limitation [B] recited in claim 11 *supra*), is anticipated by Sajadieh. We will not resort to speculation or assumptions to cure the deficiencies in the Examiner’s fact finding. *See In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967); *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999) (unpublished) (“The review authorized by 35 U.S.C. [§] 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance.”). As such, we find that the Examiner improperly relies upon Sajadieh to disclose and anticipate the disputed claim limitation. *See Warner* at 1017.

Therefore, we agree with Appellants (*see* App. Br. 7–10; Reply Br. 3–4) that the Examiner has not shown Sajadieh anticipates at least limitation

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[B], the packet identification step, recited in claims 11–16 and 18. As a result, Appellants have shown the Examiner has not (i) made a prima facie case for the anticipation of claims 11–16 and 18, and ultimately, (ii) shown all of the claim limitations of claims 11–16 and 18 are disclosed by Sajadieh, and (iii) made a proper showing of anticipation for claims 11–16 and 18.

In view of the foregoing, we do not sustain the anticipation rejection of claims 11–16 and 18 based on Sajadieh.

*Anticipation of Claims 5–10 Over Kim*

Based on our interpretation of the terms “AT command” and “AT command interpreter” as including attention commands or Hayes’ commands as set forth in the TIA/EIA-602 standard, we agree with Appellants’ contentions (*see supra* Decision 6 citing App. Br. 10–12; Reply Br. 4) regarding the anticipation rejection of claims 5–10 over Kim. Namely, Kim fails to disclose AT commands or an AT command interpreter for translating a QoS request into an AT command which is then provided to an AT command interpreter. Additionally, as discussed below, Kim is not prior art to Appellants’ invention recited in claims 5–10.

Notably, neither Kim’s (i) publication date of February 9, 2017; nor (ii) effective PCT filing date under § 371 of July 22, 2016, pre-date Appellants’ filing date of September 9, 2015. Accordingly, Kim needs to rely on the benefit of the various filing dates of its underlying U.S. Provisional Applications, all six of which stem from a common Specification and pre-date Appellants’ filing date of September 9, 2015. In relation to determining what the effective filing date of a prior art reference

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is under 35 U.S.C. § 102(a)(2), the Manual of Patent Examining Procedure states:

If the issue date of the U.S. patent or publication date of the U.S. patent application publication or WIPO published application is not before the effective filing date of the claimed invention, it may be applicable as prior art under AIA 35 U.S.C. 102(a)(2) if it was “effectively filed” before the effective filing date of the claimed invention in question ***with respect to the subject matter relied upon to reject the claim***. MPEP § 2152.01 discusses the “effective filing date” of a claimed invention. AIA 35 U.S.C. 102(d) sets forth the criteria to determine when subject matter described in a U.S. patent document was “effectively filed” for purposes of AIA 35 U.S.C. 102(a)(2).

MPEP 2154.01 (emphases added). And, with regard to determining when subject matter was effectively filed under 35 U.S.C. § 102(d), the Manual of Patent Examining Procedure states that “AIA 35 U.S.C. 102(d) requires that a prior-filed application to which a priority or benefit claim is made ***must describe the subject matter from the U.S. patent document relied upon in a rejection***.” MPEP 2154.01(b) (emphases added).

As such, for Kim to qualify as prior art to the claimed invention, the record would need to show that the subject matter recited in Appellants’ claim 5, including translating a QoS request into an AT command which is then provided to an AT command interpreter, is described in at least one of the six provisional applications. In the instant case, the Examiner fails to show, and we do not find, that (i) any of the provisional applications describe the subject matter of claim 5 recited in Kim, and (ii) Kim is entitled to the filing date of any of the provisional applications. As such, Kim’s earliest effective filing date is November 10, 2015, and, therefore,

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after the September 9, 2015 filing date of Appellants' application.

Accordingly, Kim does not qualify as prior art to the claimed invention.

In view of the foregoing, we do not sustain the Examiner's anticipation of claims 5–10 over Kim.

#### *Obviousness Rejection*

Appellants have failed to show that the Examiner erred in determining that the combination of Sajadieh and Khay-Ibbat teaches or suggests the system for enforcing quality of service, as recited in claims 1–4 and 17, including limitation [A] as set forth in claim 1. Specifically, Appellants' contention that the Examiner erred in rejecting claims 1–4 and 17 as being obvious over the combination of Sajadieh and Khay-Ibbat because Sajadieh fails to disclose non-access stratum data packets, as recited in limitation [A] of claim 1 (App. Br. 12–13), is unpersuasive. In point of fact, Appellants admit that “Sajadieh discloses a control plane including a NAS layer [NAS layer 5050]” (App. Br. 8), and paragraph 22 of “Sajadieh discloses that its NAS control plane 5060 ‘supports session management procedures, establishment and maintenance of IP connectivity’ and ‘provides for the reception and processing of system information’” (App. Br. 9). Although Appellants contend (App. Br. 8–9) Sajadieh fails to disclose identifying non-access stratum (NAS) data packets, this argument only addresses Sajadieh individually, and not the combination of Sajadieh and Khay-Ibbat. Therefore, such an argument to the individual references is not persuasive of Examiner error.

Finally, Appellants' contention that Khay-Ibbat fails to cure the deficiencies argued as to Sajadieh (App. Br. 13), is unpersuasive. In point of fact, Khay-Ibbat teaches buffering packet data and then prioritizing uplink data packets based on a quality of service (*see* Khay-Ibbat ¶¶ 63, 78, and

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92).

As a result of the foregoing, Appellants' ultimate contention, that the combination of Sajadieh and Khay-Ibbat fails to establish a prima facie case of, or a conclusion of obviousness for, claim 1 (App. Br. 13–14), is unpersuasive.

In view of the foregoing, Appellants have not adequately shown the combination of Sajadieh and Khay-Ibbat fails to teach or suggest limitation [A] as set forth in claim 1, and subsequently, that the Examiner erred in rejecting claims 1–4 and 17 as being obvious over the combination of Sajadieh and Khay-Ibbat.

#### CONCLUSIONS

(1) The Examiner erred in rejecting claims 5–10 and 14 under 35 U.S.C. § 112(b), for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(2) The Examiner erred in rejecting claims 11–16 and 18 under 35 U.S.C. § 102(a)(1) as being anticipated by Sajadieh because Sajadieh fails to disclose disputed limitation [B] recited in claim 11.

(3) The Examiner erred in rejecting claims 5–10 under 35 U.S.C. § 102(a)(2) as being anticipated by Kim, because (a) Kim is not prior art; and (b) Kim fails to disclose the disputed limitations, “AT command” and “AT command interpreter,” as recited in claim 5.

(4) Appellants have not shown the Examiner erred in rejecting claims 1–4 and 17 under 35 U.S.C. § 103 as being unpatentable over the combination of Sajadieh and Khay-Ibbat.

DECISION

(1) We reverse the Examiner's rejection of claims 5–10 and 14 under 35 U.S.C. § 112(b), as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellants regard as the invention, because the claims are definite, supported by the Specification., and clear to a person of ordinary skill in the art.

(2) We reverse the Examiner's anticipation rejections of (a) claims 11–16 and 18 over Sajadieh; and (b) claims 5–10 over Kim.

(3) We affirm the Examiner's obviousness rejection of claims 1–4 and 17 over the combination of Sajadieh and Khay-Ibbat.

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-IN-PART