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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/944,670	07/17/2013	Gary B. Jabara	0102802-010US2	6431
22504	7590	11/22/2019	EXAMINER	
DAVIS WRIGHT TREMAINE, LLP/SEATTLE IP DOCKETING DEPT. DAVIS WRIGHT TREMAINE LLP 920 FIFTH AVE., SUITE 3300 SEATTLE, WA 98104-1610			SHEPARD, JUSTIN E	
			ART UNIT	PAPER NUMBER
			2424	
			NOTIFICATION DATE	DELIVERY MODE
			11/22/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY B. JABARA, LLOYD FREDERICK LINDER,
and DAVID BRETT SIMON

Appeal 2018-009104
Application 13/944,670
Technology Center 2400

Before JENNIFER L. MCKEOWN, JAMES W. DEJMEK, and
STEPHEN E. BELISLE, *Administrative Patent Judges*.

BELISLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant¹ appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–24. App. Br. 3. We have jurisdiction under 35 U.S.C. § 6(b).

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 (2017). Appellant identifies the real party in interest as Mobilitie, LLC. App. Br. 3.

STATEMENT OF THE CASE

The Claimed Invention

Appellant's invention generally relates to "a system and method of video streaming of multiple video channels using wireless communication devices." Spec. 1:21–23.

Claim 1, reproduced below, is exemplary of the subject matter on appeal:

1. A system for the broadcast of a plurality of video streams to a plurality of mobile communication devices, comprising:

a moving vehicle;

a wireless unicast data protocol receiver aboard the vehicle for receiving a plurality of video data streams and providing a plurality of received video data streams as an output in an unmultiplexed form;

a local video processor aboard the vehicle, coupled to the receiver and configured to receive the plurality of unmultiplexed video data streams and to combine the plurality of unmultiplexed video data streams into a single stream of user datagram protocol (UDP) data packets for transmission, the video processor being further configured to assign a port number to each of the UDP data packets with each of the UDP data packets for respective ones of the video streams having a port number corresponding to the respective video stream to thereby provide the port number as the sole indication of the origin of the data packet for use by the plurality of mobile communication devices; and

at least one wireless access point (AP) aboard the vehicle communicatively coupled to the video processor to receive the stream of UDP data packets therefrom, the AP being configured to transmit the stream of UDP data packets.

App. Br. 21 (Claims Appendix).

The Applied References

The Examiner relies on the following references as evidence of unpatentability of the claims on appeal:

LaBrie	US 2002/0047861 A1	Apr. 25, 2002
Hoskins	US 2003/0106067 A1	June 5, 2003
Falvo	US 2003/0159153 A1	Aug. 21, 2003
Fedorkow	US 7,230,917 B1	June 12, 2007
Galipeau	US 2008/0104642 A1	May 1, 2008
Alrabady	US 2009/0077267 A1	Mar. 19, 2009
White	US 2009/0282438 A1	Nov. 12, 2009
Barnes	US 2010/0077436 A1	Mar. 25, 2010
Vimpari	US 2010/0242075 A1	Sept. 23, 2010
Mraz	US 8,139,581 B1	Mar. 20, 2012
Weeks	US 8,752,092 B2	June 10, 2014

The Examiner's Rejections

The Examiner made the following rejections of the claims on appeal:

Claim 1 stands rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Final Act. 4.

Claims 1, 14, and 19 stand rejected under 35 U.S.C. § 112 for failing to comply with the written description requirement. Final Act. 4–5.

However, the Examiner subsequently withdrew this § 112 rejection in the Answer. Ans. 15.

Claims 1, 11, 12, 14, 18, 19, and 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, and Fedorkow. Final Act. 5–9.

Claims 2, 4, 16, and 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, and Alrabady. Final Act. 9–10.

Claims 3, 15, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, and Barnes. Final Act. 11.

Claims 5, 17, and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, and Vimpari. Final Act. 11–12.

Claims 6 and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, Vimpari, and White. Final Act. 12–13.

Claims 8–10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, Vimpari, and Weeks. Final Act. 13–15.

Claim 13 stands rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, and LaBrie. Final Act. 15–16.

Claim 23 stands rejected under 35 U.S.C. § 103 as being unpatentable over Mraz, Galipeau, Falvo, Fedorkow, and Hoskins. Final Act. 16.

ANALYSIS²

Section 112 Rejection

Appellant disputes the Examiner’s finding that the Specification does not provide written description support for the term “unmultiplexed” as recited in independent claim 1. App. Br. 16–18; Final Act. 4. Appellant

² Throughout this Decision, we have considered Appellant’s Corrected Appeal Brief filed February 8, 2018 (“App. Br.”); Appellant’s Reply Brief filed September 25, 2018 (“Reply Br.”); the Examiner’s Answer mailed July 27, 2018 (“Ans.”); the Final Office Action mailed May 8, 2017 (“Final Act.”); and Appellant’s Specification filed July 17, 2013 (“Spec.”).

admittedly “introduced the term ‘unmultiplexed’ to help distinguish over one of the four references cited in combination by the Examiner in the rejection of claim 1,” namely *Mraz*. App. Br. 17. According to Appellant, “[s]ince the output of the multiplexer in *Mraz* is a multiplexed signal, *Appellant* amended claim 1 to clarify that the output of the wireless unicast protocol receiver is ‘in an unmultiplexed form.’” App. Br. 17. Appellant argues that the Specification provides support for “unmultiplexed,” because it discloses a receiver aboard a vehicle that “receives multiple data streams via a unicast connection and delivers the multiple (i.e., unmultiplexed) data streams to the video processor 140 onboard the vehicle.” App. Br. 17–18 (citing Spec., Figs. 17, 19, pp. 14:23–24, 15:5–15). In other words, Appellant argues that by disclosing an output of multiple data streams, the Specification reasonably conveys to the skilled artisan that the outputted data streams are not multiplexed together *and that each of the multiple data streams itself is unmultiplexed*. We find Appellant’s argument unpersuasive.

To satisfy the written description requirement, the disclosure must reasonably convey to skilled artisans that Appellant possessed the claimed invention as of the filing date. *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). Specifically, the description must “clearly allow persons of ordinary skill in the art to recognize that [the inventor] invented what is claimed” and

the test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.

Ariad Pharms., Inc., 598 F.3d at 1351 (internal quotations and citations omitted). Additionally, the Examiner has the initial burden of presenting

evidence or reasons why persons skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. *In re Wertheim*, 541 F.2d 257, 265 (CCPA 1976).

Here, the Examiner finds that the term “unmultiplexed” appears nowhere in the Specification (Final Act. 4), and that the portions of the Specification relied upon for support by Appellant (identified above) “only disclose unicasting a number of UDP video packets and make[] no mention of multiplexing or unmultiplexed video” (Ans. 19). We agree.

We also find that the limitations of claim 1 as presently drafted support the Examiner's finding. Claim 1 recites, in relevant part, “providing a plurality of received video data streams as an output *in an unmultiplexed form* [and] . . . combin[ing] the plurality of unmultiplexed video data streams into a single stream of user datagram protocol (UDP) data packets for transmission” (emphasis added). Because claim 1 recites providing a plurality of received video data streams as an output and combining those streams into a single stream, it would be superfluous to characterize the outputted plurality of video data streams as “unmultiplexed,” unless “in an unmultiplexed form” applies to each of the multiple data streams itself, for which we find no support in the Specification. *See Merck & Co. v. Teva Pharm. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”); *Power Mosfet Techs., L.L.C. v. Siemens AG*, 378 F.3d 1396, 1410 (Fed. Cir. 2004) (“[I]nterpretations that render some portion of the claim language superfluous are disfavored.”). Based on the foregoing and our review of the Specification and Briefs, we find Appellant does not

show persuasively that the Examiner erred in finding “unmultiplexed” as recited in claim 1 to lack written description support in the Specification.

Accordingly, we sustain the Examiner’s rejection under 35 U.S.C. § 112 of independent claim 1. Although not rejected by the Examiner in the Final Action, we note that each of claims 2–13 depend directly or indirectly from independent claim 1 and suffer from the same § 112 deficiency. As such, in the event of further prosecution, the Examiner should consider whether claims 2–13 should also be rejected under 35 U.S.C. § 112. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* MPEP § 1213.02.

Section 103 Rejection

Appellant disputes the Examiner’s findings that the various combinations of cited art render obvious claims 1–24. *See* App. Br. 7–16; Reply Br. 2–4. In particular, Appellant disputes the Examiner’s finding that the combination of Mraz, Galipeau, Falvo, and Fedorkow renders obvious independent claims 1, 14, and 19. *See* App. Br. 7–15; Reply Br. 2–4. Appellant argues the appealed claims as a group. *See* App. Br. 15. Thus, for purposes of our analysis, we select independent claim 1 as the representative claims, and any claim not argued separately will stand or fall with our analysis of the rejection of claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant argues, *inter alia*, that the Examiner has not shown by a preponderance of the evidence that Mraz, alone or in combination with other cited art, teaches a receiver providing a plurality of received video *streams as an output* that are combined into a single stream by a local video processor, as recited in claim 1. *See* App. Br. 11–12 (“*Mraz* fails to disclose

a receiver that provides a plurality of received video streams as an output . . . as alleged by the Examiner.”). We find Appellant’s argument persuasive.

The Examiner finds “Mraz discloses a system for multiplexing a number of video UDP packets onto a single network connection where the packets are assigned a channel number for sorting the packets at the receiving end.” Ans. 17; *see* Ans. 15 (“Mraz is used for putting multiple UDP video streams onto a single link in a network.”). But the Examiner does not sufficiently show how this disclosure teaches a receiver providing a plurality of received video streams as an output that are combined into a single stream by a local video processor, as recited in claim 1. *See* Final Act. 5–6. In particular, the Examiner does not identify which specific feature of Mraz’s “system” teaches the claimed *receiver* providing a plurality of received video streams as an output, although Appellant assumes that the Examiner relies on Mraz’s multiplexer 508 for this. *See* App. Br. 17 (“Appellant has . . . repeatedly requested that the Examiner identify the component the Examiner considered to be a ‘receiver.’ The Examiner has repeatedly ignored the request for clarification. However, the only component in *Mraz* that receives multiple data streams is a multiplexer 508.”). Further, because claim 1 recites providing *a plurality* of received video *data streams as an output of the receiver* and a local video processor *combining* those streams into *a single stream*, we find the output of the claimed receiver is *not* a combined single stream. As such, we find the Examiner has not persuasively shown how Mraz’s multiplexer, which outputs a single multiplexed stream, teaches the claimed receiver, which does not output a single multiplexed stream. The Examiner also has not persuasively shown how the other cited art remedies this deficiency.

Because we find this issue dispositive here, we do not address Appellant’s other arguments.

Accordingly, constrained by the present record, we do not sustain the Examiner’s rejection under 35 U.S.C. § 103 of independent claim 1. For similar reasons, we do not sustain the Examiner’s rejection under 35 U.S.C. § 103 of independent claims 14 and 19, which recite commensurate limitations. Additionally, we do not sustain the Examiner’s rejection under 35 U.S.C. § 103 of claims 2–13, 15–18, and 20–24, which depend therefrom.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1	112	Written Description	1	
1, 11, 12, 14, 18, 19, 24	103	Mraz, Galipeau, Falvo, Fedorkow		1, 11, 12, 14, 18, 19, 24
2, 4, 16, 21	103	Mraz, Galipeau, Falvo, Fedorkow, Alrabady		2, 4, 16, 21
3, 15, 20	103	Mraz, Galipeau, Falvo, Fedorkow, Barnes		3, 15, 20
5, 17, 22	103	Mraz, Galipeau, Falvo, Fedorkow, Vimpari		5, 17, 22
6, 7	103	Mraz, Galipeau, Falvo, Fedorkow, Vimpari, White		6, 7
8–10	103	Mraz, Galipeau, Falvo, Fedorkow, Vimpari, Weeks		8–10

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
13	103	Mraz, Galipeau, Falvo, Fedorkow, LaBrie		13
23	103	Mraz, Galipeau, Falvo, Fedorkow, Hoskins		23
Overall Outcome			1	2–24 ³

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).
See 37 C.F.R. § 41.50(f).

AFFIRMED IN PART

³ As noted above, although not rejected by the Examiner in the Final Action, we note that each of claims 2–13 depend directly or indirectly from independent claim 1 and suffer from the same § 112 deficiency.