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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HARIS ZISIMOPOULOS and VAISHALI PAISAL

Appeal 2019-000439
Application 13/696,217
Technology Center 2400

Before JAMES B. ARPIN, ADAM J. PYONIN, and
MICHAEL M. BARRY, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 4–7, 9, 12, 14–17, and 20, which constitute all of the pending claims. *See* Final Act. 1 *and* Appeal Br. 14–18 (Claims App'x). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

¹ We use “Appellant” to refer to the “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Samsung Electronics Co., Ltd. as the real party in interest. Appeal Br. 1.

Introduction

Appellant's disclosure and claims relate "to handover of video calls from a packet switched network to a circuit switched network in a single radio environment." Spec. 1. Independent claim 1 is representative of the claims on appeal:

1. A method for performing a handover of a video call from a packet switched network to a circuit switched network by a mobility management entity (MME) in a wireless network environment, the method comprising:

receiving, by the MME, a message from an e-node B (eNB) to perform a video single radio voice call continuity (vSRVCC) handover for a User Equipment (UE) from the packet switched network to the circuit switched network during a video call session in the packet switched network; and

transmitting, by the MME, a vSRVCC handover request to a circuit switched network entity for performing the vSRVCC handover of the video call session;

wherein the vSRVCC handover request comprises Sv flags including vSRVCC capabilities of the UE-associated with the video call session, and

wherein the vSRVCC capabilities indicate that the vSRVCC handover is requested by the MME.

Appeal Br. 14 (Claims App'x).

Rejections² & References

The Examiner rejected claims 1 and 17 under 35 U.S.C. § 103(a) as unpatentable over (a) the Technical Report for 3rd Generation Partnership

² In the Final Office Action prior to this Appeal, the Examiner rejected claims 4, 9, and 12 under 35 U.S.C. § 112. Final Act. 6. After Appellant filed a Response after Final Action on February 12, 2018, the Examiner withdrew that rejection in an Advisory Action delivered electronically March 28, 2018 ("Adv. Act.").

Project; Technical Specification Group Services and System Aspects; Feasibility Study of Single Radio Video Call Continuity (vSRVCC); Stage 2 (Release 10) (3GPP TR 23.8xy V0.1.0 (2010-03)) (hereafter, the “3GPP vSRVCC TR”) and (b) the Technical Specification for 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; Single Radio Voice Call Continuity (SRVCC); Stage 2 (Release 11) (3GPP TS 23.216 V11.5.0 (2012-06)) (hereafter, the “3GPP SRVCC TS”). Final Act. 9–12.

The Examiner rejected claims 4, 9, 12, and 20 under § 103(a) as unpatentable over the 3GPP vSRVCC TR, the 3GPP SRVCC TS, and Chen (US 2010/0040020 A1; Feb. 18, 2010). Final Act. 12–18.

The Examiner rejected claim 5 under § 103(a) as unpatentable over the 3GPP vSRVCC TR, the 3GPP SRVCC TS, and Bornier (US 2008/0280612 A1; Nov. 13, 2008). Final Act. 18–20.

The Examiner rejected claims 6 and 7 under § 103(a) as unpatentable over the 3GPP vSRVCC TR, the 3GPP SRVCC TS, Bornier, and Pirila (US 2005/0180338 A1; Aug. 18, 2005). Final Act. 20–22.

The Examiner rejected claim 14 under § 103(a) as unpatentable over the 3GPP vSRVCC TR, the 3GPP SRVCC TS, Chen, and the Technical Specification for 3rd Generation Partnership Project; Technical Specification Group Services and System Aspects; IP Multimedia Subsystem (IMS) Service Continuity; Stage 2 (Release 10) (3GPP TS 23.237 V10.1.0 (2010-03)) (hereafter, the “3GPP IMS TR”), and Bornier. Final Act. 23–25.

The Examiner rejected claims 15 and 16 under § 103(a) as unpatentable over the 3GPP vSRVCC TR, the 3GPP SRVCC TS, Chen, the 3GPP IMS TR, Bornier, and Pirila. Final Act. 25–27.

ANALYSIS

Appellant argues error in the rejection of claims 1 and 17 together as a group and submits no substantive arguments for the rejections of claims 4–7, 9, 12, 14–16, and 20 separate from those made for claims 1 and 17. Appeal Br. 5–12.³ We select claim 1 as representative of all rejected claims. *See* 37 C.F.R. § 41.37(c)(1)(iv).

In rejecting claim 1, the Examiner finds the 3GPP vSRVCC TR teaches the receiving step's limitations for performing a vSRVCC handover for a UE, "wherein the vSRVCC handover request comprises Sv flags including vSRVCC capabilities of the UE associated with the video call session." Final Act. 13 (citing the 3GPP vSRVCC TR § 4.1; Fig. 6.1.1.2-1). The Examiner explains "there is no specific definition of what the Sv flags are," and "the vSRVCC handover trigger is considered [to disclose the] Sv flags because it is for performing the vSRVCC handover function." *Id.* (emphasis omitted). The Examiner more particularly explains that the 3GPP vSRVCC TR "discloses 'Sv flag including vSRVCC capabilities of the UE associated with the video call session' as illustrated in Fig. 6.1.1.2-1, because vSRVCC handover trigger is the part of capability of vSRVCC for video call session, i.e., it establishes or instructs vSRVCC handover." Adv. Act. 1 (further explaining that there are "no other properties of 'Sv flag' being defined (or what are capabilities) in [the] claim, [so] it can be any parameter/quantity that represents function(s) of vSRVCC capabilities"). Regarding Appellant's Specification, the Examiner notes that "[a]lthough

³ Independent claims 9, 17, and 20 recite limitations commensurate with the argued limitations of claim 1; claims 4–7, 12, and 14–16 depend, directly or indirectly, from either independent claim 1 or 9. *See* Appeal Br. 14–18 (Claims App'x).

Table 1 presents details of Sv flag[s], but most of them are missing in [the] claim language, which clearly cannot be recognized by one of ordinary skill [sic]”). *Id.*

Appellant contends the Examiner errs, because claim 1 “clearly [recites] the Sv flags as being part of a vSRVCC handover request” and “that the Sv flags include vSRVCC capabilities of the UE-associated with the video call session.” Appeal Br. 8; *see also id.* at 9 (contending “the Examiner must reasonably construe the recitation ‘Sv flags’ in view of the [Specification]”). Appellant’s argument is persuasive.

When construing claim language during prosecution, we give it the broadest reasonable interpretation consistent with the Specification, as it would be interpreted by those of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Smith Int’l, Inc.*, 871 F.3d 1375, 1382–83 (Fed. Cir. 2017) (clarifying the broadest reasonable interpretation is not the broadest *possible* interpretation—it must “correspond[] with what and how the inventor describes [the] invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification’”) (quoting *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)). Here, the Examiner construes the recited Sv flag limitations too broadly.

Claim 1 recites that a handover request includes “Sv flags,” *i.e.*, more than one Sv flag. Claim 1 also requires the Sv flags to “includ[e] vSRVCC capabilities of the UE-associated with the video call session.” These Sv flag limitations are consistent with the disclosure in the Specification, which discloses a plurality of different Sv flags, one of which “indicates the UE capability.” *See Spec.* 7 (Table 1).

In finding the handover trigger in the 3GPP vSRVCC TR teaches these Sv flags-related limitations, the Examiner construes the Sv flags limitations too broadly. The claimed use of Sv flags requires a particular structure for implementing the related functionality. Regardless whether the 3GPP vSRVCC TR discloses the functionality, the record before us does not explain how or why an ordinarily skilled artisan would have understood that a (general) disclosure of the functionality is a teaching or suggestion of claim 1's (particular) implementation of the functionality, i.e., by using multiple Sv flags that include vSRVCC capabilities of the UE, as recited.

Thus, on the record before us, the findings do not show that the cited art teaches or suggests all limitations of claim 1, and we do not sustain its rejection under 35 U.S.C. § 103(a). We also, therefore, for the same reasons, do not sustain the § 103(a) rejections of claims 4–7, 9, 12, 14–17, and 20.

CONCLUSION

We reverse the rejections under 35 U.S.C. § 103(a) of claims 1, 4–7, 9, 12, 14–17, and 20.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 17	103	3GPP vSRVCC TR, 3GPP SRVCC TS		1, 17
4, 9, 12, 20	103	3GPP vSRVCC TR, 3GPP SRVCC TS, Chen		4, 9, 12, 20
5	103	3GPP vSRVCC TR, 3GPP SRVCC TS, Bornier		5
6, 7	103	3GPP vSRVCC TR, 3GPP SRVCC TS, Bornier, Pirila		6, 7
14	103	3GPP vSRVCC TR, 3GPP SRVCC TS, 3GPP IMS TR, Bornier		14
15, 16	103	3GPP vSRVCC TR, 3GPP SRVCC TS, Chen, 3GPP IMS TR, Bornier, Pirila		15, 16
Overall Outcome				1, 4–7, 9, 12, 14–17, 20

REVERSED