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Murphy, Bilak & Homiller/Ericsson 1255 Crescent Green Suite 200 Cary, NC 27518			JEBARI, MOHAMMED	
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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* THOMAS RUSERT

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Appeal 2019-001066  
Application 13/977,936  
Technology Center 2400

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Before JOHN A. EVANS, JENNIFER L. McKEOWN, and  
LINZY T. McCARTNEY, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks review under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 29, 30, 36, 37, and 39. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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<sup>1</sup> Appellant identifies the real party in interest as Telefonaktiebolaget LM Ericsson (publ). Appeal Brief 2, filed June 22, 2018 ("Appeal Br.").

## BACKGROUND

This patent application concerns decoding and encoding a multi-layer video stream. *See* Specification 1:4–5, filed July 2, 2013 (“Spec.”). Claims 29, 36, and 39 are independent. Claim 29 illustrates the claimed subject matter:

29. A method, in a processing circuit, of decoding a digitally coded multi-layer video stream defining multiple layers of pictures, each layer of said multiple layers having a respective layer identifier, said method comprising:

retrieving, for a layer with a layer index of said multiple layers, decoding relationship information based on said digitally coded multi-layer video stream, said decoding relationship information defining a respective layer index of each reference layer of said multiple layers on which said layer directly depends;

mapping, for each reference layer and for said layer, its layer index to a layer identifier based on mapping information of a hierarchical mapping relationship between layer identifiers and layer indices, wherein said mapping information is retrieved based on said digitally coded multi-layer video stream; and

decoding a picture of said layer based on at least one previously decoded picture in a layer of said multiple layers identified based on said layer identifiers mapped from layer indices;

wherein said mapping, for each reference layer and for said layer, comprises:

retrieving a flag *vps\_nuh\_layer\_id\_present\_flag* based on said coded multi-layer video stream;

setting, for each reference layer and for said layer and if *vps\_nuh\_layer\_id\_present\_flag* = 0, its layer identifier equal to its layer index; and

retrieving, for each reference layer and for said layer and if

*vps\_nuh\_layer\_id\_present\_flag* = 1, its layer identifier from a vector *layer\_id\_in\_nuh[i]*,

$i \in [1, vps\_max\_layers\_minus1]$ , wherein  $vps\_max\_layers\_minus1 + 1$  indicates a maximum number of layers and  $layer\_id\_in\_nuh[i]$  indicates a layer identifier for a layer with layer index  $i$ .

Appeal Br. 21–22.

## REJECTIONS

Claims	Basis	References
29, 30, 36, 37, 39	Double Patenting	Rusert <sup>2</sup>
29, 30, 36, 37, 39	§ 103	Deshpande <sup>3</sup>

## DISCUSSION

### Double Patenting

The Examiner rejected claims 29, 30, 36, 37, and 39 on the ground of nonstatutory double patenting over claims 11, 12, 30, and 31 of Rusert. Final Office Action 3–5, mailed November 15, 2017 (“Final Act.”). Although Appellant filed a terminal disclaimer on June 25, 2018, the Examiner appears to have maintained this rejection in the Examiner’s Answer. *See* Examiner’s Answer 3, mailed September 20, 2018 (“Ans.”) (explaining that the Examiner’s Answer maintains every ground of rejection in the Final Office Action mailed November 15, 2017, except for rejections listed under the heading “WITHDRAWN REJECTIONS”); *see also* 37 C.F.R. § 41.39(a)(1) (“An examiner’s answer is deemed to incorporate all of the grounds of rejection set forth in the Office action from which the appeal is taken . . . unless the examiner’s answer expressly indicates that a ground of

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<sup>2</sup> Rusert (US Patent No. 9,774,927 B2).

<sup>3</sup> Deshpande (Provisional Application No. 61/728,997).

rejection has been withdrawn.”). Appellant has not addressed the nonstatutory double patenting rejection on appeal, so we summarily affirm the rejection.

### Section 103 Rejection

Claim 29 recites a method of “decoding a digitally coded multi-layer video stream defining multiple layers of pictures, each layer of said multiple layers having a respective layer identifier.” Appeal Br. 21. The claimed method includes “retrieving, for a layer with a layer index . . . decoding relationship information . . . said decoding relationship information defining a respective layer index of each reference layer of said multiple layers on which said layer directly depends” (the retrieving limitation). Appeal Br. 21. The claimed method also includes “mapping, for each reference layer and for said layer, its layer index to a layer identifier” (the mapping limitation). Appeal Br. 21.

Appellant contends that the Examiner has not shown that Deshpande teaches or suggests the retrieving and mapping limitations. *See* Appeal Br. 9–20; Reply Brief 6–12, filed November 19, 2018 (“Reply Br.”). Appellant argues that the Examiner has not shown that Deshpande teaches or suggests a “layer index of each reference layer of said multiple layers on which said layer directly depends” as required by the retrieving limitation. *See* Appeal Br. 10–12; Reply Br. 6–11. Appellant also contends that even if Deshpande teaches or suggests the recited layer index, the Examiner has not shown that Deshpande teaches or suggests mapping a layer index to a layer identifier “for each reference layer and for said layer” as required by the mapping limitation. *See* Appeal Br. 12–14; Reply Br. 11–12.

We agree with Appellant. The Examiner found that Deshpande teaches or suggests the recited layer index because Deshpande shows tables with values that reference “scalability dimensions” that supposedly contain a “dependency\_ID.” *See* Ans. 7–9 (discussing Deshpande Figs. 12, 14, 17). Although not entirely clear, the Examiner appears to have found that the relationship between these values and the scalability dimensions also teaches mapping a layer index to a layer identifier. *See* Ans. 9 (finding that a relationship between a table value and a dependency\_ID in a “dimension\_ID[i][j]” column teaches the mapping limitation). The Examiner has not adequately explained why this relationship teaches or suggests both the recited layer and the recited mapping of a layer index to a layer identifier. In addition, as argued by Appellant, *see* Reply Br. 9, the Examiner appears to have improperly conflated the parameters and relationships shown in Deshpande’s Figures 12, 14, and 17. On this record, we do not sustain the Examiner’s rejection of claim 29 and its dependent claims under § 103. Because the Examiner’s rejection of independent claims 36 and 39 and dependent claim 37 suffers from similar flaws, we also do not sustain the Examiner’s rejections of these claims under § 103.

#### CONCLUSION

<b>Claims Rejected</b>	<b>Basis</b>	<b>References</b>	<b>Affirmed</b>	<b>Reversed</b>
29, 30, 36, 37, 39	Double Patenting	Rusert	29, 30, 36, 37, 39	
29, 30, 36, 37, 39	§ 103	Deshpande		29, 30, 36, 37, 39
<b>Overall Outcome</b>			29, 30, 36, 37, 39	

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Because we affirm at least one ground of rejection for each claim on appeal, we affirm the Examiner's decision. *See* 37 C.F.R. § 41.50(a)(1). No 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).

AFFIRMED