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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIKA FORSSELL and JANNE TERVONEN

Appeal 2019-001642
Application 12/530,047
Technology Center 2400

Before ERIC B. CHEN, JEFFERY S. SMITH, and
JOHN F. HORVATH, *Administrative Patent Judges*.

HORVATH, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ seeks review of the Examiner’s decision to reject claims 72–94. Appeal Br. 8. Claims 1–71 have been cancelled. *Id.* at 14. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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 Nokia Technologies Oy. Appeal Br. 2.

CLAIMED SUBJECT MATTER

The invention is directed to “a method and apparatus for providing network-guided handover for redirecting wireless devices in a heterogeneous access network environment.” Spec. ¶2.

Claim 72, reproduced below, is illustrative of the claimed subject matter:

72. A method, comprising:

receiving, by a mobile node and from a network node of a first access network, a handover command and an access network list, the access network list comprising information about a plurality of access networks, and the handover command instructing the mobile node to select a new access network for a handover;

selecting, by the mobile node and in response to receiving the handover command, a second access network to perform the handover, the second access network selected, by the mobile node rather than the network node, from the access network list; and

performing, by the mobile node, the handover from the first access network to the second access network.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ovadia	US 2006/0111111 A1	May 25, 2006
Dutta	US 2006/0276192 A1	Dec. 7, 2006

REJECTIONS

Claims 84–90 stand rejected under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement. Final Act. 7.

Appeal 2019-001642
Application 12/530,047

Claims 77–83 and 91–94 stand rejected under 35 U.S.C. § 112 ¶ 2 as indefinite. Final Act. 7–8.

Claims 72–94 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ovadia and Dutta. Final Act. 8–31.

OPINION

We review the appealed rejections for error based upon the issues identified by Appellant. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Appellant argues for the patentability of claims 72–94 as a group. *See* Appeal Br. 9–12. We select claim 72 as a representative claim, and review the rejection of claims 72–94 based on the rejection of claim 72. *See* 37 C.F.R. § 41.37(c)(iv). Any arguments not raised by Appellant are waived. *Id.*

We have reviewed the Examiner’s rejections in light of Appellant’s arguments that the Examiner has erred. We are not persuaded by Appellant’s arguments, and sustain the Examiner’s rejection for the reasons stated in the Final Action and Answer, which we adopt as our own. We highlight the following for emphasis.

Rejections under 35 U.S.C. § 112 ¶¶ 1–2

The Examiner rejects claims 84–90 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement. Final Act. 7. The Examiner rejects claims 77–83 and 91–94 under 35 U.S.C. § 112 ¶ 2 as indefinite. *Id.* at 7–8. Appellant states “[t]he 35 U.S.C. § 112 rejections are not the focus of the Appeal, and Appellant will address the matter of form . . . rejections later.” Appeal Br. 9 n.1.

As noted above, any arguments not raised by Appellant in the Appeal Brief are waived. *See* 37 C.F.R. § 41.37(c)(iv). Accordingly, we summarily

Appeal 2019-001642
Application 12/530,047

affirm the Examiner’s rejection of claims 84–90 as lacking written description, and the Examiner’s rejection of claims 77–83 and 91–94 as indefinite.

Rejections under 35 U.S.C. §103(a)

Appellant argues that the Examiner erred in rejecting claims 72–94 because Ovadia does not disclose a mobile terminal receiving a handover command from a first network node. *See* Appeal Br. 10 (“But sending a number of neighbors to a mobile station . . . is simply not the same as sending a handover command to a mobile station . . .”). We are not persuaded by this argument, which fails to address the full scope of the Examiner’s rejection. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

The Examiner finds the *combination* of Ovadia and Dutta teach a mobile terminal receiving a handover command and an access network list from a first network node. *See* Final Act. 9. Specifically, the Examiner finds Ovadia teaches the mobile terminal receives an access network list from a first network node “but not explicitly a handover command.” *Id.* Instead, the Examiner finds Dutta teaches the mobile terminal receives a handover command from the first network node. *Id.* at 9–10 (citing Dutta ¶ 12); *see also* Ans. 9–10 (citing Dutta ¶ 12) (“Dutta was utilized to teach the feature of handover *command*.”).

We agree with the Examiner. Dutta discloses the IEEE 802.11 Media Independent Handover Function (MIHF), which defines various Media Independent Command Service (MICS) commands, including “MIH Poll, MIH Scan, MIH Configure, and MIH Switch,” which can be used to

“instruct an MIH device to poll connected links . . . to scan for newly discovered links, to configure new links and to switch between available links.” Dutta ¶ 12. Dutta further discloses “MIH commands can be both local and remote,” i.e., issued by either the mobile terminal or a network node. Indeed, as the Examiner correctly found, Appellant’s Specification identifies the industry standard MIH Switch command as a command that “may be used to command the wireless device to perform a handover.” Final Act. 4–5 (quoting Spec. ¶ 34).

Appellant next argues the Examiner erred in rejecting claims 72–94 because “Ovadia and Dutta, whether considered independently or in combination, do not disclose or suggest a mobile node itself selecting a second address network for a handover as required by claims 72–94.” Reply Br. 2.

The Examiner finds the combination of Ovadia and Dutta teaches this limitation. *See* Final Act. 10–11. Specifically the Examiner finds that Ovadia teaches a mobile station or MSS scans a list of BSs (base stations) and selects a handover BS in response to receiving a handover command from a serving BS (e.g., a request to scan the list of BSs provided on a network access list). *Id.* at 9–10 (citing Ovadia ¶¶ 39–40; Dutta ¶ 12). Appellant disagrees, and argues that Ovadia instead teaches that it is the serving BS that selects the handover network because the serving BS “[i]n view of the HO-Pre-notification response messages . . . selects an appropriate target BS for handover.” Appeal Br. 10–11 (quoting/citing Ovadia ¶ 45, Figs. 3–4); Reply Br. 4–5.

We are not persuaded by Appellant’s argument, which fails to consider the complete teachings of Ovadia. Ovadia teaches “hand-over [HO] begins with a decision for [the] MSS to hand-over its . . . network

attachment from a serving BS to a target BS,” and that “the decision may originate . . . at the MSS.” Ovadia ¶ 40. Moreover, “the HO decision will be made based on service criteria (e.g., which BS will provide the best air-interface to the MSS),” and will be made “by an MSS in view of the . . . scanning operations.” *Id.* ¶¶ 40–41.

Although Ovadia does teach that the serving BS “selects an appropriate target BS for handover,” as Appellant observes, Ovadia further teaches the “appropriate target BS” is one or more *recommended* target BSs because after “select[ing] an appropriate target BS,” the serving BS sends MOB_BSHO-REP message 406 to the MSS, which “identif[ies] the *recommended* target base station (or stations, if applicable).” *Id.* ¶ 45 (emphasis added). The MSS then “determines if it will accept a hand-over to the target BS (or *one of the target BSs*) that is/are identified in the MOB_BSHO-REP message.” *Id.* ¶ 57 (emphasis added). If the MSS rejects the recommended target BS or BSs, “the HO process is cancelled.” *Id.* If the MSS accepts (one of) the recommended target BSs, it sends MOB_HO-IND message 408 to the serving BS. *Id.* ¶ 58, Fig. 4. The MOB_HO-IND message includes a BS_ID (base station identifier), and “informs the serving BS that the MSS has *authorized* HO to the *selected* target BS,” i.e., to the BS identified by the BS_ID. *Id.* (emphases added). Thus, Ovadia’s MSS not only (a) selects whether to handover to any one of the one or more target BSs *recommended* by the serving BS, but also (b) selects the recommended target BS, if any, to which it will be handed over.

Accordingly, for the reasons explained above, we agree with the Examiner that the combination of Ovadia and Dutto teach each of the limitations of claim 72, and sustain the Examiner’s rejection of that claim.

Appeal 2019-001642
Application 12/530,047

For the same reasons, we sustain the Examiner's rejections of claims 73–94 over the combination of Ovadia and Dutto, which are not separately argued.

CONCLUSION

The Examiner's rejection of claims 84–90 under 35 U.S.C. § 112 ¶ 1 for failing to comply with the written description requirement is sustained.

The Examiner's rejection of claims 77–83 and 91–94 under 35 U.S.C. § 112 ¶ 2 as indefinite is sustained.

The Examiner's rejection of claims 72–94 under 35 U.S.C. § 103(a) as unpatentable over Ovadia and Dutta is sustained.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	References / Basis	Affirmed	Reversed
84–90	112 ¶ 1	Written Description	84–90	
77–83, 91–94	112 ¶ 2	Definiteness	77–83, 91–94	
72–94	103(a)	Ovadia, Dutta	72–94	
Overall Outcome			72–94	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended. *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED