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Barta, Jones & Foley, P.C. (Patent Group - Microsoft Corporation) 3308 Preston Road #350-161 Plano, TX 75093			NGUYEN, DAVID Q	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SHAI GUDAY and GIL ZALMANOVITCH

Appeal 2019-001936
Application 14/835,693
Technology Center 2600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
NABEEL U. KHAN, *Administrative Patent Judges*.

KHAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 21–39 and 42. 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 Microsoft Technology Licensing, LLC. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Claim 21, reproduced below, is illustrative of the claimed subject matter:

21. A system comprising:

a mobile computing device;

a memory area associated with a mobile computing device, the memory area storing data usage plans available to the mobile computing device, the one or more data usage plans having respective data usage information and mobile operator information associated therewith including an amount of network data consumed under a respective data usage plan provided by a respective mobile operator that provides access to one or more networks; and

a processor programmed to:

receive a data transfer request from the mobile computing device; and

based in part on the data usage information associated with the one or more data usage plans, the mobile operator information associated with the one or more data usage plans, an estimated Quality of Service corresponding to available network connections and the one or more data usage plans, and the received data transfer request, select, from a plurality of mobile operators available to the mobile computing device, a mobile operator to continue performing the received data transfer request.

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Momtahan	US 2011/0276442 A1	Nov. 10, 2011
Sfar	US 2014/0044099 A1	Feb. 13, 2014
Fan	US 2008/0318621 A1	Dec. 25, 2008
Mao	US 2010/0184440 A1	July 22, 2010

REJECTIONS

1. Claims 21–39 and 42 stand rejected on the ground of non-statutory double patenting as being unpatentable over claims 1–20 of U.S. Patent No. 9,161,200 B2. Final Act. 3–4.²
2. Claims 21–25 and 28–39 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Momtahan and Sfar. Final Act. 5–10.
3. Claim 26 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Momtahan, Sfar, and Fan. Final Act. 10–11.
4. Claims 27 and 42 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Momtahan, Sfar, and Mao. Final Act. 11.

OPINION

Non-Statutory Double Patenting Rejection

The Examiner rejects claims 21–39 and 42 on the grounds of non-statutory obviousness-type double patenting over claims 1–20 of U.S. Patent No. 9,161,200 B2. Final Act. 3. Appellant did not appeal the double patenting rejection. *See* Appeal Br. 8–15. As a result, we summarily affirm the Examiner’s non-statutory double patenting rejection of claims 21–39 and 42. *See Ex Parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

² Although the header of the rejection indicates that claims 21–40 are rejected, this appears to be an error, as claim 40 is cancelled.

Claim 21 recites “a processor programmed to . . . select, from a plurality of mobile operators available to the mobile computing device, a mobile operator [that provides access to one or more networks] to continue performing the received data transfer request.” The Examiner finds Sfar teaches or suggests the aforementioned limitation. *See* Final Act. 5–6; *see also* Ans. 10. More specifically, the Examiner finds Sfar discloses a wireless communication system including: a user equipment (“UE”) that includes two Subscriber Identity Module (“SIM”) cards; two dedicated Public Land Mobile Networks (“PLMNs”) (*i.e.*, PLMN1 and PLMN2), and a service provider that provides access to PLMN1 and PLMN2. *See* Ans. 8–9 (citing Sfar at ¶¶ 63, 66, Fig. 1); *see also* Sfar ¶¶ 42, 43. As found by the Examiner, Sfar further discloses the service provider allows the UE to switch a downlink packet transmission between the two networks. *See* Ans. 8–10 (citing Sfar ¶¶ 19, 37, 63, 66); *see also* Sfar ¶ 45. As further found by the Examiner, Sfar also discloses that the UE can also switch an uplink data stream between two distinct network operators. *See* Ans. 9 (citing Sfar ¶ 8).

Appellant argues Sfar fails to teach or suggest the aforementioned limitation. *See* Appeal Br. 14. Specifically, Appellant argues Sfar discloses switching between multiple networks (*i.e.*, PLMN1 and PLMN2) via a single service provider rather than switching between multiple service providers. *See* Reply Br. C-2–C-3; *see also* Appeal Br. 11–12. Appellant additionally argues Sfar’s network operator refers to a network rather than the claimed “mobile operator,” and, thus, Sfar’s disclosure of switching between a plurality of network operators actually teaches switching between

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a plurality of networks rather than the claimed switching between a plurality of mobile operators. *See* Reply Br. C-3–C-5; *see also* Appeal Br. 12–13.

We are not persuaded the Examiner erred. Claim 21 recites that a mobile operator “provides access to one or more networks.” We agree with the Examiner that Sfar’s service provider teaches the claimed “mobile operator,” as Sfar discloses that the service provider provides access to multiple networks (*i.e.*, PLMN1 and PLMN2). *See* Ans. 8. We further agree with the Examiner that Sfar’s disclosure of the selection of a network from the multiple networks for a downlink packet transmission teaches or suggests the claimed “[selecting], from a plurality of mobile operators . . . a mobile operator to continue performing the received data transfer request,” recited in claim 21. *See* Ans. 8–9. Although the cited portions of Sfar disclose a selection of a network associated with a service provider, rather than a selection of a service provider, we conclude that such a difference is not sufficient to patentably distinguish the claim from Sfar’s disclosure, as a person of ordinary skill in the art would have been able to modify Sfar’s disclosure to have the UE select a different service provider associated with a different network. As the Supreme Court made clear that when considering obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

Further, even assuming *arguendo* that Appellant’s argued distinction would be sufficient to patentably distinguish the claim, Sfar explicitly discloses the selection of a network provider, as opposed to the selection of a network. *See* Ans. 9 (citing Sfar ¶ 8). Contrary to Appellant’s argument,

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Sfar’s network provider also teaches the claimed “mobile operator,” as Sfar discloses that the network provider provides access to a network. *See* Sfar ¶¶ 7, 8. Appellant’s argument that Sfar’s network provider refers to a network, rather than a mobile operator or service provider, is not supported by the disclosure of Sfar.

Accordingly, we sustain the Examiner’s rejection of independent claim 21. The Examiner rejects independent claims 29 and 37 on a similar basis as claim 21, and, therefore, we also sustain the Examiner’s rejections of claims 29 and 37. We also sustain the rejections of dependent claims 22–28, 30–36, 38, 39, and 42, as they are not separately argued by Appellant.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
21–39, 42		Non-statutory Double Patenting	21–39, 42	
21–25, 28–39	103(a)	Momtahan, Sfar	21–25, 28–39	
26	103(a)	Momtahan, Sfar, Fan	26	
27, 42	103(a)	Momtahan, Sfar, Mao	27, 42	
Overall Outcome			21–39, 42	

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TIME PERIOD FOR RESPONSE

No time 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