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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte IAN ROBERT COOPER

Appeal 2019-003694
Application 13/144,904
Technology Center 2400

Before ALLEN R. MacDONALD, JEREMY J. CURCURI, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from a Non-Final Rejection of claims 1–12. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

¹ Appellant identifies British Telecommunications Public Limited Company as the real party in interest. Appeal Br. 2.

CLAIMED SUBJECT MATTER

Claim 1 is illustrative of the claimed subject matter (emphasis, formatting, and bracketed material added):

1. A network distribution point for operation as a node in a telecommunications system, the network distribution point comprising:

[A.] *a digital subscriber loop access multiplexer*

- [i.] providing a plurality of digital subscriber lines interfacing with a plurality of individual termination points remote from the network distribution point, and
- [ii.] providing a multiplexed digital subscriber line connected to a remote access server that is associated with an exchange remote from the distribution point,

wherein the digital subscriber loop access multiplexer is arranged intermediate between the individual termination points and the remote access server to provide an interface therebetween; and

[B.] *a dynamic line management system* for

- [i.] processing data relating to capabilities of each of the digital subscriber loops, and
- [ii.] generating a profile of each digital subscriber loop and used ***for setting a rate profile*** to allow control of transmission of data to the individual termination points,

[C.] wherein *the digital subscriber loop access multiplexer* and *the dynamic line management system* ***are co-located*** in the network distribution point.

REFERENCES²

The Examiner relies on the following references:

Name	Reference	Date
Pickering	US 2009/0262647 A1	Oct. 22, 2009
Everett	US 2010/0293274 A1	Nov. 18, 2010

REJECTIONS

The Examiner rejects claims 1–3, 6, and 7 under 35 U.S.C. § 103 as being unpatentable over the combination of Pickering and Everett. Non-Final Act. 6–9 and 11–14. We select claim 1 as the representative claim for this rejection. The contentions discussed herein as to claim 1 are determinative as to this rejection.

The Examiner rejects claims 4, 5, and 8–12 under 35 U.S.C. § 103 as being unpatentable over Pickering and Everett in various combinations with other references. Non-Final Act. 9–11 and 14–18. The contentions discussed herein as to claim 1 are also determinative as to these rejections.

Therefore, except for our ultimate decision, we do not address claims 4, 5, and 8–12 further herein.

² All citations herein to the references are by reference to the first named inventor/author only.

OPINION

We have reviewed the Examiner's rejections in light of Appellant's arguments that the Examiner has erred. Appellant's contentions we discuss are determinative as to the rejections on appeal. Therefore, Appellant's other contentions are not discussed in detail herein.

A.

In rejecting claim 1, the Examiner finds:

Everett . . . discloses a dynamic line management system . . .

wherein a digital subscriber loop access multiplexer and the dynamic line management system *are co-located* in a network distribution point (see Fig. 1, combination of Management Device 100 and DSLAM 20 {a network distribution point}, see para. 0047, the management device 100 comprises two main functional parts, a BRAS provisioning or BRAS control function 120 and a Dynamic Line Management (DLM) function 110, see also para. 0048, the BRAS provisioning function 120 processes part of the information received from the DSLAM's to assess a consistent connection speed achieved by each DSL).

Non-Final Act. 8 (emphasis added).

B.

Appellant contends that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103 because:

The Examiner erred in rejecting claim 1 because the combination of Pickering [] and Everett does not disclose or suggest every limitation of the claim.

In response to the previous Decision on Appeal and the intervening Office Actions, claim 1 has been amended to recite (in combination with the other elements of the claim) . . . that the “[DSLAM] and the [DLM] system *are co-located* in the network

distribution point.” In other words, the claimed network distribution point comprises both a DSLAM and a DLM, and is remote from both the individual termination points (customer equipment), and the exchange. Pickering ’647 and Everett, whether considered alone or in combination, do not disclose or suggest such a network distribution point.

Appeal Br. 12 (emphasis added).

C.

The Examiner responds by determining:

Under the *broadest reasonable interpretation*, the combination of the systems as disclosed by Pickering and Everett reads upon . . . [“]wherein the digital subscriber loop access multiplexer and the dynamic line management system *are co-located* in the network distribution point” as recites in the claim.

Ans. 21–22 (emphasis added).

E.

As articulated by the Federal Circuit, the Examiner’s burden of proving non-patentability is by a preponderance of the evidence. *See In re Caveney*, 761 F.2d 671, 674 (Fed. Cir. 1985) (“preponderance of the evidence is the standard that must be met by the PTO in making rejections”). “A rejection based on section 103 clearly must rest on a factual basis[.]” *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). “The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *Id.* We conclude the Examiner’s analysis fails to meet this standard because the rejection does not adequately explain the Examiner’s findings of fact.

Particularly, we agree with Appellant that the language of claim 1 requires “the digital subscriber loop access multiplexer and the dynamic line management system are co-located in the network distribution point,” and we disagree with the Examiner’s reasoning that Everett without more is sufficient to show the argued claim limitation. We conclude, consistent with Appellant’s arguments that there is insufficient articulated reasoning to support the Examiner’s finding that Everett discloses the argued claim limitation.

Therefore, we conclude that there is insufficient articulated reasoning to support the Examiner’s final conclusion that claim 1 would have been obvious to one of ordinary skill in the art at the time of Appellant’s invention.

CONCLUSION

The Appellant has demonstrated the Examiner erred in rejecting claims 1–12 as being unpatentable under 35 U.S.C. § 103.

The Examiner’s rejections of claims 1–12 as being unpatentable under 35 U.S.C. § 103 are **reversed**.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–12	103	Pickering, Everett		1–12

REVERSED