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EXAMINER
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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 ZHANG LI, SU YING RUI,
SHOU HUI WANG, and ZHI YU YUE

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Appeal 2019-003750
Application 15/218,836
Technology Center 2400

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Before KALYAN K. DESHPANDE, CHARLES J. BOUDREAU,
and SHARON FENICK, *Administrative Patent Judges*.

BOUDREAU, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 17–34, which are all of the pending
claims. We have jurisdiction under 35 U.S.C. § 6(b)(1).

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. Appellant identifies IBM Corporation as the real party in
interest. Appeal Br. 1.

CLAIMED SUBJECT MATTER

Appellant's invention relates to instant messaging, in particular instant message routing. Spec. ¶ 2.

Claims 17, 23, and 29 are independent. Claim 17, reproduced below, is illustrative of the subject matter on appeal (emphases added):

17. A computer-implemented method within a server, comprising:

receiving, from a source client, a request to initiate an instant messaging (IM) communication with a destination client;

acquiring, based upon a request, a context associated with the source client and the destination client;

making a determination as to whether destination client is a virtual user including a group of sub-users or a common user;

selecting, based upon a policy associated with the virtual user and applied to the context, one of the sub-users; and

transferring the request to the selected one of the sub-users.

Appeal Br. 21 (Claims App.).

REJECTION

Claims 17–34 stand rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Bokish.[2] Final Act. 6.[3]

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[2] Bokish, US 2004/0189698 A1 (pub. Sept. 30, 2004).

[3] The Examiner withdrew a nonstatutory double patenting rejection of claims 17–34 and a 35 U.S.C. § 101 rejection of claims 17–34. Ans. 3.

OPINION

"receiving, from a source client, a request to initiate an instant messaging (IM) communication with a destination client"

Independent claims 17, 23, and 29 recite "receiving, from a source client, a request to initiate an instant messaging (IM) communication with a destination client." The Examiner interprets this claim limitation to "cover a scenario where a source client is already engaged with the destination client in a conversation." Final Act. 2; *see* Ans. 3–4. That is, the Examiner interprets the recited "request to initiate an instant messaging (IM) communication" to include an instant message sent from the source client to the destination client after they have already begun a conversation session. *See* Final Act. 2–3; Ans. 3–4. For that limitation, the Examiner finds that Bokish discloses an instant message sent by a user after the user has already engaged in a conversation session with an agent. Final Act. 2–3, 6 (citing Bokish ¶ 16); Ans. 3–4 (citing Bokish ¶¶ 24–25, Fig. 3).

Appellant argues that "the claimed invention is in the context of a conversation being initiated" (Appeal Br. 17–18) or "the setting up of a IM session" (Reply Br. 9), and that the "request to initiate an instant messaging (IM) communication" as claimed refers to initiating a conversation, as opposed to continuing a conversation (*see* Reply Br. 3–5). According to Appellant, there would be no need to "initiate" a conversation if a conversation was already ongoing (Appeal Br. 17; *see* Reply Br. 6) and, "[b]ased upon the language of the claim[s], IM communication from a source client to a destination client has not yet been initiated (i.e., started)" (Reply Br. 3). Accordingly, Appellant argues that the recited "request to initiate an instant messaging (IM) communication" can only correspond to a

message sent by the user prior to assignment of an agent to the user and establishment of a conversation session in Bokish. Reply Br. 4, 7, 9 (citing Bokish ¶ 18, Fig. 2); *see* Appeal Br. 16.

We agree with the Examiner that the broadest reasonable interpretation of a "request to initiate an instant messaging (IM) communication" as claimed encompasses an instant message sent from the source client to the destination client after their conversation has started. Otherwise put, the "request to initiate an instant messaging (IM) communication" does not necessarily have to relate to the *first* message sent by the source client, or a message sent by the source client prior to establishing a conversation session. Appellant conflates "communication" with "conversation" (*see* Appeal Br. 17–18; Reply Br. 4–5), but the Specification does not define "communication," nor does it define "request[ing] to initiate an instant messaging (IM) communication" as requesting to initiate an IM *conversation.* Although "communication" and "conversation" may be synonymous in certain contexts (*see* Reply Br. 5 & n.1 (citing https://www/thesaurus.com/browse/conversation)), they are not coextensive, and we agree with the Examiner that a conversation may include a plurality of communications and, hence, a plurality of requests to initiate a communication (*see* Ans. 7 (explaining that a "conversation" can be "made up of many communications").[4] Thus, we find no error in the Examiner's mapping of Bokish's instant message sent by a user after the

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[4] *Also compare* https://www.dictionary.com/browse/communication *and* https://www.thesaurus.com/browse/communication, *with* https://www.dictionary.com/browse/conversation *and* https://www.thesaurus.com/browse/conversation.

user and agent have already engaged in a conversation session to the recited "request to initiate an instant messaging (IM) communication."

"selecting, based upon a policy associated with the virtual user and applied to the context, one of the sub-users"

The Examiner finds that Bokish discloses "selecting, based upon a policy associated with the virtual user and applied to the context, one of the sub-users," as recited in independent claims 17, 23, and 29. Final Act. 6 (citing Bokish ¶ 16). Bokish discloses a system for routing instant messages from a user to an appropriate agent at an information service bureau or customer support center. Bokish ¶ 16, Abstr. "Once an information agent is assigned to a user, a session is established wherein messages between the user and the information agent will be associated with the session." *Id.* ¶ 16. The Examiner finds that Bokish's session corresponds to the claimed "context" (Final Act. 6; Ans. 4) and that Bokish discloses selecting an agent (i.e., sub-user) to receive an instant message sent from a user based on a "policy" of routing all of a user's messages within a session to the same agent (Final Act. 2–3; Ans. 7–8).

Appellant acknowledges that "Bokish describes directing the request [i.e., user's instant message] to a previously-selected agent" when the user has previously communicated with that agent. Appeal Br. 17. Appellant argues, however, that Bokish's session cannot be a "context" as claimed because in Bokish, a session is established after an agent is assigned to a user, whereas, according to the claims, "the context must exist and be known prior to the sub-user being selected." *Id.* at 15–16 (emphases omitted) (citing Bokish ¶ 16); *see* Reply Br. 2–3.

Appellant's argument is predicated on the assumption that the Examiner maps Bokish's assignment of an agent to a user (prior to establishing a session) to the recited "selecting . . . one of the sub-users." However, that is not the case. As discussed above, the Examiner cites Bokish's instant message sent by a user *after* establishment of a session for the "request to initiate an instant messaging (IM) communication." Consequently, the Examiner cites Bokish's selection of an agent to whom that instant message will be routed for "selecting . . . one of the sub-users" to whom the request will be transferred. Ans. 4–5 (citing Bokish ¶ 16). We agree with the Examiner that Bokish teaches selecting an agent (i.e., sub-user) to whom a user's instant message will be transferred based on a "policy" of routing all of a user's messages within a session (context) to the same agent. *See* Final Act. 2–3; Ans. 7–8; Bokish ¶ 16. Thus, we find no error in the Examiner's finding that Bokish teaches "selecting, based upon a policy associated with the virtual user and applied to the context, one of the sub-users."

For the foregoing reasons, we sustain the Examiner's § 102 rejection of independent claims 17, 23, and 29, as well as dependent claims 18–22, 24–28, and 30–34 not separately argued.

CONCLUSION

We affirm the Examiner's rejection of claims 17–34 under 35 U.S.C. § 102.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	References/ Basis	Affirmed	Reversed
17–34	102	Bokish	17–34	

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)(1)(iv).

AFFIRMED