

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte ANDREW DEREK FLOCKHART, ROBERT DANIEL NALBONE,  
THOMAS S. FISHER, and EUGENE P. MATHEWS

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Appeal No. 2001-1678  
Application No. 09/001,729

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ON BRIEF

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Before BARRY, LEVY, and BLANKENSHIP, Administrative Patent Judges.

BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 5-10.

We affirm-in-part.

BACKGROUND

The invention is directed to a method for operating a telephone system, using ISDN data links to distribute telephone calls from busy call centers to less busy call centers (e.g., those having lesser estimated wait times). Representative claim 9 is reproduced below.

9. A method of operating a telephone system which includes ISDN links, comprising the following steps:

a) using idle D-channels of the ISDN links, maintaining a ring-type network among nodes;

(b) maintaining a status table at each node, which contains information which facilitates routing of calls to other nodes; and

(c) transmitting data on the ring-type network which updates the status tables.

The examiner relies on the following references:

Klingman	5,680,589	Oct. 21, 1997 (filed Jun. 8, 1995)
Higgins	5,761,412	Jun. 2, 1998 (filed Feb. 20, 1997)

Claim 5 stands rejected under 35 U.S.C. § 102 as being anticipated by Klingman.

Claims 6-8 stand rejected under 35 U.S.C. § 103 as being unpatentable over Klingman.

Claims 9 and 10 stand rejected under 35 U.S.C. § 103 as being unpatentable over Klingman and Higgins.

Claims 1 and 2 have been allowed. Claims 3 and 4 have been canceled.

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We refer to the Final Rejection (Paper No. 9) and the Examiner's Answer (Paper No. 14) for a statement of the examiner's position and to the Brief (Paper No. 13) and the Reply Brief (Paper No. 15) for appellants' position with respect to the claims which stand rejected.

### OPINION

The examiner's rejection of claim 5 as being anticipated by Klingman is set forth at page 3 of the Answer. We note that Klingman's preferred embodiment uses B (bearer)-channels for transmitting data in a ring network. However, the reference discloses (col. 7, ll. 57-60) that D (data)-channels may be used for the network communication.

Appellants present no arguments in opposition to the rejection of claim 5 and expressly set out (Brief at 9) that the rejection is not contested. We sustain the rejection of claim 5 under 35 U.S.C. § 102.

With respect to the further requirements of dependent claim 6, the rejection under 35 U.S.C. § 103 adds "official notice" to the effect that the features of "routing parameters" being stored at each station and the parameters comprising an "estimated wait time (EWT)" were well known in the art. (Answer at 4.) The examiner supports the taking of "official notice" by citing three U.S. patents. (Id. at 6.)

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Appellants argue, inter alia, that there has been no showing of a suggestion from the prior art for combining the noticed subject matter with Klingman. Appellants' position is that Klingman has no use for the "routing" that is claimed. (Brief at 11-12).

The examiner responds (Answer at 6-7) that Klingman shows a type of "routing," and when modified to include the EWT feature would meet the terms of the claims.

We note that appellants respond in turn (Reply Brief at 6-14) as if the rejection of claims 6-8 were based on a combination of references. However, absent entry of new grounds of rejection, the patents cited in addition to Klingman may be used only for the limited purpose of showing the facts officially noticed by the examiner.

Instant claim 6 requires that routing parameters are stored at each station after receipt and are used by each station in routing telephone calls. We agree with appellants that the evidence relied upon in the rejection of claim 6 is not sufficient to establish prima facie obviousness of the subject matter.

Although "routing parameters" and "estimated wait times" may have been known at the time of invention, there has been no showing that the artisan, absent hindsight of the instant invention, would have applied routing parameters for storage at each station for the purpose of routing telephone calls. In particular, the rejection does not point out, and we do not find, any suggestion in Klingman that the routing of telephone calls was contemplated in relation to the ring network that is disclosed. Klingman provides four specific examples of use for the network (col. 7, ll. 25-29); absent is any suggestion for any kind of "call center" application -- notwithstanding the examiner's indication at page

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9 of the Answer that the “distributed real-time control systems” is “for a telephone company.” We find no convincing rationale from the examiner for modifying the invention of Klingman in the manner required by instant claim 6. Claims 7 and 8 incorporate the limitations of claim 6. We do not sustain the rejection of claims 6-8 under 35 U.S.C. § 103.

For the rejection of claims 9 and 10, the examiner adds the teachings of Higgins to those of Klingman. Higgins appears to be relied upon as showing that maintaining a status table at each node and examining a status table when receiving an incoming call at a node in order to route the incoming call was well known. (Answer at 4-5.)

Appellants’ position is that even if the teachings of the references were combined, there would be no “routing of calls” as claimed. (Brief at 14-15.)

We agree with the examiner (e.g., Answer at 9) to the extent that instant claim 9 does not require “telephone” calls, but may also refer to “data” calls. Klingman, in fact, uses the term “call” in the description of data links (e.g., col. 3, ll. 33-50). Instant claim 9, however, requires that information be maintained in a status table at each node for facilitating routing of calls to other nodes.

As shown in Figure 1 of Klingman, and described in the above-noted section of column 3, the reference discloses that party 1 connects with party 2, which in turn connects with party 3, in such fashion until each party is connected with two other parties in a topology appropriate for a ring network. The implicit question which the rejection fails to answer is: why maintain data to facilitate routing of calls to other nodes,

when in the system of Klingman each node maintains only an upstream and a downstream connection with respect to the ring network? Each party is provided only two connections.

The statement of the rejection (Answer at 4-5) asserts that Klingman fails to teach maintaining a status table at each node and examining a status table when receiving an incoming call at a node “in order to route the incoming call.” In our reading of the reference, however, there is no reason for maintaining information with respect to the routing of an incoming call. An incoming call is effectively complete when a connection is established with the receiving node.<sup>1</sup>

Thus, the teachings of Higgins with respect to maintaining status tables on network nodes appears to have no relevance to the “data” calls described by Klingman. While we cannot say no reason exists in the prior art for modification of Klingman’s system along the lines required by claim 9, we do not find the suggestion in the art applied. Nor do we find any convincing rationale from the examiner for making the proposed modification.

Dependent claim 10 incorporates the limitations of claim 9. We therefore do not sustain the rejection of claims 9 and 10 under 35 U.S.C. § 103 as being unpatentable over Klingman and Higgins.

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<sup>1</sup> If the “incoming call” contemplated by the rejection refers to data transfer, rather than the “calls” described by Klingman, we note that routing of incoming communications consists of, at most, simply passing the communication to the next node in the ring. See, e.g., col. 3, ll. 1-18.

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CONCLUSION

The rejection of claim 5 under 35 U.S.C. § 102 is affirmed. The rejection of claims 6-10 under 35 U.S.C. § 103 is reversed. The examiner's decision in rejecting claims 5-10 is thus affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

LANCE LEONARD BARRY	)	
Administrative Patent Judge	)	
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	)	BOARD OF PATENT
STUART S. LEVY	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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	)	
HOWARD B. BLANKENSHIP	)	
Administrative Patent Judge	)	

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