

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte PETER JOHN ATTERTON and BRIAN MICHAEL UNITT

Appeal No. 2004-1537
Application No. 09/206,597

ON BRIEF

Before HAIRSTON, DIXON, and LEVY, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2 through 6, 9, 12 through 14, 17 and 18.

The disclosed invention relates to a method and arrangement for transporting packet communications traffic between first and second nodes in a communications packet network carrying high priority traffic and low priority traffic. If a fault occurs on a path that is normally used to transport the high priority traffic, then the method and arrangement

operate to transport the high priority traffic on the path that is normally used to transport the low priority traffic. The low priority traffic thereafter uses the path normally used by the high priority traffic.

Claim 17 is illustrative of the claimed invention, and it reads as follows:

17. A method of transporting packet communications traffic between first and second nodes in a communications packet network carrying high priority traffic and lower priority traffic, said first node having a first output port to which the high priority traffic is permanently allocated and a second output port to which the lower priority traffic is permanently allocated, said first and second output ports being coupled to respective first and second input ports at said second node via a transport medium comprising first and second crossover switches and first and second substantially identical paths therebetween, the method comprising:

at the first node, identifying the higher and lower priority packets in the traffic, outputting the high priority packets of the traffic at the first output port and outputting the lower priority packets of the traffic at the second output port;

transporting the high priority traffic via the first crossover switch, the first path and the second crossover switch to the first input port at the second node, transporting the lower priority traffic via the first crossover switch, the second path and the second crossover switch to the second input port at the second node;

at the second node, receiving the high priority traffic at the first input port and the lower priority traffic at the second input port;

monitoring the integrity of the first path and, in the event of a fault on that first path, operating said first and second switches so as to transport the high priority traffic on the second path and the lower priority traffic on the first path between the switches.

The references relied on by the examiner are:

Ikeuchi et al. (Ikeuchi)	4,680,776	July 14, 1987
Jones et al. (Jones)	6,067,286	May 23, 2000 (filed Oct. 7, 1997)
Mao et al. (Mao)	6,111,675	Aug. 29, 2000 (filed Aug. 27, 1997)

Claims 2, 6, 9, 12 through 14, 17 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeuchi in view of Jones.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeuchi in view of Jones and the admitted prior art.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ikeuchi in view of Jones and Mao.

Reference is made to the briefs (paper numbers 18 and 20) and the answer (paper number 19) for the respective positions of the appellants and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejections of claims 2 through 6, 9, 12 through 14, 17 and 18.

The examiner made findings (answer, pages 3 and 4) that Ikeuchi discloses all of the limitations of claims 17 and 18 with the exception of prioritized data traffic in the form of data packets. Appellants agree with the examiner's finding that the transmitted signals in Ikeuchi are not packets (brief, page 4). According to the examiner (answer, page 4), "Jones teaches an ATM data network switch for use in switching cells of data between pluralities of data links." In view of such a teaching, the examiner has concluded (answer, pages 4 and 5) that "[i]t would have been obvious to one [of] ordinary skill in the art at the time the invention was made to adapt Ikeuchi's protection switching system for use in a packet communication environment and to use [a] packet header to identify the priority of

the traffic, as suggested by Jones, in order to upgrade the system and adapt to the new technology, i.e., packet switching.” In response, appellants argue (brief, page 4) that:

Jones is only concerned with prioritizing to avoid paths within an ATM switch which have greater delays, not with identifying priority packets so that low priority traffic is transported on the faulty path. Hence it would not be obvious without hindsight to look for references such as Jones for improving a protection scheme, and even if Jones was considered it does not suggest combining features of packet and [Ikeuchi's] circuit switching schemes together, let alone the particular features of the claim.

We agree with appellants' arguments. The record before us is completely silent as to the reasons expressed by the examiner for combining the teachings of Ikeuchi and Jones. The factual question of motivation to combine the teachings of the references should be resolved based on evidence of record, and not on the subjective belief and unknown authority expressed by the examiner. In re Lee, 277 F.3d 1338, 1343-44, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). In the absence of a factual basis in the record for substituting packets as taught by Jones for the signals transmitted by Ikeuchi, we must agree with the appellants that the examiner has resorted to improper hindsight to demonstrate the obviousness of the claimed invention. Thus, the obviousness rejection of claims 17 and 18 is reversed.

The obviousness rejections of claims 3 through 5 are reversed because the admitted prior art and Mao fail to cure the noted shortcoming in the teachings of Ikeuchi and Jones.

DECISION

The decision of the examiner rejecting claims 2 through 6, 9, 12 through 14, 17 and 18 under 35 U.S.C. § 103(a) is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
)	
)	
)	
)	
)	BOARD OF PATENT
JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
STUART S. LEVY)	
Administrative Patent Judge)	

KWH/lp

Appeal No. 2004-1537
Application No. 09/206,597

Page 6

BARNES & THORNBURG
PO BOX 2786
CHICAGO, IL 60690-2786