The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN S. CHAPMAN and HSIANG T. KUNG

Appeal No. 2004-1703
Application No. 09/333,269

ON BRIEF

Before KRASS, OWENS, and BLANKENSHIP, *Administrative Patent Judges.*

OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from the final rejection of claims 1-24, which are all of the claims in the application.

THE INVENTION

The appellants claim a node and method for controlling congestion in a data network. Claim 1, which claims the node, is illustrative:

1. A node for use in a data network, said node comprising:
- an input for receiving traffic units from a first remote node;
- an output for releasing traffic units to a second remote node;
- a control unit coupled to said input for estimating a data occupancy level of at least a portion of the data network based at least on a rate of traffic units passing from said input to said output, when the data occupancy level reaches a certain threshold said control unit being operative to generate a control signal instrumental to cause a reduction in the data occupancy level.

THE REFERENCE

Newman	5,457,687	Oct. 10, 1995

THE REJECTION

Claims 1-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Newman.

OPINION

We reverse the aforementioned rejection.

Each of the appellants' independent claims requires estimating a data occupancy level of at least a portion of a data network based at least on a rate of traffic units passing from an input to an output of a node. The appellants state that the data occupancy level is the amount of data being carried by the transport ring that interconnects the node with other nodes (specification, page 12, lines 19-20).

Newman discloses “a method and apparatus for reactive congestion control in an asynchronous transfer mode (ATM) network where the network is formed by the interconnection of nodes. Each of the nodes includes a forward path for transfer of information from source to destination through the network and a return path for returning explicit congestion control signals” (col. 5, line 64 - col. 6, line 3). Newman “employs a backward explicit congestion notification (BECN). When a queue exceeds a threshold, a request is made to send congestion signals, in the form of (BECN) cells, back to the sources of the virtual channels currently submitting traffic to it. On receipt of a BECN cell on a particular virtual channel, a source reduces it[s] transmission rate for the indicated virtual channel” (col. 6, lines 8-14).

The examiner argues that “[m]onitoring the queue length is ‘estimating a data occupancy level **(col. 54, line 8)** of at least a portion of the data network based at least on a rate of traffic units passing from said input to said output **(col. 54, lines 5-6)**, when the data occupancy level reaches a certain threshold **(col. 54, line 9)** said control unit being operative to generate a control signal **(BECN)** instrumental to cause a reduction in the data occupancy level.’ **(col. 54, line 10)**” (answer, page 6). The

portion of Newman relied upon by the examiner in making this argument discloses: “For the example being described, the arriving traffic load exceeds the rate at which traffic is removed from the queue so that the system is in saturation. When the system is in saturation, the length of the queue grows until it passes the threshold. BECN cells are then generated that reduce the amount of arriving traffic” (col. 54, lines 5-10). The examiner has not established that this disclosure that when an arriving traffic load exceeds the rate at which traffic is removed from the queue, the queue grows until it passes a threshold, is a disclosure of estimating the data occupancy level based upon a rate of passing traffic units.

The examiner argues (answer, page 5): “Newman discloses in figure 5, 2 paths. One path going from input to output starting at part 18-0 into part 18-01 along to part 53 which acts upon the input 20-n and does something in part 49. One skilled in the art can see that Newman is generating RM [reverse marker] cells on the basis of the rate of cells from in to out.” The examiner further argues that “[l]ooking at fig. 7, in the top part of the figure, part 52 has an input into the selector 63 which has an input into part 49, this also discloses ‘acting on the basis of rate of traffic units passing from input to output.” *See id*.

The examiner, however, does not explain how these portions of Newman disclose estimating a data occupancy level based upon a rate of traffic units passing from the input to the output.

For the above reasons we find that the examiner has not carried the burden of establishing a *prima facie* case of anticipation of the appellants' claimed invention.

DECISION

The rejection of claims 1-24 under 35 U.S.C. § 102(b) over Newman is reversed.

REVERSED

ERROL A. KRASS Administrative Patent Judge	)
TERRY J. OWENS Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
HOWARD B. BLANKENSHIP Administrative Patent Judge	)

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