

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JOHN T. BOATWRIGHT

---

Appeal No. 2005-1697  
Application No. 10/160,357

---

ON BRIEF

---

Before HAIRSTON, KRASS and BARRETT, Administrative Patent Judges.  
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-10.

The invention pertains to security systems for telephone networks. In particular, vulnerability of a telecommunication system is reduced by collecting statistics of each user's pattern of usage for a particular period of time and comparing these

Appeal No. 2005-1697  
Application No. 10/160,357

statistics to current usage. If a predetermined deviation is detected, then some restriction is placed upon the current call.

Representative independent claim 1 is reproduced as follows:

1. A method of determining if a use of a particular unit is fraudulent comprising the steps of,

monitoring the use of said particular unit to collect statistics concerning the use of said particular unit over a time period having a specific length to establish a normal usage pattern for said particular unit,

determining if more than a predetermined deviation exists between the use of said unit during a second period of time having said specific length and the said normal usage pattern,

taking a first type of action if said deviation is below a first value,

taking a second type of action if said deviation is above said first value.

The examiner relies on the following reference:

Cooper et al. (Cooper)                      5,335,265                      Aug. 2, 1994

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as anticipated by Cooper.

Reference is made to the briefs and answers for the respective positions of appellant and the examiner.

#### OPINION

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every

Appeal No. 2005-1697  
Application No. 10/160,357

element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

At the outset, we note that, in accordance with appellant's grouping of the claims at page 4 of the principal brief, all claims will stand or fall together. Accordingly, we will focus on independent claim 1.

It is the examiner's position that Cooper anticipates the instant claimed subject matter by reading the claimed "monitoring" step on call detail records of Cooper, wherein the call setup period is the claimed "period of time." The examiner considers steps 405-408 of Cooper's Figure 4 to read on the claimed "determining" step, wherein the second time period is the call setup period of a subsequent call. The claimed first and second types of action is said to correspond to steps 409 and 410 in Figure 4 of Cooper.

We disagree with the examiner.

Cooper is directed to the prevention of fraud in the use of a cell phone, particularly the fraud committed by "cloning" of a cell phone number. By measuring the amount of time between calls from a particular cell phone number and also determining the

Appeal No. 2005-1697  
Application No. 10/160,357

geographical location from which those calls were made, it is determined if it is feasible for the authorized caller to have been in both of those places, considering the time period between calls. For example, if a call is placed in New York from a particular cell number and a call is placed from that very same cell number in Los Angeles one hour later, fraud is highly suspect.

The instant invention is also directed to reducing fraud, but the instant system monitors a particular unit during two periods of time. The first period is one of normal use, a reference period, on which statistics are collected. The second period is the period that is being examined for fraud. If there is more than a predetermined deviation between the use of the unit in these two periods of time, the second use is deemed suspect.

We agree with the examiner that Cooper's authorized use of the cell phone which is monitored may be considered "monitoring the use of said particular unit to collect statistics concerning the use of said particular unit over a time period having a specific length." We also agree that Cooper may be said to determine if there is more than a predetermined deviation between the use of the unit during a second period of time, in that the

Appeal No. 2005-1697  
Application No. 10/160,357

use of the cell number in a geographical location impossible for the first user to arrive at in so short a time period will indicate fraud.

However, the instant claims require more. Specifically, they require the monitoring over a time period of specific length "to establish a normal usage pattern." It is not clear that one may consider the information monitored in Cooper to be a "usage pattern."

Moreover, and more importantly for our analysis, the instant claims also require that the second time period has "said specific length." That is, the second time period must be the same length as the first time period.

There is no indication in Cooper that the call setup periods, which the examiner appears to rely on for these lengths of time, is the same in both calls. While it may happen, in any two calls, that the call setup times will be the same, this will occur only by happenstance; it does not, by necessity, occur each time. The instant claims, on the other hand, require that the "time period having a specific length" and the "second period of time" have the same specific length every time. At best, the

Appeal No. 2005-1697  
Application No. 10/160,357

examiner is speculating, without supporting evidence, that two call setup periods in Cooper must be the same. An anticipation rejection under 35 U.S.C. § 102 may not properly be based on speculation.

Accordingly, the examiner's decision rejecting claims 1-10 under 35 U.S.C. § 102(e) is reversed.

REVERSED

	)	
KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
ERROL A. KRASS	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
LEE E. BARRETT	)	
Administrative Patent Judge	)	

EAK:hh

Appeal No. 2005-1697  
Application No. 10/160,357

ELMER GALBI  
MARGER JOHNSON AND MCCOLLOM  
1030 S.W. MORRISON ST.  
PORTLAND, OR 97025