

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

Appeal No. 2006-0657
Application No. 09/670,172

ON BRIEF

Before THOMAS, HAIRSTON, and RUGGIERO, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 18, 21 through 24 and 26 through 39.

The disclosed invention relates to a method and apparatus for selecting a time delay to wait before retransmitting a frame after detecting a collision on the network during an initial transmission of the frame. The time delay is selected using an algorithm that varies the time delay at a rate less than an exponential rate based on a number of collisions.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method of providing access to a network, comprising:

detecting a collision on the network during transmission of a frame;

waiting a time delay before retransmitting the frame;
and

selecting the time delay using an algorithm that varies the time delay at a rate less than an exponential rate based on a number of collisions.

The references relied on by the examiner are:

Yang et al. (Yang)	5,436,903	July 25, 1995
Kalkunte	5,963,560	Oct. 5, 1999

Claims 1, 2, 4 through 16 and 33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kalkunte.

Claims 3, 17, 18, 21 through 24, 26 through 32 and 34 through 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kalkunte in view of Yang.

Reference is made to the brief and the answer 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 anticipation rejection of claims 1, 2, 4 through 16 and 33, reverse the obviousness rejection of claims 3, 21 through 24, 29 through 32 and 34 through 39, and sustain the obviousness rejection of claims 17, 18 and 26 through 28.

Turning first to the anticipation rejection of claims 1, 2, 4 through 16 and 33, appellants argue (brief, page 7) that “[t]he wait time in Kalkunte is not selected for the purpose of *retransmitting* the data, but to transmit a new set of data, since the wait time of Kalkunte was selected based on the fact that the station has just won arbitration and sent its data.” We agree with appellants’ argument. Kalkunte specifically states (column 5, lines 16 through 18) that “FIGS. 3a-3e schematically depict the timing intervals that the stations 44 will wait after sensing the deassertion of the carrier before attempting transmission of a data packet” (emphasis added). Thus, the anticipation rejection of claims 1, 2, 4 through 16 and 33 is reversed because Kalkunte is not concerned with retransmitting data after a collision, and is not concerned with selecting a time delay using an algorithm that varies the time delay at a rate less than an exponential¹ rate based on a number of collisions.

Turning next to the obviousness rejection of claims 17, 18 and 26 through 28, we find that the obviousness rejection of claims 17 and 18 is sustained because Yang considered alone discloses that the number n of detected collisions can be less than 10

¹ According to appellants (specification, page 2), the IEEE 802.3 standard defines an exponential backoff algorithm. Kalkunte uses the IEEE 802.3 standard (column 3, lines 31 through 57).

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(column 6, lines 25 through 35), and that the obviousness rejection of claims 26 through 28 is sustained because Yang considered alone discloses that after a collision on a communications channel is detected (column 4, lines 15 through 21), a controller selects one of plural backoff algorithms (i.e., either the standard IEEE 802.3 backoff algorithm or a special backoff algorithm) after examining the contents of a data field in a data packet (column 3, lines 6 through 14 and column 4, lines 22 through 31). As indicated in In re Bush, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961), and In re Boyer, 363 F.2d 455, 458, n.2, 150 USPQ 441, 444, n.2 (CCPA 1966), the Board may rely on one reference alone in a multiple reference rejection under 35 U.S.C. § 103 without designating such an action as a new ground of rejection.

The obviousness rejection of claims 3, 21 through 24, 29 through 32 and 34 through 39 is reversed because neither Kalkunte nor Yang teaches or would have suggested to the skilled artisan a backoff algorithm other than the standard IEEE 802.3 backoff algorithm. The only other specific algorithm mentioned by Yang is one that is longer than the standard IEEE 802.3 backoff algorithm (column 6, lines 54 through 58; column 10, lines 14 through 18; column 11, lines 20 through 22).

DECISION

The decision of the examiner rejecting claims 1, 2, 4 through 16 and 33 under 35 U.S.C. § 102(b) is reversed, and the decision of the examiner rejecting claims 3, 21 through 24, 29 through 32 and 34 through 39 under 35 U.S.C. § 103(a) is reversed. The decision of the examiner rejecting claims 17, 18 and 26 through 28 under 35 U.S.C.

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§ 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136 (a) (1) (iv).

AFFIRMED-IN-PART

JAMES D. THOMAS Administrative Patent Judge))))))
KENNETH W. HAIRSTON Administrative Patent Judge) BOARD OF PATENT) APPEALS) AND) INTERFERENCES))
JOSEPH F. RUGGIERO Administrative Patent Judge))

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