The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 SVEN-RUNE OLOFSSON et al.

Appeal No. 2006-0759
Application 09/582,637

ON BRIEF[1]

Before THOMAS, HAIRSTON, and KRASS, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 34 through 63.

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[1] The panel has only recently received this appeal for decision.

Representative claim 34 is reproduced below.

34. An active POTS splitter comprising:

active aplitter circuitry to be connected to a subscriber line for separating analog POTS signals from xDSL signals; and

line test circuitry associated with said active splitter circuitry for transmitting a test signal on the line based upon at least one of an event and receipt of a test request signal, said line test circuitry having associated therewith a unique identity code transmitted with the test signal.

The following references are relied on by the examiner:

Dresser	5,357,556	Oct. 18, 1994
Kennedy et al. (Kennedy)	5,799,060	Aug. 25, 1998 (filed May 16, 1996)
Winkler et al. (Winkler)	5,870,451	Feb. 9, 1999 (filed Nov. 6, 1997)
Chan et al. (Chan)	5,974,115	Oct. 26, 1999 (filed Nov. 15, 1996)
Keefe et al. (Keefe)	6,005,921	Dec. 21, 1999 (filed Aug. 28, 1997)
Bingel et al. (Bingel)	6,014,425	Jan. 11, 2000 (filed Sep. 29, 1997)
Lechleider et al. (Lechleider)	6,091,713	Jul. 18, 2000 (filed Apr. 13, 1998) (Provisional filing date Sep. 8, 1997)
Scholtz et al. (Scholtz)	6,301,337	Oct. 9, 2001 (filed Sep. 18, 1997)
Rybicki et al. (Rybicki) (European Patent Application)	EP 0,795,977	Sep. 17, 1997

All claims on appeal, claims 34 through 63, stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the

examiner relies upon Scholtz in view of Dresser or Lechleider in a first stated rejection as to claims 34 through 36, 38, 39, 42, 46 through 51, 53 and 61 through 63. To this combination of references, the examiner adds the European patent as to claims 40, 41, 55 and 56; adds Bingel as to claims 44 and 45; adds Winkler as to claims 37, 43, 52, 54 and 60; and adds Kennedy or Keefe or Chan as to claims 57 through 59.

Rather than repeat the positions of the appellants and the examiner, reference is made to the Brief (no Reply Brief has been filed) for the appellants' positions, and to the Answer for the examiner's positions.

OPINION

For the reasons set forth by the examiner in the Answer, as expanded upon here, we sustain the rejection of all claims on appeal under 35 U.S.C. § 103. In accordance with appellants' grouping at the bottom of page 4 of the Brief, claims 34 through 63 are to be considered together as a single group. In light of this, appellants only present arguments as to

the first stated rejection and to the references of Scholtz, Dresser and Lechleider used to reject them.

At the outset, we note that according to appellants' "Background of the Invention" at pages 2 and 3 of the specification as filed, both passive and active POTS (Plain Old Telephony Service) splitters were known in the art. Appellants have disclosed no specifics of any active POTS splitter design in the specification and drawings as filed. Additionally, appellants' contribution in the art appears to be the enhancement of an active splitter design by the incorporation therewith of a test functionality or line testing means. This line testing means also appears to be known in the art by itself since there are no details of them presented in the specification and drawings as filed.

The earlier-noted first stated rejection includes each independent claim 34, 46, 49 and 63. Apparatus claims 34 and 63 appear to bear much correspondence to each other. The claimed active POTS splitter is said to encompass the use of an active splitter and a line test circuitry which is merely to be connected and is not stated to be positively connected to any subscriber line for the purpose of separating analog POTS signals

and xDSL signals. These signals are also not positively stated to be generated within the claim. Of note, however, is the fact

that the line test circuitry is not stated to be associated with any central office or customer location to the extent disclosed and argued in the Brief. Not only do claims 34 and 63 not positively recite that the line test circuitry is located with the active splitter at the location of the customer (as disclosed), it is not positively stated that the actual testing operation as recited in the second clause of these claims actually tests for analog POTS signals or xDSL signals. In contrast, these ambiguities are essentially not present in independent method claims 46 and 49.

There appears to be no dispute that Scholtz teaches generally an active POTS splitter arrangement to be used according to the environment in prior art figure 2 to test various physical locations between a customer premise and a central office by the use of test phone 60. Column 1 notes that POTS splitters were known to be utilized at each end of the subscriber line.

Although we tend to agree with the appellants' views in the Brief that the operational circuitry 70 in the various

portions of figure 3 and as labeled but unnumbered elements in the portions of figure 6 do not necessarily transmit a test

signal (Brief, page 7), it appears to us that the normal operation of a phone from a subscriber’s location may appear to be useable as a test signal to the extent broadly recited. Although not clearly recited in independent claims 34 and 63 as noted earlier, it appears to us that the artisan would well appreciate that some form of testing signal is transmitted either from the central office or the location of where the test phone 60 is located, such as at the customer’s location. Prior art troubleshooting and testing utilizing testing handsets was known in the art as discussed at column 1, line 46, through column 2, line 8; column 5, line 51, through column 6, line 7; and column 9, line 50, through column 10, line 14 of Scholtz.

The active POTS splitter arrangement appears to be best depicted in figures 6A and 6B of Scholtz which respectively shows low pass filters and high pass filters utilized for respective filtering operations to detect analog POTS signals and xDSL signals. In such an environment, Scholtz does appear to at least suggest to the artisan that a test signal is placed upon the

subscriber line from a customer's location since test phone 60 in prior art figure 2 may be placed at junction box 62.

Correspondingly, the examiner's characterizations of Dresser and Lechleider are noted to the extent the examiner does generally notify a reader of their teachings and suggestions. Dresser's enhanced remote MTU or maintenance termination unit 8 in figures 3 through 6 clearly indicates to the reader the capability to inject into the subscriber line between the subscriber and the central office test signals from the subscriber's location. Note the teaching at column 1, lines 6 through 11; column 3, lines 33 through 35; and the teachings at column 6, lines 14 through 16 and 37 through 44. These capabilities exist in addition to the conventional approach of injecting test signals onto the subscriber line from the central office location.

Alternatively, the reference to Lechleider makes clear the ability of his system and apparent preference to inject test signals from the customer premises onto the subscriber line to the central office. Note the teachings in the last half of the abstract at lines 13 through 21; column 3, lines 7 through 13,

38 through 48 and line 63 through column 4, line 3; the showing in figure 1 in addition to its corresponding teachings at column 4, lines 27 through 41; column 5, line 43, through column 6, line 7; and column 7, line 23, through column 8, line 4.

These teachings constitute an expanded view of these references from that which has been relied upon by the examiner and each also clearly teaches the fact that it was well known in the art to use some kind of identification codes including caller ID indications to identify subscriber loops and/or devices that are connected therewith for addressability purposes to uniquely identify test requests or codes sent along the subscriber’s line from the central office to the subscriber.

From our review of the three references relied upon by the examiner, it appears to us that the artisan clearly would have found it obvious to have incorporated either the teachings of Dresser or Lechleider into the overall active POTS filter arrangement of Scholtz to enhance its testing capability to the extent testing is suggested anyway in that reference. On the other hand, we find it would have been equally obvious for the artisan to have separately combined the teachings of the active POTS filter of Scholtz with either Dresser or Lechleider to

enhance their respective capabilities, such as to also make them useable in an active POTS filter environment as in Scholtz. The respective combinations of Scholtz and Dresser or Scholtz and Lechleider, taken from the perspective of either reference as a starting point within either combination, would have been obvious to the artisan since the resulting arrangement obviously would have enhanced the environments of use and the testing capabilities respectively taught in any one of the references alone.[2]

Since no distinguishing arguments have been presented to us among independent claims 34, 46, 63 and 49, and their respective dependent claims in the first stated rejection, we sustain the rejection of all of them. Correspondingly, since no arguments have been set forth as to the remaining claims on appeal, also rejected separately under 35 U.S.C. § 103, they also fall with our consideration of their respective parent independent claims. Accordingly, the decision of the examiner rejecting all claims on appeal under 35 U.S.C. § 103 is affirmed.

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[2] The various other references noted by the examiner in the examiner's responsive arguments portion of the Answer have not been considered in our deliberations since they have not been relied upon in a formal statement of the rejection.

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

AFFIRMED

JAMES D. THOMAS Administrative Patent Judge	)	
KENNETH W. HAIRSTON Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ERROL A. KRASS Administrative Patent Judge	)	

JDT:psb

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