

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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 DAVID V. GUNTER, DENNIS A. MORGAN, KENNETH L. CROCKER,
EDUARD GUZOVSKY, RICHARD H. LAMB, and BRUCE JOHNSON

Appeal No. 2006-1641
Application No. 09/794,586

HEARD: July 12, 2006

Before JERRY SMITH, BARRY, and BLANKENSHIP, Administrative Patent Judges.
BLANKENSHIP, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-33, which are all the claims in the application.

We affirm.

Appeal No. 2006-1641
Application No. 09/794,586

BACKGROUND

The invention relates to a system and method for detecting, monitoring, and maintaining an Internet Connection Sharing Device (ICSD). Representative claim 13 is reproduced below.

13. A method for managing an Internet Connection Sharing Device (ICSD), comprising:

detecting the presence of an ICSD by requesting that the ICSD generate an ICSD status message;

generating an ICSD status message; and

interpreting an ICSD status message.

The examiner relies on the following reference:

Parameswaran Nair et al. (Nair) 5,724,356 Mar. 3, 1998

Claims 1-33 stand rejected under 35 U.S.C. § 102 as being anticipated by Nair.

We refer to the Final Rejection (mailed May 5, 2005) and the Examiner's Answer (mailed Nov. 1, 2005) for a statement of the examiner's position and to the Brief (filed Oct. 5, 2005) and the Reply Brief (filed Dec. 29, 2005) for appellants' position with respect to the claims which stand rejected.

OPINION

Based on appellants' arguments in the Brief, we select claims 13 and 31 as representative in deciding this appeal. See 37 CFR § 41.37(c)(1)(vii). The examiner's

Appeal No. 2006-1641
Application No. 09/794,586

rejection of the claims as being anticipated by Nair is set forth at page 3 of the Answer, supported by further reasoning at pages 4 through 9.

Claim 13 recites, inter alia, detecting the presence of an Internet Connection Sharing Device (ICSD) by requesting that the ICSD generate an ICSD status message. Columns 10 and 11 of Nair provide principal description of PCs on network 20 (Fig. 1) requesting and receiving status messages from LAN modem node 100.

Appellants contend, however, that the examiner has erred in finding that LAN modem node 100 of Nair is an ICSD within the meaning of claim 13.

Appellants refer us to the instant specification (page 1, lines 9-15; page 5, lines 19-22) in suggesting that the term requires a gateway to the Internet for a LAN, where a plurality of devices on the LAN can benefit from concurrently sharing one Internet connection, and a “time-sharing or frequency concurrently sharing” of the Internet connection. (Brief at 8.)

We have reviewed the specification, and the sections do not set forth any limiting definition for ICSD as suggested by appellants. The “Background” at page 1 indicates that an ICSD “may” serve as a gateway to the Internet for a LAN. Sharing of an Internet connection “may” be accomplished via the ICSD. The section at page 5 indicates that an ICSD “may” be a computer executing a process that facilitates time-sharing or frequency sharing of an Internet connection, such as a modem connection, a DSL connection, and/or a wireless connection.

Appeal No. 2006-1641
Application No. 09/794,586

Appellants acknowledge in the Brief (at 7) that with the Nair system, LAN modem node 100 allows a communications channel to be open to the Internet (e.g., via dial-up to an Internet service provider at public data network 80; Nair col. 3, ll. 51-64; Fig. 1). Assuming for the moment that Nair describes but a “single” channel to the Internet, we observe that instant claim 13 does not recite what the ICSD does, nor how an Internet connection may be shared.

We agree with the examiner’s finding that LAN modem node 100 of Nair serves as a gateway to the Internet for local network 20. We also agree with the examiner’s finding that LAN modem node 100 allows sharing of the Internet connection by PCs on local network 20. We agree with the examiner’s claim interpretation that claim 13 does not specify how the Internet connection may be shared. We agree with the examiner’s claim interpretation that claim 13 does not specify the content of the status message, and thus may refer to “off LAN resources” rather than status of the device itself, notwithstanding appellants’ indication to the contrary (e.g., Brief at 8). As we are not persuaded that appellants’ specification defines the term ICSD in a way that distinguishes over the LAN modem node 100 of Nair, we sustain the § 102 rejection of claims 1-30 and 33.

Claim 31 (with claim 32 depending) is more specific with respect to the ICSD in the recitation of a system including an ICSD “that allows the concurrent sharing of” an Internet connection.

Appellants argue, repeatedly, that Nair discloses a system whereby only a single connection to the Internet may be present at a particular time, but appear to base the view on column 3, lines 52 through 64 and column 5, lines 37 through 42 of the reference (Reply Brief at 4). We do not find the sections to support appellants' allegation that the reference states that ONE LAN device can communicate with ONE off-LAN resource such as any public communication network. The examiner points out, to the contrary, that Nair's system comprises at least two modems (e.g., Figs. 2 and 3), thus providing for a shared connection as claimed. (Answer at 5.) Moreover, the examiner discusses in the Answer what the artisan knew of communications within a conventional LAN, such as the LANs described in the specification and the reference.

Appellants' remarks in the briefs alleging things that are required of "concurrent sharing of an Internet connection" suggest, at best, that the recitation was a term of art at the time of invention that would serve to distinguish over the system described by Nair. Appellants have not provided any evidence in support of the position, if that is the position. Arguments of counsel are not evidence. See, e.g., Meitzner v. Mindick, 549 F.2d 775, 782, 193 USPQ 17, 22 (CCPA 1977); In re Pearson, 494 F.2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Moreover, as the examiner notes and appellants admit, the instant disclosure did not contain the term "concurrent" sharing. We are unsure what it is we are to read from the specification into instant claim 31 in order to distinguish the claim over Nair. Whatever the thing or things may be, we cannot read limitations from the specification

Appeal No. 2006-1641
Application No. 09/794,586

into the claims when argued limitations are not recited in the claims. During prosecution before the USPTO, where claims can be amended, the scope of a claim cannot be narrowed by reading disclosed limitations into the claim. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550 (CCPA 1969).

We have considered all of appellants' arguments but are not persuaded that the examiner's finding of anticipation is in error. We sustain the rejection of claims 1-33 under 35 U.S.C. § 102 as being anticipated by Nair.¹

CONCLUSION

The rejection of claims 1-33 is affirmed.

¹ We add that claims 9 through 12, claiming a "data packet," do not appear to be drawn to statutory subject matter, in view of the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility," 1300 OG 142 (Nov. 22, 2005). Further, claim 8 could also be rejected under 35 U.S.C. § 112, fourth paragraph, for failure to further limit the claim from which it depends. Claim 8 requires the "components" of base claim 1, but not the "system" of claim 1.

Appeal No. 2006-1641
Application No. 09/794,586

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

AFFIRMED

JERRY SMITH)
Administrative Patent Judge)
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Administrative Patent Judge) AND
) INTERFERENCES
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Appeal No. 2006-1641
Application No. 09/794,586

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