

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JASON M. BREWER

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Appeal No. 2007-0028  
Application No. 10/694,277

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ON BRIEF

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

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 30 through 37, 42 through 46, 49 through 63, 66 through 70, 73 and 74. After consideration of the brief, the examiner objected to claims 46 and 70 as being dependent upon a rejected base claim, and indicated that the two claims would be allowable if rewritten in independent claim form including all of the limitations of the base claims and any intervening claims (answer, page 3). Accordingly, claims 30

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through 37, 42 through 45, 49 through 63, 66 through 69, 73 and 74 remain before us on appeal.

The disclosed invention relates to a link layer gateway computer that operates to communicate a data packet from a source host computer in a first network to a destination host computer in a second network.

Claim 30 is illustrative of the claimed invention, and it reads as follows:

30. A link layer gateway computer operable to communicate a data packet from a source host computer selected from one of a plurality of host computers coupled to a first network medium to a destination host computer selected from one of a plurality of host computers coupled to a second network medium, wherein:

a first network interface circuit enables connection of said link layer gateway computer to said first network medium; and

a second network interface circuit enables connection of said link layer gateway computer to said second network medium;

the link layer gateway computer has an assigned protocol address and a computer protocol handler;

responsive to either of the first and second network interface circuits receiving a data packet, the computer protocol handler evaluates a destination protocol address in the received data packet;

the computer protocol handler is responsive to the received data packet if the destination protocol address corresponds to the assigned address of the link layer gateway computer;

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wherein the link layer gateway computer is programmed to execute a link layer protocol handler coupled to communicate with each of the first and second network interface circuits;

wherein, responsive to either of the first and second network interface circuits receiving a data packet comprising an address pairing communication, the link layer protocol handler evaluates a destination protocol address in the received data packet;

wherein, responsive to determining that the destination protocol address does not correspond to the assigned address of the link layer gateway computer, the link layer protocol handler determines if a source host computer which transmitted the received data packet and the destination host computer designated by the destination protocol address are not on the same one of either the first network medium or the second network medium;

wherein:

responsive to the link layer protocol handler determining that the source host computer which transmitted the received data packet and the destination host computer designated by the destination protocol address are not on the same one of either the first network medium or the second network medium, the link layer protocol handler communicates a reply data packet to the source host computer which transmitted the received data packet;

the reply data packet comprises an address pairing; and

the address pairing comprises the destination protocol address and a hardware physical address corresponding to a selected one of the first network interface circuit or the second network interface circuit, wherein the selected network interface circuit is coupled to the same network medium as the source host computer which transmitted the received data packet.

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The references relied on by the examiner are:

Krause et al. (Krause)	5,590,285	Dec. 31, 1996
Templin et al. (Templin)	5,781,550	July 14, 1998
Wright, Jr. et al. (Wright)	5,857,201	Jan. 5, 1999
Brewer	6,657,999	Dec. 2, 2003 (filed Mar. 31, 1997)

Hoffman et al. (Hoffman), “IEEE 1394: A Ubiquitous Bus,” IEEE, 1995, pages 334 through 338.

Finlayson et al. (Finlayson), “A Reverse Address Resolution Protocol,” Request For Comments: 903, Stanford University, June 1984, pages 1 through 4.

Claims 30 through 37, 42 through 46, 49 and 50 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 through 15 of Brewer in view of Templin.

Claims 30, 31, 42 through 45, 49 through 60, 66 through 69, 73 and 74 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Templin in view of Finlayson.

Claims 32, 35, 36 and 61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Templin in view of Finlayson and Krause.

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Claims 33, 34, 62 and 63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Templin in view of Krause and Hoffman<sup>1</sup>.

Claim 37 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Templin in view of Finlayson and Wright.

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

#### OPINION

We have carefully considered the entire record before us, and we will sustain the obviousness-type double patenting rejection of claims 30 through 37, 42 through 46, 49 and 50, and reverse the obviousness rejections of claims 30 through 37, 42 through 45, 49 through 63, 66 through 69, 73 and 74.

In response to all of the rejections on appeal, appellant argues (brief, pages 16 through 19 and 26 through 28; reply brief, pages 5 through 8) that claim 30 recites, among other things, the following:

wherein, responsive to determining that the destination protocol address does not correspond to the assigned address of the link layer gateway computer, the link layer protocol handler determines if a source host computer which transmitted the received data packet and

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<sup>1</sup> Since these claims depend from claims 30 and 51, Finlayson should have been included as a reference in the rejection.

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the destination host computer designated by the destination protocol address are not on the same one of either the first network medium or the second network medium;

wherein:

responsive to the link layer protocol handler determining that the source host computer which transmitted the received data packet and the destination host computer designated by the destination protocol address are not on the same one of either the first network medium or the second network medium, the link layer protocol handler communicates a reply data packet to the source host computer which transmitted the received data packet;

the reply data packet comprises an address pairing;  
and

the address pairing comprises the destination protocol address and a hardware physical address corresponding to a selected one of the first network interface circuit or the second network interface circuit, wherein the selected network interface circuit is coupled to the same network medium as the source host computer which transmitted the received data packet.

According to the appellant (brief, page 16), “there are items in Claim 30 that precede the above quoted language that are admitted by the Specification to be, standing alone, known features; however, with respect to the language set forth above, additional and important features/functionality are provided yet the Examiner fails not only to demonstrate how such is shown in the art, but the

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Examiner also fails to provide sufficient clarity of how the art relates at all to these aspects.”

Turning first to the obviousness-type double patenting rejection, we agree with the appellant’s argument (brief, pages 27 and 28) that the “reply data packet” to the source host computer and an “address pairing” are not set forth in claim 1 of Brewer. On the other hand, we find that the above-quoted excerpt from claim 30 is found in claims 12 through 15 of Brewer with minor word changes. The minor word changes between claim 30 on appeal and claims 12 through 15 in Brewer preclude us from reaching a decision that the claims should have been rejected under 35 U.S.C. § 101 for same invention double patenting. The minor differences between the claims do not, however, preclude us from reaching the conclusion that the examiner was correct in making a finding of obviousness-type double patenting. In summary, the obviousness-type double patenting rejection of claims 30 through 37, 42 through 46, 49 and 50 is sustained.

Turning to the obviousness rejection of claims 30, 31, 42 through 45, 49 through 60, 66 through 69, 73 and 74, the examiner acknowledges (answer, page 5) that “Templin does not disclose communicating a reply data packet to the source host computer, where the data packet reply comprises the destination protocol

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address and a hardware physical address to the source host computer.” Appellant argues (reply brief, page 8) that “Finlayson does not describe an instance where the reply address relates to anything other than either the source and the responder and, for this reason, the art, even if combined per the Examiner, does not show the elements of claim 30.” We agree with appellant’s argument. Thus, the obviousness rejection of claims 30, 31, 42 through 45, 49 through 60, 66 through 69, 73 and 74 is reversed because the reply to the source and responder computers in Finlayson does not include a physical hardware address of a link layer computer as required by all of the claims on appeal.

The obviousness rejections of claims 32 through 37 and 61 through 63 are reversed because the teachings of Krause, Hoffman and Wright fail to cure the noted shortcomings in the teachings of Templin and Finlayson.

### DECISION

The decision of the examiner rejecting claims 30 through 37, 42 through 46, 49 and 50 under the judicially created doctrine of obviousness-type double patenting is affirmed, and the decision of the examiner rejecting claims 30 through 37, 42 through 45, 49 through 63, 66 through 69, 73 and 74 under 35 U.S.C. § 103(a) is reversed.

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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

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
ERROL A. KRASS	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
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JEAN R. HOMERE	)	
Administrative Patent Judge	)	

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