

The opinion in support of the decision being entered today is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VALÉRIA MOLNAR

Appeal 2007-0929
Application 10/000,774
Technology Center 2100

Decided: August 16, 2007

Before JOHN C. MARTIN, HOWARD B. BLANKENSHIP,
and MAHSHID D. SAADAT, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from a final rejection of claims 21-36, which are all of the claims pending in this application, as claims 1-20 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We affirmed.

Appellant has invented a method and an apparatus for routing a message from an origin to a destination which subscribes to multiple networks wherein a transmission route for the message is selected among the multiple networks (Specification 3). The selection of the route depends on a value of a route indicator (*id.*) which is maintained valid until a subsequent delivery error occurs indicating delivery failure, at which point its value will be changed again (*id.* at 6).

Claim 21, which is representative of the claims on appeal, reads as follows:

21. A method for routing a message from an origin to a destination, said destination being adapted to have a subscription to plural networks adapted to transmit messages, said method comprising the steps of:

determining, whether said destination has a multiple network subscription;

selecting a route for said message through said multiple networks, if said destination has a multiple network subscription; and

transferring said message from said origin to said destination via said selected route,

wherein said selected route is selected dependent on a value of a route indicator, wherein said value of said route indicator is dependent on an indication of a delivery error for a message previously to be routed to said destination.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Robinson	WO 97/07642	Feb. 27, 1997
Doviak	US 6,418,324 B1	Jul. 9, 2002

The Examiner rejected claims 21-36 under 35 U.S.C. § 103(a) based upon the teachings of Doviak and Robinson.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103. Appellant urges that the proper interpretation of the claimed term “previously to be routed to said destination” delimits the delivery error to that of a message that has already been tried to be sent or routed (Br. 3; Reply Br. 3). Based on such interpretation, Appellant argues that the network selection criteria in Doviak are based on the User Configuration parameters and not on an indication of a delivery error of a previously sent message, as recited in the claims (Br. 4-5). Therefore, the issue turns on whether there is a legally sufficient justification for combining the disclosures of Doviak and Robinson and if so, whether the combination of the applied references teaches the claimed subject matter including selecting a route based on an indication of a delivery error for a message previously to be routed to the destination.

FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal and are believed to be supported by a preponderance of the evidence.

1. Appellant’s claim 21 requires that the transmission route be selected dependent on a value of a route indicator, whose value is dependent on an indication of a delivery error for a message previously to be routed to the destination. This recitation is consistent with the disclosure related to the

value of parameter “ROUTE_IND,” which is valid until a delivery error is received and the parameter is changed (Specification 6: 5-24).

2. Doviak relates to a method and system for transporting data over dissimilar communications media between a remote mobile or fixed terminal device and a host system (Abstract). A router selects a communications network in accordance with user configured parameters (*id.*).

3. Doviak further describes transportation of data to include determining wireless communications link selection criteria (col. 6, ll. 19-24) which uses two classes of parameters to determine the next network to use for transport of data (col. 6, ll. 56-59).

4. Doviak’s switching system switches networks during the time between the transport of consecutive data packets (col. 6, ll. 53-55).

5. Figure 30 of Doviak shows Router 200, which enables the mobile device to selectively transmit and receive data over a plurality of networks according to user configured parameters (col. 29, ll. 48-53).

6. The router includes a Decision process 206 which monitors the user configuration parameters 208 and the Network Availability function 210 and specifies a network to be substituted for the network currently in use after its availability is checked by Network Availability function 210 (col. 30, ll. 4-14; col. 34, ll. 19-32).

7. Doviak discloses that the Network Availability function 210 periodically interrogates each Network Interface 214 and passes the status of each interface to Decision process 206 to be considered in determining what the “next Network” should be (col. 34, ll. 19-36).

8. Specifically, Network Availability 210 in Doviak may determine if the Network Interface 214 is installed; if the Network Interface 214 is properly configured and functioning properly; if the Network Interface 214 is connected to the Network, on-line, and available for sending/receiving messages; and if the Network Interface 214 is in good health (col. 34, ll. 19-26). In a CDPD network, the Network Availability 214 determines if the Received Signal Strength Indication (RSSI) is sufficient to transmit relatively error-free data (col. 34, ll. 42-45). Indicators of health and connectivity status include, but are not limited to, RSSI, Clear to Send (CTS), Channel Clear/Channel Ready, and Transmit Grant (col. 35, ll. 51-56).

9. The above interrogation process may be accomplished by monitoring a timer tick (provided by the switch microprocessor), which instructs the Network Availability 210 to query each Network Interface 214 (col. 34, ll. 27-30).

10. The status of each Network Interface 214 is then passed to the Decision process 206, which determines what the “next Network” will be if the result of the interrogation indicates that the "current Network" is experiencing transmission problems (col. 34, ll. 32-36).

11. After describing the user configuration parameters, which are used for selecting the “current network” and the “next Network” (col. 34, l. 56 through col. 35, l. 36), Doviak describes using these metrics (i.e., the user configuration parameters) to instruct Router 200 how to select a particular network (col. 35, ll. 37-43).

12. The Examiner does not contend that any of Doviak’s user configuration parameters represent delivery errors. Instead, the Examiner

contends that the Network Availability function 210 detects delivery errors and, more particularly, delivery errors for messages previously to be routed to destinations.

13. Doviak further discloses that Decision process 206 continuously examines the User Configured parameters to determine the next network to use in case the current network becomes unavailable (col. 35, ll. 58-62), i.e., starts “experiencing transmission problems” (col. 34, l. 36). When it is determined that the current network is no longer available, the Decision process 206 queries Network Availability function 210 to determine whether the next network is available, i.e., installed, configured, on-line, and in good health (col. 35, l. 66 through col. 36, l. 16). If the next network is determined to be available, the Router Core 204 actuates Switch 212 to physically connect the next Network as the current Network (col. 36, ll. 1-5).

PRINCIPLES OF LAW

1. Scope of claims

Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298, 67 USPQ2d 1132, 1135-36 (Fed. Cir. 2003). The claim construction analysis begins with the words of the claim. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582, 39 USPQ2d, 1573, 1576 (Fed. Cir. 1996). Claims will be given their broadest reasonable interpretation consistent with the specification, and limitations appearing in

the specification are not to be read into the claims. *In re Zletz*, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

2. *Obviousness*

To reach a conclusion of obviousness under § 103, the Examiner bears the burden of producing factual basis supported by teaching in a prior art reference or shown to be common knowledge of unquestionable demonstration. Our reviewing court requires this evidence in order to establish a prima facie case. *In re Piasecki*, 745 F.2d 1468, 1471-72, 223 USPQ 785, 787-88 (Fed. Cir. 1984).

Furthermore, the test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. *See In re Kahn*, 441 F.3d 977, 987-988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), *In re Young*, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

ANALYSIS

1. *Scope of Claim 21*

Claim 21 specifies that the “route indicator” has a “value” that is “dependent on an indication of a delivery error for a message previously to be routed to said destination.” The Examiner contends that the phrase “a message previously to be routed to said destination” is broad enough to read on a message previously intended for routing to the destination, whether or not an attempt for its transmission was made that resulted in failure (Answer 6-8). The Examiner further contends that the recited “indication of a

delivery error” for such a message is broad enough to read on an indication that the intended network was experiencing transmission problems that would have interfered with delivery of the message (*id.* at 9-10). Appellant responds that the language of claim 21 indicates to one of ordinary skill in the art that a message routing attempt was made, but the message was not completely routed because of a delivery error (Reply Br. 2). Appellant further argues that the term “to be routed” necessarily refers to an actual delivery attempt previous to the setting of the route indicator value because such value is dependent on an indication of delivery error of that message and therefore must be based on a message that was actually sent to the destination but was not completely delivered (Reply Br. 3).

We agree with the Examiner’s interpretation.

2. *Obviousness Rejection*

The Examiner reads the claimed “route indicator” having a “value” that is “dependent on an indication of a delivery error for a message previously to be routed to said destination” on the network availability status of the current network after it has been changed to unavailable as a result of experiencing transmission problems (Answer 9-10). The Examiner reads the step of “selecting a route for said message . . . dependent on a value of a route indicator” on Decision process 206 when it checks the availability of the selected next network to determine that it is available before physically connecting it as the new current network (*id.*).

Appellant concedes that Doviak’s network selection process is based in part on network availability status (Reply Br. 2-3) but denies that the network availability status represents a delivery error for a message previously to be routed to said destination, as required by the claim.

According to Appellant, “[s]imply because a network discussed in Doviak may experience transmission problems, prompting a decision to select another network[,] does not mean that delivery error of a message occurred” (Reply Br. 4). We agree with the Examiner that Doviak’s detection of transmission problems on the current network can accurately be characterized as “an indication of a delivery error for a previous message to be sent,” which we have construed to mean “an indication of a delivery error for a message previously intended to be sent.” The detection of transmission problems on the current network is an indication that continued transmission on that network “will cause delivery errors” (Answer 10) for a message intended for any destination served by the current network , which is enough to satisfy the claim language at issue.

Appellant further disputes the combinability of Doviak and Robinson based on the assertion that multiple network subscription of the destination is already known in Doviak (Br. 6; Reply Br. 5). Appellant points to specific portion in Doviak teaching communication over multiple networks and admits that combining Robinson’s determination of the existing multiple network subscription would be unnecessary (*id.*).

Relying on Appellant’s admission that the teachings in Robinson the Examiner intended to combine with Doviak are actually present in Doviak and without any need to address Robinson, we find that the claimed subject matter in claim 21 would have been obvious within the meaning of 35 U.S.C. § 103.¹

¹ The Board may rely on less than all of the references applied in an obviousness rejection without designating it as a new ground of rejection. *See In re Bush*, 296 F.2d 491, 496, 131 USPQ 263, 266-67 (CCPA 1961); *In*

CONCLUSION OF LAW

Because Appellant has failed to point out any error in the Examiner's position, we are affirming the § 103 rejection with respect to claim 21 and also with respect to claims 22-36, which are argued merely based on the same reasons discussed in relation with claim 21 (Br. 6-7). Therefore, we sustain the 35 U.S.C. § 103 rejection of claims 21-36 over Doviak and Robinson.

DECISION

The decision of the Examiner rejecting claims 21-36 is affirmed.

re Boyer, 363 F.2d 455, 458 n.2, 150 USPQ 441, 444 n.2 (CCPA 1966). Additionally, it is well settled that “anticipation is the epitome of obviousness.” *In re McDaniel*, 293 F.3d 1379, 1385, 63 USPQ2d 1462, 1466-67 (Fed. Cir. 2002) (quoting *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 USPQ 193, 198 (Fed. Cir. 1983); *In re Fracalossi*, 681 F.2d 792, 794, 215 USPQ 569, 571 (CCPA 1982)).

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

AFFIRMED

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