

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SANCHAITA DATTA and RAGULA BHASKAR

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Appeal 2008-0069  
Application 10/034,197  
Technology Center 2100

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Decided: July 8, 2008

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Before JEAN R. HOMERE, JAY P. LUCAS, and STEPHEN C. SIU,  
*Administrative Patent Judges.*

SIU, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-21. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

#### A. INVENTION

The invention at issue involves computer network data transmission (Spec. 1). In particular, data sites are connected over multiple parallel private networks (*id.* 9). When one network fails, the failure is sensed by a controller, and traffic is automatically routed through one or more other private networks (*id.* 10).

#### B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows:

1. A controller which controls access to multiple independent private networks in a parallel network configuration, the controller comprising:

a site interface connecting the controller to a site;

at least two private network interfaces; and

a packet path selector which selects between private network interfaces according to a specified criterion;

wherein the controller receives a packet through the site interface and sends the packet through the private network interface that was selected by the packet path selector.

#### C. REJECTION

Claims 1-3 and 8-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,948,069 (“Kitai”) and U.S. Patent No. 6,209,039 (“Albright”). Claims 4, 13-16 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Albright, and U.S. Patent

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No. 5,910,951 (“Pearce”). Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Albright, and U.S. Patent No. 6,546,423 (“Dutta”). Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Albright, and U.S. Patent No. 6,195,680 (“Goldszmidt”). Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Albright, Pearce, and U.S. Patent No. 6,546,423 (“Dutta”). Claim 19 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Pearce, and Goldszmidt. Claims 20 and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kitai, Albright, Pearce and Goldszmidt.

## II. CLAIM GROUPING

“When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(vii) (2006).<sup>1</sup>

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<sup>1</sup> We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

Appellants argue claims 1-3, 8-12, 14, 18, and 20 as a group (Fourth Revised Substitute App. Br. 18).<sup>2</sup> Claims 1-3 and 8-12 of the group are subject to one ground of rejection, claims 14 and 18 of the group are subject to a second ground of rejection, and claim 20 is subject to a third ground of rejection. We group claims 1-3 and 8-12, which are subject to the same ground of rejection, as a first group. Because Appellants do not provide additional arguments for claims 14 and 18, we group claims 14 and 18 with claims 1-3 and 8-12. Appellants also do not provide additional arguments for claim 20. Therefore, we group claim 20 with claims 1-3, 8-12, 14, and 18.

Appellants also argue claims 4, 13, 15, 16 and 21 as a group (Fourth Revised Substitute App. Br. 19). Claims 4, 13, 15, and 16 are subject to one ground of rejection and claim 21 is subject to a different ground of rejection. We group claims 4, 13, 15, and 16, which are subject to the same ground of rejection, as a second group. Because Appellants do not provide additional arguments for claim 21, we consider claim 21 with claims 4, 13, 15, and 16.

Appellants argue 6 and 7 as a group and claims 5, 17, and 19 separately (Fourth Revised Substitute App. Br. 20-21). We group claims 6 and 7 as a third group.

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<sup>2</sup> We rely on the “Fourth Revised Substitute Appeal Brief,” filed March 6, 2007 in lieu of the original and previously filed briefs.

We select claim 1 as the sole claim on which to decide the appeal of the first group, claim 4 as the sole claim on which to decide the appeal of the second group, and claim 6 as the sole claim on which to decide the appeal of the third group. We decide claims 5, 17, 19, 20, and 21 separately.

### III. CLAIMS 1-3, 8-12, 14, 18, AND 20

Appellants assert that “Kitai does not teach private networks” (Fourth Revised Substitute App. Br. 13) because “the LANs of Kitai are not private networks” (Fourth Revised Substitute App. Br. 17).

The Specification discloses “private networks such as frame relay networks and/or point-to-point network connections” (Spec. 9). The Specification, while disclosing two examples of “private networks,” fails to define “private networks” as limited to only frame relay networks and point-to-point networks. Therefore, we decline to adopt this limited interpretation of the term “private network.”

In the absence of an explicit definition of the term “private network,” we broadly but reasonably interpret the term “private network” using an ordinary and customary meaning of the term to include any interconnected system of devices or components (i.e., “network”) that is private. We further construe the term “private” to include anything that is kept secret, is not open to the public, or is maintained with at least some degree of restricted access. For example, Webster’s New International Dictionary, Second Edition (1934) defines the term “network” as meaning “any system

of lines or channels interlacing or crossing” and the term “private” as meaning “belonging to, or concerning, an individual person, company, or interest.” “[T]he PTO gives claims their ‘broadest reasonable interpretation.’” *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). Hence, a “private network” includes any system in which access may be restricted in some way or in which the system belongs or concerns an individual person, company, or interest.

As Appellants point out, Kitai discloses a Local Area Network (LAN). We do not find that Kitai’s LANs are necessarily open to the public or cannot be restricted. Thus, we do not find that Kitai’s LAN cannot be a “private network.” Absent any evidence to the contrary, we agree with the Examiner that one of ordinary skill in the art would have construed “private networks” to include LANs.

In addition, Albright discloses a “first frame relay network and a second frame relay network” (Abstract, Fig. 3) and “a logical switch **312** connecting . . . to either Frame Relay interface **310** terminating link **350**, or Frame Relay interface **314** terminating link **351**” (col. 6, ll. 54-58). Hence, Albright discloses multiple interfaces (e.g., “Frame Relay interface 310” and “Frame Relay interface 314”) and selecting between the interfaces (i.e., connecting to either Frame Relay interface 310 or Frame Relay interface 314). Therefore, even assuming that a “private network” includes only a Frame Relay network and nothing else, and even assuming that a Frame

Relay network can never be a LAN, Albright discloses Frame Relay networks and selecting between Frame relay interfaces, as recited in claim 1.

Appellants further argue that “Albright and Kitai were not properly combined . . . because . . . Albright deals with serial networks” which, according to Appellants “would have led those of skill in the art away from combining Albright and Kitai when they were trying to build a parallel network configuration” (Fourth Revised Substitute App. Br. 14).

Kitai discloses known methods and systems in which “communication paths . . . connect the client computer with the server computer” and “a selector . . . (selects) . . . one of the communication paths” (Abstract). As set forth above, Albright discloses additional known methods and system in which multiple frame relay networks are connected via a Frame Relay interface. Because combining the known elements of Kitai with known elements of Albright merely entails the combination of familiar elements (e.g., communication networks, frame relay interfaces, data communication) according to known methods to perform known functions to achieve a predictable and expected result (i.e., data communication via communication networks), we find that the combination of the references would have been obvious. “[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1740 (2007) (citing *Sakraida v. AG Pro, Inc.*, 425 U.S. 273, 282 (1976)).

We disagree with Appellants' contention that one of ordinary skill in the art would have been led away from combining Kitai and Albright because "Albright deals with serial networks" (Fourth Revised Substitute App. Br. 14). The determination of obviousness must consider, *inter alia*, whether a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and whether there would have been a reasonable expectation of success in doing so. *Brown & Williamson Tobacco Corp. v. Philip Morris, Inc.*, 229 F.3d 1120, 1125 (Fed. Cir. 2000). *Medichem S.A. v. Rolabo S.L.*, 77 USPQ2d 1865, 1869 (Fed. Cir. 2006). Where the teachings of two or more prior art references conflict, the Examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984.) Furthermore, our reviewing court has held that "[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994). *See also Para-Ordnance Mfg. v. SGS Importers Int'l*, 73 F.3d 1085, 1090 (Fed. Cir. 1995).

In the present case, we do not find that a person of ordinary skill after reading either Kitai or Albright would have been discouraged from combining the references. Neither Kitai nor Albright indicates the undesirability of the combination or other form of discouragement.

We disagree with Appellants' contention that the mere disclosure of a serial connection between networks in Albright would have discouraged the person of ordinary skill in the art from utilizing network interfaces in a parallel network of Kitai. Appellants do not argue that Albright discloses that the network interfaces cannot be used in the parallel network configuration of Kitai or that applying network interfaces to parallel networks would be disadvantageous. Therefore, we see no reason why one of ordinary skill in the art would have been discouraged from implementing network interfaces in any network and in any configuration. Appellants have failed to provide a convincing rationale as to why one of ordinary skill in art would have been discouraged from utilizing Frame Relay network interfaces in a serial format merely because Albright discloses one example of utilizing the interfaces in a serial configuration.

Appellants do not provide additional arguments in support of claims 14, 18 or 20.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 1. We therefore affirm the rejection of claim 1, and of claims 2, 3, 8-12, 14, 18, and 20, which fall therewith.

IV. CLAIM 4, 13, 15, 16, AND 21

Appellants argue, with reference to Kitai, Albright, and Pearce, that “the rejections fail to identify anything specific in one reference or in the art that would have led one of skill to the particular other references” (Fourth Revised Substitute App. Br. 19).

As indicated above, Appellants have not shown that the Examiner erred in combining the Kitai and Albright references. As set forth above, Kitai and Albright disclose data communication in multiple networks including selecting between network interfaces. The Examiner finds that Pearce also discloses data communication in a network “wherein the packet path selector selects between network interfaces according to a reliability criterion” (Ans. 8). We find that combining Pearce with Kitai and Albright to achieve data communication in multiple networks including selecting between network interfaces (Kitai and Albright) in which the selecting is performed according to a reliability criterion (Pearce) would have entailed no more than rearrangement of known elements performing known functions to achieve an expected result. We agree with the Examiner that this combination would have been obvious. *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 4. We therefore affirm the rejection of claim 4, and of claims 13, 15, 16, and 21, which fall therewith.

## V. CLAIM 6 AND 7

Appellants allege a “failure to justify combining Kitai and Albright” and a “failure to justify combining Kitai and Goldszmidt” (Fourth Revised Substitute App. Br. 20).

Goldszmidt discloses “deliver of real-time or continuous data streams” in which the data communication is switched between servers “in order to continue receiving the real-time multimedia stream with minimal disruption and while maintaining a balanced load across multiple servers” (Abstract). Hence, Goldszmidt discloses switching paths of data communication if a load imbalance is detected in a network. As set forth above, Kitai and Albright disclose data communication in data networks including switching data communication paths between network interfaces. Also as above, we find that the combination of Kitai and/or Albright with Goldszmidt involves no more than rearrangement of known elements (e.g., data communication via data communication networks, switching between different network interfaces or data communication paths, and switching paths to optimize load balancing) by performing known functions to achieve predictable and expected results. We therefore find that the combination of references would have been obvious to one of ordinary skill in the art. *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 6. We therefore affirm the rejection of claim 6, and of claim 7, which falls therewith.

#### VI. CLAIM 5

Appellants argue a “failure to justify combining Kitai and Dutta” (Fourth Revised Substitute App. Br. 20).

Dutta discloses “a system and method for load balancing” (Abstract). For reasons set forth above, we disagree with Appellants’ contention that it would not have been obvious to one of ordinary skill in the art to have rearranged known elements (e.g., data communication networks, switching between data communication paths or network interfaces, or optimizing load balancing in a network) that perform known functions to achieve predictable results. *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). Therefore we are unconvinced by Appellants argument.

It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 5.

#### VII. CLAIM 17

Appellants argue a “failure to justify combining Kitai and Dutta” and a “failure to justify combining Kitai and Pearce” (Fourth Revised Substitute App. Br. 20).

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We disagree with Appellants' argument for reasons already discussed above. It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 17.

#### VIII. CLAIM 19

Appellants argue a "failure to justify combining Kitai and Goldszmidt" (Fourth Revised Substitute App. Br. 21).

We disagree with Appellants' argument for reasons already discussed above. It follows that Appellants have failed to demonstrate that the Examiner erred in rejecting claim 19.

#### IX. ORDER

In summary, we affirm the rejections of claims 1-21 under § 103(a).

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

AFFIRMED

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