

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* THOMAS E. WESTON and KARL E. MILLER

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Appeal 2008-2221  
Application 10/107,617  
Technology Center 2600

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Decided: September 9, 2008

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Before MAHSHID D. SAADAT, ROBERT E. NAPPI,  
and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1, 5-10, 12-18, and 20. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Appellants' claimed invention relates to a method and apparatus for minimizing the setup time for a mobile station interaction to an external network. (Spec. 1: 7-10). The system pre-establishes network node configurations for future use when an appropriate session invite is received by the network. (Spec. 4: 10-21).

Independent claim 1 is illustrative of the invention and reads as follows:

1. A method for coupling a plurality of mobile stations from a communication network to an external network comprising the steps of:

collecting aggregate data regarding prior connections between the communication network and the external network;

predicting future traffic loading between the communications network and the external network based upon the collected aggregate data;

pre-establishing a plurality of speculative context links between the communications network and the external network based upon the predicted future traffic loading; and

dynamically assigning the plurality of speculative context links as the requests for connections are received from the plurality of mobile stations to thereby establish a connection between the plurality of mobile stations and the external network.

The Examiner relies on the following prior art references to show unpatentability:

|            |                 |  |
|------------|-----------------|--|
| Nordenstam | US 6,442,615 B1 | Aug. 27, 2002<br>(filed Apr. 12, 2000) |
| Forslöv    | US 6,608,832 B2 | Aug. 19, 2003<br>(filed Jul. 23, 1998) |

Claims 1, 5-10, 12-18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Forsl w and Nordenstam.

While Appellants have indicated the appeal of the rejections of claims 1, 5-10, 12-18, and 20, arguments have been raised solely against independent claims 1 and 17, where identical arguments have been raised against the rejection with respect to both claims. We take claim 1 to be representative of the argued claims. *See*, 37 C.F.R. § 41.37(c)(1)(vii).

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

## ISSUES

Under 35 U.S.C. § 103(a), with respect to appealed claim 1, do Forsl w and Nordenstam teach or suggest all of the elements of that claim to render it unpatentable?

## FINDINGS OF FACT

1. The Specification details a system wherein a number of links or network connections may be established and pooled for use as required by the network. Prior to mobile station's request, a connection will exist from the RAN (Radio Access Network) to the SGSN (Serving GPRS Support Node) to the GGSN (Gateway GPRS Support Node), and outbound from the GGSN to another gateway. All the nodes and links are pre-established such

that when a session invite request is received from mobile station the connection will be immediately made. (Spec. 4:1-16; Figs. 1 and 2, elements 10, 20 ,30, 40, 110, 120 and 130).

2. Independent claim 1 recites, in part, “dynamically assigning the plurality of speculative context links as the requests for connections are received,” and independent claim 17 recites, in part that the resource allocation manager acts to “dynamically assign the plurality of speculative context links as requests for data services are received.”

3. Forsl w describes an apparatus for coupling a plurality of mobile stations to an external network. (Abstract; Col. 2, ll. 44-63; Fig. 2, elements 30, 32, and 34).

4. Nordenstam provides an improved approach to traffic data evaluation in a network. The system collects data with respect to a real traffic flow in the network and evaluates the data through a network modeling unit to model the network through a virtual network having virtual links without capacity restrictions imposed thereon. It allows the user to draw conclusions on the network load through the use of real network measurements. (Abstract; Fig. 1, elements 10, 12, 14, and 16).

5. The traffic data evaluation approach in Nordenstam allows “the operator of the network time to eliminate the bottleneck by extending the network before the service to the customers is affected.” (Col. 5, ll. 51-53).

#### PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so

doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

“ . . . there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”

*KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Center*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

## ANALYSIS

Appellants argue with respect to claim 1, that Nordenstam fails to teach or suggest creating and/or dynamically assigning speculative context links, and that Nordenstam only discloses the modeling of a network based on actual network traffic data. (App. Br. 5; Reply Br. 6). We find Appellants argument to be compelling.

The Examiner finds that pre-establishing a plurality of speculative context links is the same as allocating bandwidth for various networks. (Ans. 7). This finding, however, ignores the clear recitation in claim 1 that those links are dynamically assigned. (FF. 2). While Nordenstam provides useful modeling and may instruct the network operator how to avoid potential problems, (FF. 5), there is nothing in Nordenstam to suggest the dynamic assignment of speculative context links. In other words, even if Nordenstam were interpreted as creating speculative context links, there is nothing in Nordenstam that teaches or suggests dynamically assigning those links.

Additionally, the Examiner asserts that “based on the result of monitoring and evaluations, the system would make decision on add more hardware into the network, acquiring more bandwidth and links in the network such that the network would have sufficient capacity according to future needs.” (Ans. 7) However, this does not meet the limitations found in claim 1, which requires “dynamically assigning the plurality of speculative context links as the requests for connections are received.” Any such assignment the Examiner finds in Nordenstam would not occur as connection requests are received and would remain independent of such requests. In other words, once the system is altered, it would not be altered based on actual traffic and would only be changed after a subsequent round of evaluation. As such, we find that rejection of claims 1, 5-10, 12-18, and 20 to be improper for failing to teach or suggest all of the elements of those claims.

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### CONCLUSION

In summary, we have reversed the Examiner's rejection of claims 1, 5-10, 12-18, and 20 under 35 U.S.C. § 103(a) as unpatentable over Forslów and Nordenstam.

### DECISION

The Examiner's rejection of claims 1, 5-10, 12-18, and 20 before us on appeal is reversed.

REVERSED

KIS

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