

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SVEN JOZEF JEANNE VAN DEN BOSCH,
PALOMA DE LA VALLEE, NATALIE MARIA CORNELIA
DEGRANDE, and GERT VAN HOEY

Appeal 2008-4249
Application 10/230,125
Technology Center 2400

Decided: December 9, 2008

Before ROBERT E. NAPPI, JOHN A. JEFFERY, and KEVIN F. TURNER,
Administrative Patent Judges.

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 6(b) of the final
rejection of claims 1-10, 12-14, 16, 17, 19, and 20.¹

We affirm the Examiner's rejection of these claims.

¹ We note that claims 11, 15, and 18 were originally rejected under 35 U.S.C. § 112, first paragraph. However, these rejections were withdrawn in the Examiner's Answer. Therefore, claims 1-10, 12-14, 16, 17, 19, and 20 are the only claims that remain on Appeal.

INVENTION

The invention is directed towards a network management system for managing a plurality of network nodes. Claim 1 is representative of the invention and reproduced below:

1. A network management system for managing a network including a plurality of network nodes, wherein the network management system comprises:
 - a memory that stores information parameters defining links among the plurality of network nodes;
 - an adaptor coupled to said memory that adapts the information parameters in said memory in response to receiving new information parameters, wherein old information parameters that are stored in the memory are adapted via intermediate states; and
 - an optimizer coupled to said adaptor that optimizes the adapting of the information parameters by determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path.

REFERENCE

Chimento, Jr. US 5,434,848 Jul. 18, 1995

REJECTION AT ISSUE

The Examiner rejected claims 1-10, 12-14, 16, 17, 19, and 20 under 35 U.S.C. § 102(b) as being anticipated by Chimento.

ISSUE

Rejection under 35 U.S.C. § 102(b) as being anticipated by Chimento.

Appellants argue on pages 12 through 16 of the Brief that the Examiner's rejection of claims 1 through 5, 12, and 13 is in error. Appellants assert that the Examiner's rejection is in error because Chimento does not teach an optimizer "coupled to the adaptor that optimizes the adapting of information parameters by determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path." Brief 13. On page 16 of the Brief, Appellants present similar arguments directed to claims 6, 14, 16, and 17. On pages 16 and 17 of the Brief, Appellants present similar arguments directed to claims 7, 8, 19, and 20. On page 17 of the Brief, Appellants present similar arguments directed to claims 9 and 10.

Thus, for each of the independent claims, and their dependent claims, Appellants' contentions present us with the issue: have Appellants shown that the Examiner erred in finding that Chimento teaches an optimizer coupled to an adaptor that optimizes the adapting of information parameters

by determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path?

FINDINGS OF FACT

1. Chimento discloses a packet communications network with multiple network nodes connected by one or more communication links. Chimento, col. 3, ll. 23-28.
2. Each of the network nodes contain decision points which include adapters, a packet switching fabric, transmission adapters, a network access controller, a route controller, and a network topology data base. Chimento, Fig. 3.
3. “In order to transmit packets on the network of FIG. 1, it is necessary to calculate a feasible path or route through the network from the source node to the destination node for the transmission of such packets.” Chimento, col. 4, ll. 1-5.
4. If the source node is node 1 and the destination node is node 8, the initial route could be node 1 to node 4 to node 7 to node 8. Chimento, Fig. 1.
5. Once a packet reaches an adapter (located within a network node), both the route controller in conjunction with the network topology data base and network access controller calculate new routes or control access of signals on previously assigned routes. Chimento, col. 5, ll. 18-26.

6. “The information in [network topology] data base is updated when new links are activated or old links are taken down, when new nodes are added to the network or removed from the network, and when link loads change due to the addition or removal of new connections.” Chimento, col. 5, ll. 41-46.
7. As a data packet begins its journey through the network, the data packet begins with an initial path which is reviewed and modified based upon an optimal route determination at each node along the route. Chimento, col. 5, ll. 9-12.

PRINCIPLES OF LAW

Office personnel must rely on Appellants’ disclosure to properly determine the meaning of the terms used in the claims. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 980 (Fed. Cir. 1995) (en banc). “[I]nterpreting what is *meant* by a word *in* a claim ‘is not to be confused with adding an extraneous limitation appearing in the specification, which is improper.’” *In re Cruciferous Sprout Litigation*, 301 F.3d 1343, 1348, (emphasis in original) (citing *Intervet Am., Inc. v. Kee-Vet Labs., Inc.*, 887 F.2d 1050, 1053 (Fed. Cir. 1989)).

37 C.F.R. § 41.37 (c)(1)(vii) states:

For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. 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. . . . A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

ANALYSIS

Initially, we note that Appellants' Brief separately addresses each independent claim and groups the dependent claims with the respective independent claim. As such, we select independent claims 1, 6, 7, and 9 to be representative claims for each group.

Claims 1 through 5, 12, and 13

Appellants' arguments have not persuaded us that the Examiner erred in finding that Chimento teaches an optimizer coupled to the adaptor that optimizes the adapting of information parameters by determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path. Appellants argue that Chimento teaches a pre-calculated, *feasible path* without any transitioning between the paths. Brief 14. Appellants further argue that Chimento does not even suggest "any variation of links along the route once the route calculation is performed." Brief 15. However, the Examiner has found Chimento discloses a route controller that calculates optimum routes for packets traveling along the network. Answer 11. In addition, the Examiner has found Chimento discloses "calculating new routes or controlling access of signals on *previously assigned* routes" (emphasis added). Answer 11-13. We agree with the Examiner.

Claim 1 recites “determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path.” As indicated above, the Appellants’ arguments are centered on the interpretation of the terms “initial network path”, “intermediate network path”, and “final network path.” However, Appellants fail to specifically define these terms in the Specification. On page 14 of the Examiner’s Answer, the Examiner has broadly interpreted “initial network path” to be the “path where [the] packet initially starts traveling,” the “intermediate network path” as the path calculated after the packets are routed through the system, and the “final network path” as the path actually traveled. Appellants have not challenged these interpretations and we agree with the Examiner’s interpretation.

Chimento discloses a packet communications network with multiple network nodes connected by one or more communication links. Fact 1. Each of the network nodes contain decision points which include adapters, a packet switching fabric, transmission adapters, a network access controller, a route controller, and a network topology data base. Fact 2. “In order to transmit packets on the network of FIG. 1, it is necessary to calculate a feasible path or route through the network from the source node to the destination node for the transmission of such packets.” Fact 3. As in Figure 1 of Chimento, if the source node is node 1 and the destination node is node 8, the initial route could be node 1 to node 4 to node 7 to node 8. Fact 4. This is equivalent to the initial route as described in the claimed invention. Once a packet reaches an adapter (located within a network node), both the

route controller in conjunction with the network topology data base and network access controller calculate new routes or control access of signals on previously assigned routes. Fact 5. This is equivalent to the intermediate route as described in the claimed invention. “The information in [network topology] data base is updated when new links are activated or old links are taken down, when new nodes are added to the network or removed from the network, and when link loads change due to the addition or removal of new connections.” Fact 6. Therefore, as a data packet begins its journey through the network, the data packet begins with an initial path which is reviewed and modified based upon an optimal route determination at each node along the route. Fact 7. If the optimal route is changed for some reason along the way, the data packet is directed to the new path or paths, i.e., intermediate paths, until the data packet reaches its destination, wherein the last intermediate path determines the final path. Accordingly, Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of representative claim 1. As a result, Appellants’ arguments have not persuaded us of error in the Examiner’s rejection of claims 2 through 5 and 11 through 13 based upon their dependency from claim 1.

Claims 6 through 10, 14, 16, 17, 19, and 20

Appellants’ arguments directed to claims *6 through 10, 14, 16, 17, 19, and 20* present the same issue as discussed with respect to claim 1. Claims 6, 7, and 9, however, are slightly different from claim 1. These independent claims each recite an optimizer coupled to an adaptor that optimizes the adapting of information parameters by transitioning between an initial, intermediate, and final network path. As discussed above with respect to

claim 1, we find this to be taught by Chimento. Thus, Appellants' arguments have not persuaded us of error in the Examiner's rejection of the three groups of claims: (1) Group 1, claims 6, 14, 16, and 17; (2) Group 2, claims 7, 8, 19, and 20; and (3) Group 3, claims 9 and 10.

CONCLUSIONS OF LAW

Appellants have not shown that Chimento does not teach an optimizer coupled to the adaptor that optimizes the adapting of information parameters by determining a transition between at least one initial network path and at least one final network path, wherein the at least one initial network path is switched to at least one intermediate network path selected based on the adapted information parameters before being switched to the at least one final network path.

ORDER

The Examiner's rejection of claims 1-10, 12-14, 16, 17, 19, and 20 is affirmed.

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).

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AFFIRMED

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