

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT T. BELL
and RICHARD B. PLATT

Appeal No. 2001-2001
Application 08/870,600

ON BRIEF

Before THOMAS, JERRY SMITH and GROSS, Administrative Patent Judges.
THOMAS, Administrative Patent Judge.

REQUEST FOR REHEARING

In a decision dated June 26, 2003, the decision of the examiner rejecting claims 41-60 under 35 U.S.C. § 103 was affirmed. The subsequent, intervening prosecution history led to the withdrawal of abandonment mailed on December 3, 2003.

In considering the substance of the Request for Rehearing, we note initially the observations we made at page 7 of our original decision where we correlated appellants' disclosed invention with the basic concepts of Shimizu. We made reference to the Summary of the Invention at pages 19 and 20, and the

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abstract of the disclosure at pages 45 and 46, and the showing in disclosed Figure 3, which we observe is somewhat similar to the combination of Shimizu's Figure 5A and Figure 5B.

Page 2 of the amendment filed on May 21, 1999 as Paper No. 12 canceled previous claims 21-40 and introduced new claims 41-60. Previous versions of the claims pending were consistent with the noted portions of the disclosure where the switching circuitry was stated to actually "establish" the user information data path over a switching network after the initial or first endpoint received the response to the call requested from the endpoint. It is the claimed version introduced in claim 41 that now more broadly recites this feature as the "initiation of the establishing" of a user information path over an information transport network.

The Request for Rehearing, as well as the principal brief and reply brief, have urged us to consider from Shimizu the actual beginning through the ending of the signaling sequence (of the signaling circuitry portion of claim 41) and the corresponding teachings and suggestions of Shimizu as outlined in our prior decision as comprising the initiating establishment of a data path in the last clause of representative claim 41 on

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appeal. Our original opinion did not agree with this view, nor do we now.

The actual language of representative claim 41 on appeal, in our view, does not distinguish over the teachings and suggestions of Shimizu of the process depicted in Figure 5A of first reserving the bandwidth among various links in the system and then in Figure 5B of the initiation of the establishment of a user information path to the extent recited in the switching circuitry clause at the end of representative claim 41 on appeal. Appellants' disclosed invention performs two separate functions according to the respective signaling circuitry and the switching circuitry recited in this claim. Correspondingly, the bulk of our prior decision clearly indicates that Shimizu performs a separate signaling circuitry function to establish the availability of the bandwidth from the beginning endpoint to the ending endpoint through a separate path before the initiation of the establishment or the actual establishment through separate switching circuitry of the data path, as claimed. This is detailed in our prior decision between pages 4 and 6 thereof.

The signal or message path in Shimizu and in claim 41 is different than the actual data path or the path for data.

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The signaling message path from the beginning endpoint to the ending endpoint in Shimizu and claim 41 is established or determined before the actual establishment or the initiation of the data path sequence in Shimizu and claim 41. Correspondingly, the signaling message path in Shimizu is not used to convey data or used as a data path as well outlined briefly at page 3 of our original decision as to the embodiments in Shimizu shown in Figures 1-5 and the separate embodiment shown in Figures 6 and 7. The mere reservation of the bandwidth in Shimizu to the examiner, to us, and we strongly believe to the artisan, is not equivalent to or intended by Shimizu to correspond to the actual initiation of the establishment of the data path according to the switching circuitry clause of claim 41 on appeal.

According to the first embodiment in Shimizu, Figure 1 shows a separate cross connect network for data path communication purposes and a separate initial signaling path that is for control signal communications. The signaling network 4 in Figure 1 first transmits control signal from the transient switches (TS) and the local switches (LS). Correspondingly, the data itself is then transferred through the local switches (LS) and through the ATM cross connect network illustrated at the top portion of representative figure 1 of Shimizu only after the

bandwidth allocation has been secured through the communication from the beginning endpoint to the endpoint according to this signaling network 4.

Our study of the prior decision in light of the Request for Rehearing has lead us to note here what appears to be a typographical error in the text at column 4 of Shimizu. More specifically, we reproduced column 4, lines 7-11 at the bottom of our prior decision page 5, which we again do here:

After the registration of the required bandwidth has been successfully completed, as shown in FIG. 5B, the communication is carried out between the local switch 11 and the local switch 32 through the cross connect network in which VPI is defined in advance.

Considering the context of the disclosure, principally the discussion at columns 3 and 4 as to the embodiment in Figures 1-5 of Shimizu, it appears that the reference in this just quoted portion of Shimizu at column 4 should refer to Fig. 5A rather than 5B. It is Figure 5A that allocates, reserves, acknowledges and thus registers the bandwidth from LS11 to LS32, where a reply or acknowledgment signal is sent indicating the registration of the bandwidth back to the LS11, the originating endpoint. The caption of Figure 5A indicates that the showing relates to the bandwidth allocation sequence and the ultimate result at the

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bottom left of the Figure 5A is the complete establishment of the bandwidth.

On the other hand, the showing in Figure 5B clearly indicates the data communication through the separately discussed cross connect network begins or is initiated, to the extent recited at the end of representative claim 41 on appeal, by local switch 11 through various intermediary switches to local switch 32 and back again to the originating local switch 11.

Paraphrasing column 4, lines 7-11 as correctly interpreted, after the registration of the required bandwidth has been successfully completed as shown in Figure 5A, communication is initiated at and carried out between the local switch 11 and the local switch 32 through the cross connect network according to the showing in Figure 5B. The structure to effect this is shown in Figures 1 and 2.

Thus, we are unpersuaded that we have erred in our interpretation of Shimizu. Clearly, when taken in light of the teachings and showings of Shimizu, the subject matter of independent claim 41 as representative of all claims on appeal, clearly would have been obvious to the artisan within 35 U.S.C. § 103.

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In view of the foregoing, appellants' Request for Rehearing is granted to the extent that we have in fact reviewed our findings but is denied as to making any change therein.

REHEARING DENIED

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Administrative Patent Judge)	
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Jerry Smith)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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