UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/208,152	07/29/2002	Joseph Peter R. Tosey	034300-000228	3239

46188 7590 07/01/2010

Nixon Peabody LLP
P.O. Box 60610
Palo Alto, CA 94306

EXAMINER	
MERED, HABTE	

ART UNIT	PAPER NUMBER
2474	

MAIL DATE	DELIVERY MODE
07/01/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH PETER R. TOSEY and RICHARD WODZIANEK

Appeal 2009-006951
Application 10/208,152
Technology Center 2400

Before JOSEPH L. DIXON, JEAN R. HOMERE, and THU A. DANG, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF CASE

Appellants appeal the Examiner's final rejection of claims 1-21 and 23 under 35 U.S.C. § 134 (2002). Claim 22 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

We affirm.

A. INVENTION

According to Appellants, the invention relates to enhancing the initiation of a wireless digital network device coupled to a wireless network (Spec. 2, ¶ [0002]).

B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A network data device configured to receive data from an interconnected network, the network data device comprising:

processing circuitry;

data network connection circuitry configured to receive data from the interconnected network;

wireless messaging circuitry, communicatively coupled to the data network connection circuitry and the processing circuitry, the wireless messaging circuitry responsive to a wireless signal, wherein

the data network connection circuitry is configured to receive data from the interconnected network based upon an indication from the wireless messaging circuitry.

C. REJECTION

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

Elliott	US 6,859,135 B1	Feb. 22, 2005 (filed on Jun. 5, 2000)
Liebenow	US 6,816,913 B1	Nov. 9, 2004 (filed on Nov. 4, 1998)

Claims 1-12, 21, and 23 stand rejected under 35 U.S.C. § 102(e) as anticipated by the teachings of Elliott.

Claims 13-20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Elliott in view of Liebenow.

II. ISSUE

Did the Examiner err in finding that Elliott discloses a "data network connection circuitry" that is "configured to receive data from the interconnected network based upon an indication from the wireless messaging circuitry" (claim 1)?

III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Elliott

1. Elliott discloses a system 100 which includes a cellular network portion 105 and a network 115 (col. 3, ll. 7-11; Fig. 1).
2. Wireless device 400 includes a data transceiver 410, and a paging receiver 415, wherein the data transceiver 410 receives and transmits data packets while the paging receiver 415 receives paging messages (col. 4, ll. 46-53; Fig. 4).
3. In order for device 400 to receive data from a source, device 400 must first power up its data transceiver 410, wherein "wake-up" signals can be transmitted for reception by paging receiver 415 to power up transceiver 410 (col. 5, ll. 47-51).

VI. ANALYSIS

Claims 1-12, 21, and 23

In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants do not separately argue the rejection of claims 1-12, 21, and 23. Therefore, we select independent claim 1 as being representative of the cited claims. *Id.*

Appellants argue that "the components being woken up in Elliott are always the wireless components" and thus "[u]nlike the presently claimed

invention, there is never any mention or discussion of waking up data network connection circuitry configured to receive data from an interconnected network" (App. Br. 10). Though Appellants admit that "the interconnected network in Appellants['] claims may have wireless portions, and the data network connection circuitry used by the network device to interface with the interconnected network may themselves by[sic] wireless," Appellants argue that "this does not change the fact that Elliott does not show waking up data network connection circuitry configured to receive data from an interconnected network, because the network whose components are woken up in Elliot is cellular network 105, not an interconnected network" (*Id.*).

The Examiner notes that "Appellants seem to suggest that Elliott's network is a wireless network and not an interconnected network because it is not a combination of wired and wireless network" but explains that "an interconnected network simply means in the art as well as in the Appellants' specification that it is simply a connection of independent networks" (Ans. 13). In particular, according to the Examiner, "[t]he issue of the interconnected network being wireless or wired is not at all claimed" (*Id.*) (emphasis omitted). Thus, the Examiner finds that "Elliott shows in Figure 1 an interconnected network made up of two independent networks 105 and 110" (*Id.*).

Though Appellants contend that, in Elliott, "there is never any mention or discussion of waking up data network connection circuitry" and

that Elliott merely discloses a "cellular network 105" (App. Br. 10), such contentions are not commensurate in scope with the language of claim 1. In particular, such "waking up" limitation is not recited in claim 1. Furthermore, claim 1 merely requires that data is received from an "interconnected network" which does not preclude a cellular network. We agree with the Examiner that "[t]he issue of the interconnected network being wireless or wired is not at all claimed" (Ans. 13) (emphasis omitted). In fact, as the Examiner points out, independent claim 23 which is grouped with claim 1 does not even "recite or claim an interconnected network" (Ans. 11).

Accordingly, the issue that we address on appeal is whether Elliott discloses a "data network connection circuitry" that is "configured to receive data from the interconnected network based upon an indication from the wireless messaging circuitry" as specifically recited in claim 1. In particular, we address whether Elliott discloses an interconnected network. That is, we will not read any unrecited limitations with respect to "waking up" or "combination of wireless and wired" into claim 1.

Thus, our analysis gives the claims their broadest reasonable interpretation. *See In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Our analysis will not read limitations into the claims from the specification. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Claim 1 simply does not place any limitation on what "interconnected network" means, includes or represents, other than that data is received from

the interconnected network. We interpret the "interconnected network" as any system of sharing information that is operating as a unit.

Elliott discloses a system which includes a cellular network portion and a network (FF 1), wherein, for the wireless device in the system to receive data from a source, the wireless device must first power up its data transceiver and "wake-up" signals can be transmitted for reception by its paging receiver to power up its transceiver (FF 2-3). We find that an ordinarily skilled artisan would have understood the system of Elliot to be configured to receive data based upon an indication from a wireless messaging circuitry, wherein the data is received from an interconnected network. That is, the artisan would also have understood the data to be received from a system of sharing information that is operating as a unit.

Claim 1 merely requires that data is received from an "interconnected network" which does not preclude a cellular network for sharing information that is operating as a unit. That is, the scope in the language of claim 1 does not preclude the application of cellular network as the interconnected network. In fact, we find no error with the Examiner's finding that "an interconnected network simply means in the art as well as in the Appellants' specification that it is simply a connection of independent networks" (Ans. 13).

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting independent claim 1 and claims 2-12, 21, and 23 falling therewith under 35 U.S.C. § 102(e).

Claims 13-20

As to independent claim 13 and claims 14-20 depending therefrom, Appellants merely argue that "[a]s explained above, Elliott does not disclose these features" and that "Liebnow does not cure this defect" (App. Br. 11).

As discussed above, we find no deficiencies with Elliott with respect to the rejection of claim 1. Since Appellants do not provide separate arguments with respect to claims 13-20 from those of claim 1, we affirm the rejection of claim 13 and its dependent claims 14-20 under 35 U.S.C. § 103(a) as being unpatentable over Elliott in view of Liebenow.

V. CONCLUSIONS

(1) The Examiner did not err in finding that claims 1-12, 21, and 23 are anticipated by the teachings of Elliott.

(2) The Examiner did not err in concluding that claims 13-20 are unpatentable over the teachings of Elliott in view of Liebenow.

(3) Claims 1-21 and 23 are not patentable over the prior art of record.

VI. DECISION

We affirm the Examiner's decision rejecting claims 1-12, 21, and 23 under 35 U.S.C. § 102(e), and rejecting claims 13-20 under 35 U.S.C. § 103(a).

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

peb

Nixon Peabody LLP
P.O. Box 60610
Palo Alto, CA 94306