

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board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. 25

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MAKOTO MURATA

Appeal No. 2000-1561
Application No. 08/768,922

ON BRIEF

Before HAIRSTON, RUGGIERO, and LALL, Administrative Patent Judges.
RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-11. Claims 1-3 have been allowed by the Examiner. An amendment filed October 8, 1999, which amended claim 4 and canceled claims 10 and 11, was approved for entry by the Examiner. Accordingly, only the Examiner's rejection of claims 4-9 is before us on appeal.

The claimed invention relates to network data communication systems and, more particularly, to a packet transferring device that functions as an interface between a data terminal and a

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network communication medium. An order number assigned to a data packet received from the data terminal is stored and compared with the order number of a successfully transmitted data packet after receipt of a confirmation message from a receiving terminal. As a result of the comparison operation, only untransmitted packets are subjected to a resending operation, thereby eliminating the necessity of retransmitting an entire data file in the event of a communication interruption.

Representative claim 4 is reproduced as follows:

4. A packet transfer device for transferring data between a data terminal and a communication network in the form of data packets, comprising:

number assignment means for assigning an order number to a data packet to be sent to a selected receiver through said network, and for storing the assigned order number in a number storage means;

transmission means for sending said packet to said receiver, and for receiving data from said receiver;

transmitted packet order number storage means for sequentially storing an order number of a packet received by said receiver as confirmed by data in a message sent from said receiver via the network; and

discrimination means for discriminating whether a data packet to be sent by said transmission means has been previously transmitted or not by comparing the assigned order number of said data packet to be sent as stored in the number storage means with the order number of a last packet confirmed as having been received, as stored in the packet number storage means.

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The Examiner relies on the following prior art:

Kirchner et al. (Kirchner) 5,745,685 Apr. 28, 1998
(filed Dec. 29, 1995)

Claims 4-9 stand finally rejected under 35 U.S.C. § 102(e)
as being anticipated by Kirchner.

Rather than reiterate the arguments of Appellant and the
Examiner, reference is made to the Briefs¹ and Answer for the
respective details.

OPINION

We have carefully considered the subject matter on appeal,
the rejection advanced by the Examiner and the evidence of
anticipation relied upon by the Examiner as support for the
rejection. We have, likewise, reviewed and taken into
consideration, in reaching our decision, Appellant's arguments
set forth in the Brief along with the Examiner's rationale in
support of the rejection and arguments in rebuttal set forth in
the Examiner's Answer.

¹ The Appeal Brief was filed January 10, 2000 (Paper No. 16). In
response to the Examiner's Answer dated March 28, 2000 (Paper No. 17), a Reply
Brief was filed May 30, 2000 (Paper No. 18), which was acknowledged and
entered by the Examiner as indicated in the communication dated September 19,
2000 (Paper No. 21).

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It is our view, after consideration of the record before us, that the Kirchner reference fully meets the invention as set forth in claims 4-9. Accordingly, we affirm.

Appellant's arguments in response to the Examiner's rejection of the appealed claims are organized according to a suggested grouping of claims indicated at page 6 of the Brief. We will consider the appealed claims separately only to the extent separate arguments for patentability are presented. Any dependent claim not separately argued will stand or fall with its base claim. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983).

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.), cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

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With respect to independent claim 4, the representative claim for Appellant's first suggested grouping (including claims 4 and 6-8, the Examiner indicates (Answer, pages 4-6) how the various limitations are read on the disclosure of Kirchner. In particular, the Examiner points to the illustrations in Kirchner's Figure 10 and the accompanying description beginning at column 7, line 35.

In our view, the Examiner's analysis is sufficiently reasonable that we find that the Examiner has as least satisfied the burden of presenting a prima facie case of anticipation. The burden is, therefore, upon Appellant to come forward with evidence and/or arguments which persuasively rebut the Examiner's prima facie case. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Brief have not been considered (see 37 CFR § 1.192(a)).

Appellant's arguments in response (Brief, pages 7-9; Reply Brief, pages 2 and 3) focus on the Examiner's alleged misinterpretation of the Kirchner reference. In Appellant's view, Kirchner's comparison of packet sequence numbers determines only whether a data packet has been sent, in contrast to the

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determination of whether a data packet "to be sent" has previously been sent as set forth in representative claim 4.

After careful review of the Kirchner reference in light of the arguments of record, however, we are in agreement with the Examiner's position as stated in the Answer. Our interpretation of the disclosure of Kirchner coincides with that of the Examiner, i.e., Kirchner's comparison of sequence numbers to determine whether a packet needs to be retransmitted meets all of the requirements of appealed claim 4. As indicated in the explanation of Kirchner's example beginning at column 9, line 24, when an expected sequence number comparison match between transmitted and return acknowledgment messages does not occur within a timeout period, the message is retransmitted. In our view, this retransmitted message corresponds to a message "to be sent" as broadly set forth in Appellant's claim 4. In other words, there is nothing in the claim language which precludes a message "to be sent" from being a message "to be resent."

As to Appellant's further argument (Brief, page 9) that, unlike the claimed invention, Kirchner does not provide a record of successfully transmitted packets, we find such argument to not be commensurate with the scope of the claims. In our view, this argument of Appellant improperly attempts to narrow the scope of

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the claim by implicitly adding disclosed limitations which have no basis in the claim. See In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). We find no language in the present appealed claims which requires any feature directed to establishing a record or history of data packets which have been successfully transmitted.

We similarly find to be unpersuasive Appellant's related argument (Brief, page 9) that, in contrast to Appellant's invention, in Kirchner " . . . the entire sequence of packets is resent after interruption of transmission." We find no support in Kirchner for this conclusion of Appellant. To the contrary, Kirchner (column 8, lines 46-50) discloses that, in the situation in which not all of the previously transmitted data has been acknowledged, then " . . . [only] the most outstanding, non-acknowledged data packet with the current sequence number information included" is resent.

In view of the above discussion, since all of the claimed limitations are present in the disclosure of Kirchner, the Examiner's 35 U.S.C. § 102(e) rejection of independent claim 4, as well as claims 6-8 which fall with claim 4, is sustained.

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Turning to a consideration of the Examiner's 35 U.S.C. § 102(e) rejection of dependent claims 5 and 9, which includes limitations specifying a resend operation on re-establishment of a call following a disconnection condition, we sustain this rejection as well. We find no persuasive arguments from Appellant that would convince us of any error in the Examiner's line of reasoning (Answer, page 6) that Kirchner's description of the indication of a non-receipt of a transmitted call, which triggers the disclosed resend operation, corresponds to a call disconnection condition as claimed.

In summary, we have sustained the Examiner's 35 U.S.C. § 102(e) rejection of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 4-9 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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JOSEPH F. RUGGIERO)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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PARSHOTAM S. LALL)	
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JFR:hh

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