Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALLAN SCHNEIDER

Appeal No. 2000-2276
Application No. 08/727,730

ON BRIEF

Before HAIRSTON, KRASS, and RUGGIERO, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is appeal from the final rejection of claims 1 through 3, 8 through 18, 20 through 25, 31 through 33 and 36 through 43.

The disclosed invention relates to a wireless digital communications system that sends and receives packet data via a packet switched network (i.e., the Internet).

Claim 1 is illustrative of the claimed invention, and it reads as follows:

> 1. In a wireless digital communications system receiving a modulated wireless signal from a digital telephone, the digital telephone having a subscriber telephone number and a vocoder for compression of voice signals to generate digital vocoder voice samples in a vocoder protocol specifically adapted for the wireless digital communications system, the modulated wireless signal carrying an encoded form of the digital vocoder voice samples as encoded, digital voice samples for a destination telephone number, a system comprising:
>
> a first wireless transceiver having a demodulator demodulating the received modulated wireless signal and outputting a first data stream carrying the encoded, digital voice samples;
>
> a decoder decoding the encoded, digital voice samples and in response outputting said digital vocoder voice samples from the first data stream in said vocoder protocol; and
>
> a gateway interface sending and receiving packet data via a packet switched network, the gateway interface having a packet assembler/disassembler receiving said digital vocoder voice samples in the vocoder protocol, the packet assembler/disassembler packetizing the received digital vocoder voice samples into data packets having a destination address corresponding to said destination telephone number, the gateway interface outputting said data packets onto the packet switched network for reception by a network node corresponding to said destination address.

The references relied on by the examiner are:

Goodman	4,916,691	Apr. 10, 1990
Pohjakallio	5,502,721	Mar. 26, 1996
Glaser et al. (Glaser)	5,793,980	Aug. 11, 1998 (filed Nov. 30, 1994)

Yang, "INETPhone: Telephone Services and Servers on Internet," Request For Comments: 1789 (Univ. of North Texas, Apr. 1995).[1]

Claims 1 through 3, 14 through 18, 20 through 25, 31 through 33, 36 through 40, 42 and 43 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pohjakallio in view of Yang and Glaser.

Claims 8 through 13 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pohjakallio in view of Yang, Glaser and Goodman.

Reference is made to the briefs (paper numbers 24 and 26) and the answer (paper number 25) for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejection of claims 1 through 3, 8 through 18, 20 through 25, 31 through 33 and 36 through 43.

At the outset, we note that appellant questions whether Yang is a valid reference since April 1995 is not the only date on the Internet publication, and because all of the material disclosed therein may not have been in the Internet publication on the

[1] According to the examiner (answer, page 3), this reference was obtained via the Internet on Feb. 12, 1997.

indicated date of April 1995 (brief, pages 6 and 7). Appellant's arguments to the contrary notwithstanding, the February 12, 1997 date and the accompanying changing times that appear in the lower right corner of each page of the Yang publication agree with the examiner's statement (answer, page 3) that the publication was obtained via the Internet on February 12, 1997. In other words, the noted date and times clearly indicate the date and time each individual page of the publication was downloaded and printed by the examiner. In the absence of evidence that proves otherwise, April 1995 is presumed to be the publication date of all of the material set forth in the publication. In re Epstein, 32 F.3d 1559, 1567, 31 USPQ2d 1817, 1822 (Fed. Cir. 1994) ("in the absence of evidence to support this speculation, we do not find appellant's argument persuasive").

Appellant argues (brief, page 9) that the applied references neither teach nor would have suggested to one of ordinary skill in the art to interface a wireless voice communication system to the Internet.

We agree with the examiner (answer, pages 3 and 4) that Pohjakallio discloses a mobile cellular telephone network that includes a vocoder 34, that the mobile station "has exactly the same structure as the telephone shown in Fig. 3 of the instant

invention," and that "Pohjakallio does not show a gateway for receiving and packetizing the low-bit rate voice samples from the mobile station and outputting the data packets onto a packet network." We additionally agree with the examiner (answer, page 4) that "Yang discloses server gateways on the Internet which packetize voice data so as to transmit the voice data over the Internet (a packet network) according to the Internet protocols." According to the examiner (answer, page 4), "[i]t would have been obvious to one of ordinary skill in the art to use server gateways of Yang in connection with the MSC [mobile exchange] taught by Pohjakallio to transmit/receive voice over the Internet with the motivation being to establish a long distance phone connection via two local phone connections and one Internet connection; thus avoiding toll offices as explicitly suggested at page 2 of Yang."

Although Yang uses a gateway server to connect a standard telephone network and the Internet, we agree with the appellant's argument (brief, page 9) that "[o]nly Applicant's own claims and disclosure provide any suggestion or motivation to directly transmit the actual vocoder samples used in the wireless domain through a public packet-switched data network, like the Internet." Since appellant's disclosed and claimed invention is

the only source of a teaching for connecting a wireless digital network to the Internet using the vocoder protocol of the wireless network, we agree with the appellant's argument (brief, page 9) that the examiner has resorted to impermissible hindsight to demonstrate the obviousness of the claimed invention. The IS-54 compression algorithm teachings of Glaser fail to cure the noted shortcoming in the teachings of Pohjakallio and Yang. Thus, the obviousness rejection of claims 1 through 3, 14 through 18, 20 through 25, 31 through 33, 36 through 40, 42 and 43 is reversed.

The obviousness rejection of claims 8 through 13 and 41 is reversed because the transcoder teachings of Goodman do not provide for the deficient teachings of Pohjakallio, Yang and Glaser.

DECISION

The decision of the examiner rejecting claims 1 through 3, 8 through 18, 20 through 25, 31 through 33 and 36 through 43 under 35 U.S.C. § 103(a) is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
ERROL A. KRASS Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOSEPH F. RUGGIERO Administrative Patent Judge	)	

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