

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HOWARD T. OLNOWICH, JEHOASHUA BRUCK,
JAMES W. FEENEY and ELI UPFAL

Appeal No. 1998-0710
Application 08/625,379

ON BRIEF

Before KRASS, JERRY SMITH and LALL, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 21 and 22, which constitute the only claims remaining in the application.

The disclosed invention pertains to a bufferless selectable switch apparatus for connecting data messages from a switch input port to a switch output port.

Representative claim 21 is reproduced as follows:

21. A bufferless selectable switch apparatus for use in a multi-stage bufferless switch network, the apparatus comprising:

a plurality of switch inputs and a plurality of switch outputs;

means for receiving a plurality of data messages and providing the plurality of data messages to some of the plurality of switch inputs, said plurality of data messages each including a path connection request;

a plurality of connection control nodes operably coupled to the receiving means, wherein each of the plurality of connection control nodes is operably coupled to a corresponding one of the plurality of switch inputs; and

a plurality of output multiplexers operably coupled to the plurality of connection control nodes, wherein each of the plurality of output multiplexers is operably coupled to a corresponding one of the plurality of switch outputs;

wherein, when the plurality of data messages is provided to the some of the plurality of switch inputs, corresponding connection control nodes of the plurality of connection control nodes of the some of the plurality of switch inputs interprets the path connection request to identify targeted output multiplexers of the plurality of output multiplexers and commands the targeted output multiplexers;

Appeal No. 1998-0710
Application 08/625,379

It is our view, after consideration of the record before us, that the disclosure of Newman does fully meet the invention as set forth in claims 21 and 22. Accordingly, we affirm.

Appellants have indicated that for purposes of this appeal the claims will stand or fall together as a single group [brief, page 3]. Consistent with this indication appellants have made no separate arguments with respect to the two claims on appeal. Accordingly, both of the claims before us will stand or fall together. 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). Therefore, we will consider the rejection against independent claim 21 as representative of both claims on appeal.

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 Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385,

Appeal No. 1998-0710
Application 08/625,379

388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to independent claim 21, the examiner has indicated how he reads this claim on the disclosure of Newman [answer, pages 3-4]. Appellants argue that the last two paragraphs of claim 21 are not fully met by the disclosure of Newman. Specifically, appellants argue that the searching technique of Newman sequentially tests paths rather than simultaneously as claimed, and the flooding technique of Newman does not target an output multiplexer as claimed because it is undirected simultaneous communication [brief, pages 4-5]. Appellants also argue that Newman does not teach the simultaneous communication paths as claimed [id., page 5].

The examiner essentially responds that the language of claim 21 is broad enough to read on either the searching technique or the flooding technique of Newman [answer, pages 4-6].

After a careful review of the record in this case, we

agree with the conclusion reached by the examiner. Although we do not agree with the examiner's view that the searching technique of Newman meets the claimed invention, we do agree with the examiner that the flooding technique meets the claimed invention. The searching technique does not meet the claimed invention because claim 21 recites that a plurality of communication paths are simultaneously active whereas the searching technique of Newman sequentially tests one path at a time. However, we agree with the examiner that the flooding technique of Newman fully meets the invention as recited in claim 21.

The flooding technique of Newman simultaneously activates all free communication paths between an input message and the targeted destination for that message [see column 6, lines 50-52]. In our view, this operation does satisfy the claim recitation that output multiplexers be targeted and commanded. Since only paths which relate to the desired destination in Newman are flooded, we agree with the examiner that this constitutes an identification of a target output and a command to that target output.

Appeal No. 1998-0710
Application 08/625,379

Although appellants' reply brief points out numerous differences between the disclosed invention and the Newman device, we do not find any of these differences supported by the broad language of claim 21. The measure of the invention is the claim, and objects and advantages of the invention as set forth in the disclosure will not be incorporated into the claim language. Therefore, the alleged differences between the invention and the Newman device as argued in the reply brief are not considered pertinent to the claimed invention.

In summary, the language of claim 21 can be read on the selectable switch of Newman. Therefore, the decision of the examiner rejecting claims 21 and 22 is affirmed.

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

AFFIRMED

Appeal No. 1998-0710
Application 08/625,379

| | |
|-----------------------------|-------------------|
| ERROL A. KRASS |) |
| Administrative Patent Judge |) |
| |) |
| |) BOARD OF PATENT |
| JERRY SMITH |) |
| Administrative Patent Judge |) APPEALS AND |
| |) |
| |) INTERFERENCES |
| |) |
| PARSHOTAM S. LALL |) |
| Administrative Patent Judge |) |

JS:pgg
David L. Adour
IBM Corporation - IP Law Dept.
1701 North Street, N50/040-4
Endicott, NY 13760