

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SPRINT SPECTRUM L.P., CELLCO PARTNERSHIP D/B/A VERIZON
WIRELESS, and AT&T MOBILITY LLC,
Petitioner,

v.

ADAPTIX, INC.,
Patent Owner.

Case IPR2016-00824
Patent 8,934,375 B2

Before KALYAN K. DESHPANDE, TREVOR M. JEFFERSON, and
J. JOHN LEE, *Administrative Patent Judges*.

DESHPANDE, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Sprint Spectrum L.P., Cellco Partnership d/b/a Verizon Wireless, and AT&T Mobility LLC (collectively, “Petitioner”) filed a Petition requesting an *inter partes* review of claims 2, 4–8, 11, 13, 14, 18, 20–24, 27, 29, and 30 of U.S. Patent No. 8,934,375 B2 (Ex. 1101, “the ’375 patent”). Paper 4 (“Pet.”). Adaptix, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” After considering the Petition, the Preliminary Response, and associated evidence, we conclude that Petitioner has demonstrated a reasonable likelihood that it would prevail in showing unpatentability of claims 2, 4, 6, 8, 18, 20, 22, and 24 of the ’375 patent. Thus, we institute an *inter partes* review of claims 2, 4, 6, 8, 18, 20, 22, and 24 of the ’375 patent. We further conclude that Petitioner has not demonstrated a reasonable likelihood that it would prevail in showing the unpatentability of claims 5, 7, 11, 13, 14, 21, 23, 27, 29, and 30 of the ’375 patent. Therefore, we do not institute an *inter partes* review of claims 5, 7, 11, 13, 14, 21, 23, 27, 29, and 30 of the ’375 patent.

A. Related Proceedings

Petitioner indicates that the ’375 patent is the subject of the following proceedings: *Adaptix, Inc. v. AT&T Mobility LLC*, Case No. 6:15-cv-43 (E.D. Texas), *Adaptix, Inc. v. Sprint Spectrum, L.P.*, Case No. 6:15-cv-44 (E.D. Texas), and *Adaptix, Inc. v. Cellco Partnership d/b/a Verizon Wireless*, Case No. 6:15-cv-45 (E.D. Texas). Pet. 59–60.

IPR2016-00823, filed concurrently, also challenges the '375 patent. *Sprint Spectrum L.P. v. Adaptix, Inc.*, Case IPR2016-00823 (PTAB date) (Paper 9) (“IPR2016-00823 Inst. Dec.”).

B. The '375 Patent (Ex. 1101)

The '375 patent discloses methods and apparatuses for allocating subcarriers in an orthogonal frequency division multiple access (OFDMA) system. Ex. 1101, 2:27–29. Accordingly, each of multiple subscribers measures performance parameters for a plurality of subcarriers, selects multiple candidate subcarriers with good performance, and provides information regarding respective candidate subcarriers to a base station. *Id.* at 3:24–29. The performance parameter measurements may be based upon pilot symbols provided by the base station. *Id.* at 5:36–46. Upon receiving the information from the subscribers, the base station selects subcarriers from the candidate subcarriers to be allocated for use by each subscriber. *Id.* at 3:37–39. Subsequently, the base station informs each subscriber of its respective subcarrier allocation. *Id.* at 3:55–57. This process is repeated periodically and/or when channel deterioration is observed. *Id.* at 6:63–7:15.

Figure 1B, reproduced below, is a flow diagram of one embodiment of the process for allocating clusters of subcarriers to subscribers.

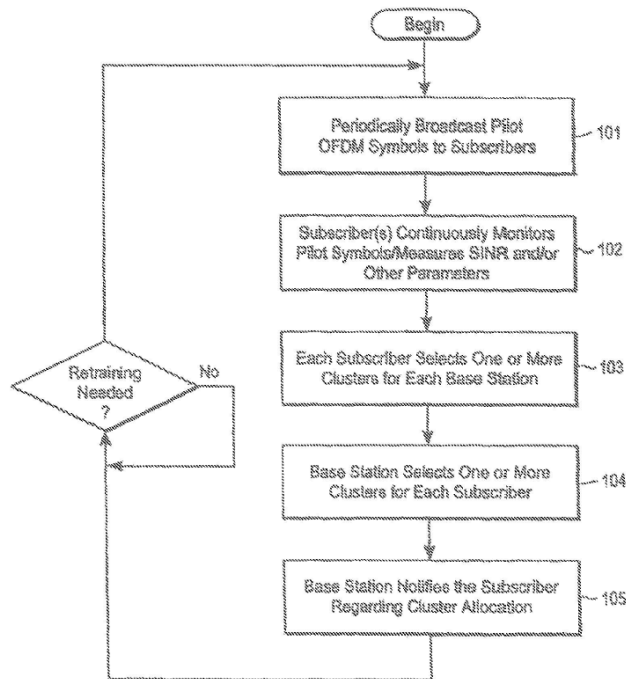


FIG. 1B

In accordance with the process depicted above in Figure 1B, each base station periodically broadcasts pilot OFDM symbols to every subscriber (step 101). *Id.* at 5:36–38. Each subscriber continuously monitors the reception of the pilot symbols and measures associated performance parameters (step 102). *Id.* at 5:47–50. Then, each subscriber selects one or more clusters with good performance and feeds back to the base station information regarding these candidate clusters (step 103). *Id.* at 5:50–55. The base station then selects, for each subscriber, one or more clusters from among the candidate clusters (step 104). *Id.* at 6:18–20. The base station notifies each subscriber about the cluster allocation at step 105. This process may be repeated, as further depicted in Figure 1B. *Id.* at 6:63–65.

C. Illustrative Claims

Petitioner challenges claims 2, 4–8, 11, 13, 14, 18, 20–24, 27, 29, and 30 of the '375 patent. Pet. 4–58. All of the challenged claims depend,

directly or indirectly, from independent claims 1 and 17. Claims 2 and 5 are illustrative of the claims at issue and are reproduced below:

2. The method of claim 1, wherein the plurality of feedback clusters at the second time is different than the plurality of feedback clusters at the first time.

Ex. 1101, 17:54–56.

5. The method of claim 4, wherein at least one subcarrier of the first plurality of subcarriers in the first time slot is different than all of the subcarriers of the second plurality of subcarriers in the second time slot.

Ex. 1101, 18:1–4.

D. The Alleged Grounds of Unpatentability

The information presented in the Petition sets forth proposed grounds of unpatentability of claims 2, 4–8, 11, 13, 14, 18, 20–24, 27, 29, and 30 of the '375 patent under 35 U.S.C. § 103(a) as follows (*see* Pet. 7–58):¹

References	Claims Challenged
Ritter, ² Gesbert, ³ and Thoumy ⁴	2, 8, 14, 18, 24, and 30
Ritter, Gesbert, Thoumy, and Gitlin ⁵	4–7, 11, 13, 20–23, 27, and 29
Thoumy, Gesbert, and Gitlin	6–8, 11, 13, 22–24, 27, and 29
Thoumy, Gesbert, and Ritter	2, 14, 18, and 30

¹ Petitioner supports its challenge with the Declaration of Richard D. Gitlin, Sc.D. (Ex. 1102).

² The parties refer to Exhibit 1104 as “Ritter,” which is an English translation of DE 198 00 953 Cl. The German patent document has been entered as Exhibit 1103.

³ U.S. Patent No. 6,760,822 B1; issued July 6, 2004 (Ex. 1105) (“Gesbert”).

⁴ U.S. Patent No. 7,039,120 B1; issued May 2, 2006 (Ex. 1107) (“Thoumy”).

⁵ U.S. Patent No. 6,018,528; issued January 25, 2000 (Ex. 1106) (“Gitlin”).

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