Amendment Under 37 C.F.R. § 1.116
Expedited Procedure - Art Unit 2683

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	
Jacob JORGENSEN	Art Unit: 2683
Appl. No. 09/349,975	Examiner: Lee Nguyen
Filed: July 9, 1999	**Atty. Docket No. 36792-162252**
For: METHOD FOR THE RECOGNITION AND OPERATION OF VIRTUAL PRIVATE NETWORKS (VPNs) OVER A WIRELESS POINT TO MULTI-POINT (PtMP) TRANSMISSION SYSTEM	Customer No. 26694 PATENT TRADEMARK OFFICE

Reply Under 37 C.F.R. § 1.116

Attention: Box AF

Honorable Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Final Office Action dated September 6, 2002, Applicants submit the following Amendment and Reply.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are needed to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees

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required therefor (including fees for net addition of claims), and any other fee deficiency are hereby authorized to be charged, any overpayments credited, to our Deposit Account No. 22-0261.

Kindly enter the following Reply.

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of reply, claims 1 - 19 are pending in the application, with claims 1, 7, and 15 being the independent claims.

Based on the following Remarks, Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Point 2 of the Office Action

In point 2 of the Action, the Examiner canceled Claim 2. Since the Applicant did not cancel Claim 2, and the Examiner is not permitted to cancel Claim 2 (MPEP §1302.04), Applicant respectfully requests that the Examiner correct this typographical error and restore Claim 2 of the patent application.

Rejections under 35 U.S.C. §103

In point 4 of the Office Action, the Examiner rejected Claims 1 and 3-19 under 35 U.S.C. §103(a) as being unpatentable over Buchholz et al. (U.S. Patent No. 5,493,569 hereafter

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"Buchholz") in view of Chase et al. (U.S. Patent No. 6,188,671 hereafter "Chase"). This rejection is respectfully traversed.

1. Chase fails to teach packet-centric wireless point to multipoint communication system using a packet centric protocol.

As claimed, for a network protocol to be ***packet-centric***, the protocol can ***not*** be ***circuit-centric***. As clearly defined in the specification, a packet-centric protocol "does not use dedicated circuits through which to transfer packets." Specification, page 57, lines 8-9. In a packet-centric protocol according to the present invention, when a large file is sent down the protocol stack, "segmentation and packetization of the data" occurs, and then "a header is placed on the packet for delivery to the data link." Page 57, lines 11-12. A circuit-centric protocol and/or network such as, e.g., an asynchronous transfer mode (ATM) protocol network of Chase is different from a packet-centric protocol network, in that the circuit-centric network assigns circuits for the ATM network. Unlike the circuit-centric ATM protocol, the packet-centric protocol does "not specifically route" the packets across a "specific channel." Page 57, lines 14-15. Instead, the packet-centric protocol places a header on the packet and lets the network deal with routing the packets. Page 57, lines 15-16. "Therefore, the outbound packets can take various routes to get from a source to a destination. This means that the packets are in a datagram form and not sequentially numbered as they are in other protocols." Page 57, lines 16-18.

Where the specification provides definitions for claim terms, the specification may be

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used in interpreting claim language. In re Vogel, 422 F.2d 438, 441, 164 USPQ 619, 622 (CCPA 1970). Here, the definition of a packet-centric protocol is provided in the specification, page 57, for example, and should be given proper weight in interpreting the term. Claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of specification. In re Marosi, 710 F.2d at 802, 218 USPQ at 292 (quoting In re Okuzawa, 537 F.2d 545, 548, 190 USPQ 464, 466 (CCPA 1976).

Here, reading claim 1 in light of the specification, the claimed packet-centric protocol should be reasonably interpreted to mean a protocol in which "segmentation and packetization of the data" occurs, and then "a header is placed on the packet for delivery to the data link", where "the packets are in a datagram form and not sequentially numbered." Page 57, lines 11-12 and 16-18. As defined in the specification, the ***packet-centric protocol*** is ***not circuit-centric***. Thus, the term packet centric should be reasonably interpreted to mean that the packet-centric protocol is ***not*** a protocol that sets up "virtual circuits between source and destination nodes... by dedicating the virtual circuit to a specific traffic type" such as ATM. Specification at page 57, lines 4-9. Applicant's claimed invention requires use of a packet-centric protocol over a wireless link. Chase sets forth an ATM circuit-centric type network which further does not contemplate a wireless link. Instead, Chase contemplates a fast packet network. A fast packet network is defined as a network whose link error rate is so low as to not require error checking. The wireless link (an inherently unreliable link) of the claimed invention is anything but a reliable link, fast packet network.

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2. Improper Combination of References

The Examiner has not shown a proper motivation to combine the references, and thus has not proven the Examiner's prima facie case of obviousness. The Examiner is combining the references in hindsight, using Applicant's Specification as a roadmap. It is improper to combine the references without showing a proper motivation to combine the references.

As noted recently by the Federal Circuit in In Re Sang- Su Lee, (Fed. Cir. 2002), it is fundamental that rejections under 35 U.S.C. §103 must be based on evidence comprehended by the language of that section (quoting In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983)). The essential factual evidence on the issue of obviousness is set forth in Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966) and extensive ensuing precedent. The patent examination process centers on prior art and the analysis thereof. When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness. See, e.g., McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001) stating that "the central question is whether there is reason to combine [the] references," a question of fact drawing on the Graham factors. "The factual inquiry whether to combine references must be thorough and searching." Id. It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with. See, e.g., Brown &

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