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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ERICSSON INC. and TELEFONAKTIEBOLAGET LM ERICSSON,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2014-01330
Patent 8,310,993 B2

Before BRIAN J. MCNAMARA, DAVID C. MCKONE, and JASON J. CHUNG, *Administrative Patent Judges.*

CHUNG, *Administrative Patent Judge.*

DECISION

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

I. INTRODUCTION

Ericsson Inc. and Telefonaktiebolaget LM Ericsson ("Petitioner") filed a Petition ("Pet.") for *inter partes* review of claims 1–12 of U.S. Patent No. 8,310,993 ("the '993 patent") (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Paper 3. Intellectual Ventures II LLC ("Patent Owner") filed a Preliminary Response ("Prelim. Resp."). Paper 6. We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may be instituted only if "the information presented in the petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

Petitioner challenges the patentability of claims 1–12 of the '993 patent under 35 U.S.C. §§ 102 and 103. Upon consideration of the Petition and Preliminary Response, we determine that Petitioner has demonstrated that there is a reasonable likelihood that Petitioner would prevail in showing that claims 1–12 are unpatentable. Pursuant to 35 U.S.C. § 314, we authorize an *inter partes* review to be instituted as to claims 1–12 of the '993 patent.

A. The '993 Patent

The '993 patent relates generally to packet data transmission in a wireless communication system. Ex. 1001, 1:15–19. According to the '993 patent, what the patent refers to as "transfer communication protocol" or "TCP" data segments are buffered in downlink ("DL") TCP transmissions. Ex. 1001, 4:57–60. The buffered TCP data segments are transmitted from the buffer to the user equipment ("UE"). Ex. 1001, 4:60–63; Fig. 5. As the TCP segments are transmitted from the buffer, a counting logic counts a

number of transmitted TCP segments that are transmitted to the UE. Ex. 1001, 5:4–7. The counting logic ensures that when a second segment is sent, uplink ("UL") resources are allocated. Ex. 1001, 5:8–12; Fig. 5. After the UL resources are allocated and the DL message is processed, a stand-alone acknowledgement ("ACK") message is transmitted in the UL. Ex. 1001, 5:36–39; Fig. 5.

B. Related Matters

Petitioner identifies the following related district court proceedings:

Intellectual Ventures II LLC v. AT&T Mobility LLC, Case No. 1-13-cv-01668-UNA (D. Del.), filed October 7, 2013. Pet. 1.

Intellectual Ventures II LLC v. Leap Wireless International Inc., Case No. 1-13-cv-01669-UNA (D. Del.), filed October 7, 2013. Pet. 1.

Intellectual Ventures II LLC v. Nextel Operations Inc., Case No. 1-13-cv-01670-UNA (D. Del.), filed October 7, 2013. Pet. 1.

Intellectual Ventures II LLC v. T-Mobile USA Inc., Case No. 1-13-cv-01671-UNA (D. Del.), filed October 7, 2013. Pet. 1.

Intellectual Ventures II LLC v. United States Cellular Corp., Case No. 1-13-cv-01672-UNA (D. Del.), filed October 7, 2013. Pet. 1.

C. Illustrative Claim

Independent claim 1 is reproduced below:

> 1. A wireless network comprising:
> a circuit located in the wireless network, wherein the circuit buffers segments of transfer communication protocol (TCP) data for downlink (DL) transmission;
> a transmitter arranged to transmit the buffered segments of TCP data to a user equipment (UE);

the circuit is further configured to count a number of transmitted segments of TCP data;

wherein the circuit is further configured, in response to the count exceeding a predetermined number, to transmit a message that indicates an allocation of uplink resources to transfer an uplink segment and the allocation of uplink resources is sufficient to have information indicating acknowledgment; and

wherein the circuit is further configured to receive, in response to the uplink resources, the uplink segment which includes the information indicating acknowledgment of receipt of the transmitted segments of TCP data.

D. Prior Art References Applied by Petitioner

Petitioner challenges the patentability of claims 1–12 on the basis of the following items of prior art:

US 8,310,993 B2, Applicant's Admitted Prior Art (Ex. 1001, "AAPA")	Nov. 13, 2012
US 7,260,073 B2 (Ex. 1007, "Sipola")	Aug. 21, 2007
US 2005/0054347 A1 (Ex. 1008, "Kakani")	Mar. 10, 2005
US 8,005,481 B2 (Ex. 1009, "Bergstrom")	Aug. 23, 2011
US 7,706,274 B2 (Ex. 1010, "Koning")	Apr. 27, 2010
US 8,572,250 B2 (Ex. 1011, "Rinne")	Oct. 29, 2013

E. The Alleged Grounds of Unpatentability

The information presented in the Petition sets forth Petitioner's contentions of unpatentability of claims 1–12 of the '993 patent based on the following specific grounds (Pet. 10–60):

References	Basis	Challenged Claims
Sipola, Bergstrom, and AAPA	§ 103(a)	1, 2, 4–8, and 10–12

References	Basis	Challenged Claims
Sipola, Bergstrom, AAPA, and Rinne	§ 103(a)	3 and 9
Sipola, Kakani, and AAPA	§ 103(a)	1, 2, 4–8, and 10–12
Sipola, Kakani, AAPA, and Rinne	§ 103(a)	3 and 9
Koning, Bergstrom, and AAPA	§ 103(a)	1, 2, 4–8, and 10–12
Koning, Bergstrom, AAPA, and Rinne	§ 103(a)	3 and 9

II. ANALYSIS

We turn now to Petitioner's asserted grounds of unpatentability to determine whether Petitioner has met the threshold standard, under 35 U.S.C. § 314(a), for instituting review.

A. Claim Construction

As a step in our analysis for determining whether to institute a review, we determine the meaning of the claims. In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. *See* 37 C.F.R. § 42.100(b). Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). We construe the terms below in accordance with these principles.

Each of independent claims 1 and 7 recite using "transfer communication protocol (TCP)." Petitioner proposes a claim construction for "transfer communication protocol (TCP)" as "transmission control

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