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EXAMINER

MCCORMACK, THOMAS S

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAMANA R. MACHIREDDY, VISHAL R. MANSUR, and
MATTHEW RYAN OCHS¹

Appeal 2015-005089
Application 12/891,102
Technology Center 2600

Before MICHAEL J. STRAUSS, JON M. JURGOVAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–20. Claims 1, 7, and 15 are independent. We have jurisdiction over this appeal under 35 U.S.C. § 6(b). We REVERSE.²

¹ According to Appellants, the real party in interest is International Business Machines Corporation. *See* Appeal Brief 2.

² Throughout this Opinion, we refer to: (1) Appellants' Specification filed Sept. 27, 2010 (Spec.); (2) the Non-Final Office Action (Non-Final Act.) mailed May 14, 2014; (3) the Appeal Brief (Appeal Br.) filed Nov. 4, 2014; (4) the Examiner's Answer (Ans.) mailed Feb. 11, 2015; and (5) the Reply Brief (Reply Br.) filed Apr. 1, 2015.

BACKGROUND

According to Appellants, the application relates to a method, system, and computer usable program product for remote device location identification using an identification command included in a predetermined communication directed to the remote device. Spec. 3. Claim 1 is illustrative and is reproduced below with a disputed limitation emphasized:

1. A computer implemented method for remote device location identification, the computer implemented method comprising:

receiving, at a remote device in a data processing environment, a command to identify the remote device, the command being included in a predetermined communication directed to the remote device, wherein the predetermined communication is to cause another operation distinct from the identification of the remote device, wherein the command is embedded in a first Next page of a link auto-negotiation procedure by setting a set of bits in the first Next page to a first value, wherein setting by the remote device the set of bits in the first Next page to a second value causes the remote device to provide information about a type of identification supported at the remote device, wherein the first Next page is a new page added to a page in the predetermined communication, and wherein the first value and the second value are unused in the link auto-negotiation procedure;

determining, at the remote device, whether the command is supported at the remote device;

setting, by the remote device, responsive to the determining being affirmative, a bit in a second Next page in the link auto-negotiation procedure to indicate support for the command during the link auto-negotiation procedure; and

identifying by the remote device, responsive to the determining being affirmative, the remote device by transmitting an identification of a location associated with the remote device.

REFERENCES

The art relied upon by the Examiner in rejecting the claims on appeal:

Petite	US 2002/0019725 A1	Feb. 14, 2002
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Baumer et al. ("Baumer")	US 2007/0086450 A1	Apr. 19, 2007
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Sheikman et al. ("Sheikman")	US 2012/0068822 A1	Mar. 22, 2012
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REJECTION

Claims 1–20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Petite, Sheikman, and Baumer. Non-Final Act. 4.

Our review in this appeal is limited to the above rejection and issues raised by Appellants. We have not considered other possible issues that have not been raised by Appellants and which are, therefore, not before us. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2014).

ISSUE

Did the Examiner err in finding that the combination of Petite, Sheikman, and Baumer teaches or suggests “determining, at the remote device, whether the command is supported at the remote device” as recited in claim 1?

DISCUSSION

The Examiner relies on Petite’s transmission of a negative acknowledgement from a wireless device to teach or suggest “determining, at the remote device, whether the command is supported at the remote device” as recited in claim 1. Non-Final Act. 2 and 8.

Specifically, the Examiner finds that, in *Petite*, a negative acknowledgement is sent whenever the message is not received and understood and the negative acknowledgement indicates the received message is *not supported* by the remote device because it does not allow operation of the remote device. Ans. 27 (citing *Petite* ¶ 73).

Appellants contend that the Examiner errs because:

Nowhere does *Petite* teach[,] that when the remote device sends a negative acknowledgement, that negative acknowledgement is **due to a lack of support** of the command at the remote device. In fact, even when the command is supported at the remote device of *Petite*, the remote device of *Petite* can send a negative acknowledgement because the command may be faulty, untimely, misdirected, or otherwise improper.

Appeal Br. 13.

We find Appellants arguments' persuasive. The Examiner fails to demonstrate that *Petite*'s transmission of a negative acknowledgement in response to the receipt of the command suggests determining that the command is not supported by the wireless device.

The Examiner's rejection of the disputed limitation relies on the Oxford dictionary definition of the term "support," as the broadest reasonable interpretation of that claim term. Ans. 27. According to the Examiner, the Oxford dictionary defines "support," as used in computing, "as allowing the use or operation of a device." *Id.*

Under a broadest reasonable interpretation, the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372 (Fed. Cir. 2004).

The Examiner's dictionary definition of support is not reasonable in view of the Appellants' Specification, which indicates, for example, that the remote device does not support a command when the remote device is incapable of complying with the command. Spec. ¶ 62. Therefore, we disagree with the Examiner's conclusion that the cited portions of Petite suggest determining "whether the command is supported at the remote device," as claimed.

Because we agree with at least one of the dispositive arguments advanced by Appellants, we need not reach the merits of Appellants' other contentions.

We are thus constrained to reverse the Examiner's obviousness rejection of independent claims 1, 7, and 15 and their respective dependent claims over Petite, Sheikman, and Baumer.

We note, in an *ex parte* appeal, the Board "is basically a board of review—we review . . . rejections made by patent examiners." *Ex parte Gambogi*, 62 USPQ2d 1209, 1211 (BPAI 2001). "The review authorized by 35 U.S.C. Section 134 is not a process whereby the examiner . . . invite[s] the [B]oard to examine the application and resolve patentability in the first instance." *Ex parte Braeken*, 54 USPQ2d 1110, 1112 (BPAI 1999). Because we are a board of review, and not a place of initial examination, we will not engage in the *de novo* examination required to supplement the Examiner's findings in connection with the determining of whether the command for identification of the remote device is supported at the remote device. We express no opinion as to whether independent claim 1 would be obvious over Petite, Sheikman, and Baumer if supported by additional explanation and/or references. We leave any such further consideration to the Examiner. Although the Board is authorized to reject

claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See Manual of Patent Examining Procedure* (MPEP) § 1213.02 (9th Ed., Mar. 2014).

Furthermore, our decision is limited to the findings before us for review. The Board does not “allow” claims of an application and cannot direct an Examiner to pass an application to issuance. Rather, the Board’s primary role is to review adverse decisions of examiners including the findings and conclusions made by the Examiner. *See* 37 C.F.R. § 41.50(a)(1) (“The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner”).

DECISION

We reverse the Examiner’s decision rejecting claims 1–20 under 35 U.S.C. § 103(a) as being unpatentable over Petite, Sheikman, and Baumer.

REVERSED