

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES W. FEENEY,
JOHN D. JABUSCH,
ROBERT F. LUSCH
and HOWARD T. OLNOWICH

Appeal No. 95-4937
Application 08/017,088¹

ON BRIEF

Before THOMAS, KRASS and FLEMING, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 7. Claims 8 and 15, although finally rejected, have now been indicated by the examiner in the answer as being allowable. Thus, claims 1 through 7 are the only claims before us.

¹ Application for patent filed February 12, 1993

The invention is directed to a method for communicating a message over a multi-stage network. The method is best illustrated by reference to independent claim 1, reproduced as follows:

1. A method for communicating a message over a multi-stage network coupled to at least two nodes, the method comprising the steps of:

a first node placing an indicator in the message for selecting at least one receiving node and an indicator for selecting destination checking;

the first node sending the message over the multi-stage network to said at least one receiving node;

the multi-stage network routing the message directly and only to said at least one receiving node based upon the indicator for selecting at least one receiving node;

said at least one receiving node receiving the message;

said at least one receiving node determining whether to perform destination checking based upon the indicator for selecting destination checking;

said at least one receiving node performing destination checking if it has determined to do so;

said at least one receiving node accepting the message if either destination checking was performed and said at least one receiving node is a destination of the message, or destination checking was determined not to be performed; and

said at least one receiving node not accepting the message if destination checking was performed and said at least one receiving node is not a destination of the message.

The examiner relies on the following references:

Lee	5,235,594	Aug. 10, 1993
Sindhu et al. (Sindhu)	5,195,089	Mar. 16, 1993

Additionally, the examiner relies on admitted prior art [APA] from page 1 of the instant specification. More specifically, the examiner cites the statement that “Multi-stage switching networks are gaining acceptance as a means for interconnecting multiple nodes within modern digital computing systems.”

Claims 1 through 7 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Sindhu in view of APA with regard to claims 1 through 5, adding Lee to this combination with regard to claims 4 through 7.²

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

At the outset, we note that this application was remanded to the examiner by a Board administrator for compliance with MPEP 1206(9) regarding a separate appendix to the brief containing a copy of the appealed claims. The primary examiner waived this requirement, as evidenced by his signature on page 2 of the remand and so the brief [Paper No. 10], as filed, is properly before us.

² Apparently, there is an alternative rejection of claims 4 and 5 under 35 U.S.C. § 103 over either Sindhu and APA or under Sindhu and APA with Lee.

After careful consideration of the claimed subject matter and the evidence of obviousness, along with the arguments of both appellants and the examiner, we conclude that the examiner has failed to establish a prima facie case of obviousness and we will not sustain the rejection of claims 1 through 7 under 35 U.S.C. § 103 based on the evidence provided by the applied references.

Independent claim 1 is very specific in claiming the communication of a message over a “multi-stage network” with the network “routing the message directly and only to said at least one receiving node based upon the indicator for selecting at least one receiving node.” The claim also calls for the receiving node to determine whether to perform a “destination checking” based on the indicator for selecting destination checking. Independent claim 7 is even more specific in reciting the actual bits included in the indicator.

The examiner applies Sindhu as showing “all the claimed method of operating a communication network to improve the networks [sic, network’s] throughput” [answer-page 3], citing column 18, lines 37-50 of Sindhu. Recognizing that Sindhu does not disclose the disclosed system as being applicable to a “multi stage routing network” [answer-page 4], the examiner cites APA and concludes that it would have been obvious “to have utilized the packet communication technique taught by Sindhu in a multi-stage network to provide a network with greatly improved throughput” [answer-page 4].

While we may not go so far as appellants in labeling Sindhu “nonanalogous art,”

since it is in the ambit of communication systems, we agree with the gist of appellants' argument in that Sindhu is unconcerned with "multi-stage networks" and we find no reason that the skilled artisan would have been led to employ any of Sindhu's teachings relative to transferring data between multiple system buses and a cache controller to a multi-stage switching network, as claimed.

Even assuming, arguendo, that the artisan would have found Sindhu applicable to the multi-stage network environment of the instant claimed invention, the examiner has never come to grips with the "destination checking" limitations of the instant claims. The claims are directed to very specific interactions between the indicator and the receiving node as to whether the receiving node should perform destination checking and the consequences of such checking, relative to accepting or rejecting the message, if destination checking is so indicated. We find no suggestion of this whatsoever in the applied references.

Further, even if Sindhu could somehow be combined with the multi-stage network indicated in APA, there is absolutely no cogent rationale by the examiner why such a combination would have been made and/or how, exactly, the multi-stage network teaching of APA is to be incorporated into Sindhu's system.

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Because the examiner has not established a prima facie case of obviousness, the examiner's decision rejecting claims 1 through 7 under 35 U.S.C. § 103 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	
ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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MICHAEL R. FLEMING)	
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