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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION,
Petitioner,

v.

PROXYCONN, INC.,
Patent Owner.

Case IPR2012-00026
Case IPR2013-00109
Patent 6,757,717

Before SALLY C. MEDLEY, THOMAS L. GIANNETTI, and MITCHELL G. WEATHERLY, *Administrative Patent Judges.*

GIANNETTI, *Administrative Patent Judge.*

DECISION ON REMAND
35 U.S.C. § 144 and 37 C.F.R. § 42.5(a)

BACKGROUND

On December 21, 2012, at the request of Microsoft Corporation ("Microsoft") in a petition (Paper 6, "Pet.") filed in this case, we instituted an *inter partes* review of claims 1, 3, 10, and 22–24 of U.S. Patent No. 6,757,717 ("the '717 Patent") under 35 U.S.C. §§ 311–319. Paper 17. On February 25, 2013, also at Microsoft's request in a separate petition, we instituted an *inter partes* review of claims 6, 7, 9, 11, 12, and 14 of the '717 patent, and joined the two review proceedings under 35 U.S.C. § 315(c). IPR2013-00109, Papers 14, 15. Patent Owner, Proxyconn, Inc. ("Proxyconn"), did not file a Preliminary Response in either of the proceedings. After institution and joinder of the proceedings, however, Proxyconn filed a Corrected Patent Owner Response (Paper 45, "PO Resp.") and a Motion to Amend (Paper 37). The trial proceeded and oral argument was held on November 18, 2013.

On February 19, 2014, the Board issued a Final Written Decision in accordance with 37 C.F.R. § 42.73. Paper 73 ("Final Dec."). The Board concluded that Microsoft had established, by a preponderance of evidence, that claims 1, 3, 6, 7, 9, 10, 11, 12, 14, 22, and 23 of the '717 patent were unpatentable as anticipated and claims 1, 3, and 10 were unpatentable as being directed to obvious subject matter. The Board further concluded that Microsoft had not established, by a preponderance of evidence, that claim 24 of the '717 patent was unpatentable. Both parties appealed the decision to the United States Court of Appeals for the Federal Circuit.

On June 19, 2015, the Federal Circuit issued a decision, affirming-in-part, reversing-in-part, and vacating-in-part the Board's decision, and remanding the case to the Board. *Microsoft Corp. v. Proxyconn, Inc.*, 789

F.3d 1292 (Fed. Cir. 2015). The Federal Circuit decided that the Board had erred in its construction of certain terms appearing in the claims of the '717 patent. As a result, the Federal Circuit vacated the Board's determinations that claims 1, 3, 6, 7, 9, 10, 22, and 23 of the '717 patent were not patentable and remanded the case to the Board "for proceedings consistent with this opinion." 789 F.3d at 1299–1300. The court also affirmed the Board's determination that claim 24 was patentable and the Board's conclusion that claims 11, 12, and 14 were anticipated by the DRP reference.[1] *Id*. at 1302–03. Finally, the court affirmed the Board's denial of Proxyconn's motion to amend. *Id*. at 1308. The Federal Circuit's mandate issued on August 25, 2015. Paper 76.

The parties were unable to reach agreement on post-remand procedures and, therefore, Microsoft sought the Board's guidance. On September 1, 2015, following a telephone conference call with counsel, the Board entered an Order directing the parties to file briefs addressing the effect of the Federal Circuit's decision on the Board's Final Written Decision, specifically as to the patentability of claims 1, 3, 6, 7, 9, 10, 22, and 23 of the '717 patent. Paper 77. The briefs, limited to fifteen pages, were to be filed simultaneously, and the parties were instructed that no new prior art references or other evidence beyond that considered in the Board's Final Written Decision should be presented. No replies were authorized at the time, but the parties were instructed that should they wish to file a reply,

[1] THE HTTP DISTRIBUTION AND REPLICATION PROTOCOL, W3C Note (August 25, 1997), retrieved from http://www.www3.org/TR/NOTE-drp-19970825 (IPR2013-00109, Ex. 1003).

they must contact the Board for authorization. *Id.* Neither party requested such authorization.

In accordance with the Board's Order, the parties filed their briefs on September 11, 2015. Papers 78 ("PO Remand Br."), 79 ("Pet. Remand Br."). On remand, Microsoft limits its patentability challenge to three grounds advanced in the Petition and upon which we instituted a trial:

1. Obviousness of claims 6, 7, and 9 over Mattis[2] and DRP;
2. Obviousness of claims 1, 3, and 10 over Perlman[3] and Yohe;[4] and
3. Anticipation of claims 22 and 23 by Santos.[5]

The Board has reviewed the record in light of the Federal Circuit's decision and the arguments of the parties. For the reasons that follow, we again conclude that claims 1, 3, 6, 7, 9, 10, 22, and 23 of the '717 patent are not patentable.

DISCUSSION

The parties disagree on the effect of the Federal Circuit's decision on remand. Proxyconn contends that the Board has "no other option" but to conclude that Microsoft failed to prove that the claims are unpatentable. PO Remand Br. 2. According to Proxyconn, "Microsoft has had a full and fair chance to present its chosen claim construction and arguments for unpatentability, and it has lost." *Id*. In a footnote, Proxyconn argues that the

[2] U.S. Patent No. 6,292,880, issued Sept. 18, 2001 (IPR2013-00109, Ex. 1004)
[3] U.S. Patent No. 5,742,820, issued Apr. 21, 1998 (Ex. 1003).
[4] U.S. Patent No. 5,835,943, issued Nov. 10, 1998 (Ex. 1005).
[5] Santos and Wetherall, *Increasing Effective Link Bandwidth by Suppressing Replicated Data*, Proceedings of the USENIX Annual Technical Conference (NO 98) New Orleans, Louisiana, June 1998 (Ex. 1004).

Board is "without authority to take further action" because the 18-month time period for the Board to make a final determination has expired. *Id*. at 3 n.1 (citing 35 U.S.C. § 316(a)(11); 37 C.F.R. § 42.100(c)). Alternatively, Proxyconn asserts that the claims are patentable over the art considered in our Final Written Decision. *Id*. at 3–15.

We are not persuaded by Proxyconn's argument that the Board is not permitted to consider the merits of Microsoft's reasserted challenges on remand. First and foremost, the Federal Circuit remanded the case to the Board "for proceedings consistent with this opinion." 789 F.3d at 1295. We do not interpret the Federal Circuit's decision as requiring us to enter judgment for Proxyconn. Had this been the court's intent, it could have done so. *See* 28 U.S.C. § 2106 (authorizing appellate courts to "affirm, modify, vacate, set aside or reverse" and remand). As the Federal Circuit recently stated regarding another remand to the Board: "The Board may control its own proceedings, consistent with its governing statutes, regulations, and practice. 37 C.F.R. § 42.5(a)." *Ariosa Diagnostics v. Verinata Health, Inc.*, Nos. 2015-1215, 2015-1226, 2015 WL 7148267, at *8 (Fed. Cir. Nov. 16, 2015).

We also are not persuaded by Proxyconn's argument that reconsidering the merits of the case in light of the Federal Circuit's claim constructions results in unfairness or a "denial of due process." PO Remand Br. 2. The guidance on claim construction provided by the Federal Circuit was based on claim constructions proposed by Proxyconn during the trial. *See* PO Resp. 11–16. For this reason, the suggestions that the claim constructions are "new," or that Proxyconn was never permitted to address them, are unavailing. PO Remand Br. 2.

Nor can Proxyconn claim it never had opportunity to respond to the arguments presented by Microsoft on remand, for they are not new, either. Rather, they are based on prior art of record that Microsoft relied upon in the petitions in these cases. For the arguments themselves, Microsoft has provided references to where they appear in the petitions and the supporting claim charts and expert testimony.

Likewise, we are not persuaded that the Board is constrained by the 18-month deadline for issuing a final written decision under 35 U.S.C. § 316(a)(11). *See supra*. First, the 18-month deadline does not apply necessarily to joined cases, such as this one.[6] Second, even if the 18-month deadline were applicable, the Board's Final Written Decision was entered within 18 months of the institution of trial, whether that date is measured from the institution of trial in IPR2012-00026 or the joined proceeding in IPR2013-00109. The Federal Circuit's partial vacatur does not negate the Board's prior compliance with the deadline. If it did, that would essentially foreclose any further proceedings consistent with the Federal Circuit's mandate in this case. Finally, we are not persuaded by Proxyconn's unsupported assertion that this proceeding is "skewed in favor of Petitioner." PO Remand Br. 2.

The '717 Patent

The '717 patent is described in the Final Written Decision. Here, we present a summary description.

[6] Under 35 U.S.C. § 316(a)(11), "the Director . . . may adjust the time periods [for issuing a final written decision] in the case of joinder under section 315(c)."

The ’717 Patent describes a system for data access in a packet switched network. Ex. 1002, Abstract. The system has a sender/computer including an operating unit, a first memory, a permanent storage memory, and a processor. The system also has a remote receiver/computer including an operating unit, a first memory, a permanent storage memory, and a processor. The sender/computer and receiver/computer communicate through the network. *Id*.

The sender/computer further includes a device for calculating digital digests on data; the receiver/computer further includes a network cache memory and a device for calculating digital digests on data in the network cache memory; and the receiver/computer and/or the sender/computer includes a device for comparison between digital digests. *Id*.

The ’717 patent describes several embodiments of the claimed invention. The following figures (Figs. 4 and 11) from the patent illustrate two embodiments:

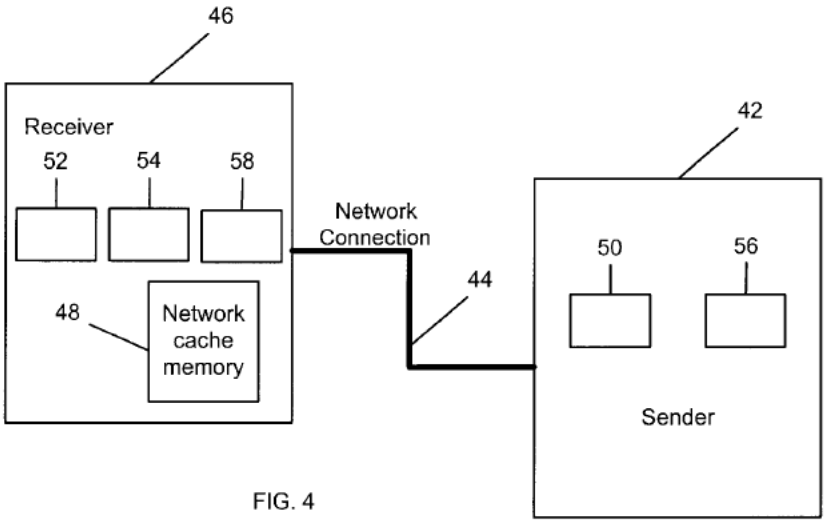

FIG. 4

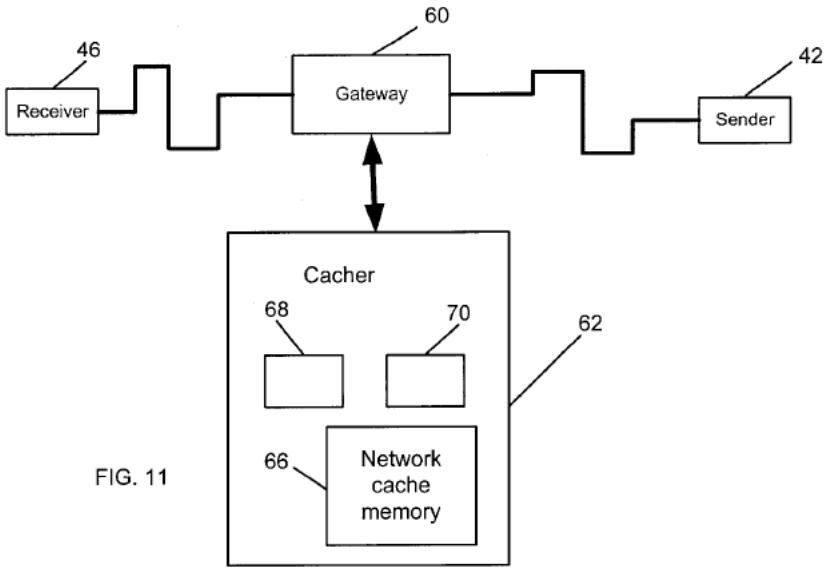

FIG. 11

Figure 4 depicts an embodiment of the invention in which a network computer system has at least two computers: sender/computer 42 and receiver/computer 46. Ex. 1002, col. 7, ll. 17–37. Figure 11 depicts an embodiment which adds gateway 60 and cacher 62 between sender/computer 46 and receiver/computer 42. *Id*. at col. 8, l. 57–col. 9, l. 9.

The Federal Circuit Decision

The Federal Circuit identified two erroneous claim constructions and one correct claim construction by the Board. First, the court considered the term "gateway . . . connected to said packet-switched network in such a way that network packets sent between at least two other computers pass through it" recited in claims 6, 7, and 9. 789 F.3d 1298. *See* Ex. 1002, Fig. 11 (reproduced *supra*). The Federal Circuit decided that the Board erred in concluding that the "two other computers" through which network packets pass could include the caching computer. 789 F.3d at 1299. Referring to the '717 patent specification, the Federal Circuit concluded that the phrase "two other computers" describes components that are "separate and distinct" from

the gateway and caching computers. *Id*. Because the Board's determination that claims 6, 7, and 9 were anticipated by the DRP reference was based on an erroneous construction, the Federal Circuit vacated the Board's determination of unpatentability of claims 6, 7, and 9 and remanded to the Board. *Id*. at 1299.

Next, the Federal Circuit considered the Board's construction of the terms "sender/computer" and "receiver/computer" in connection with independent claims 1, 10, and 22, and dependent claims 3 and 23. Referring to the specification and figures, the Federal Circuit decided that the Board erred in concluding that the terms "sender/computer" and "receiver/computer" were broad enough to include intermediary gateway and caching computers. *Id*. at 1300. Because the Board's determination that claims 1, 3, 10, 22, and 23 were not patentable was based on an erroneous construction, the Federal Circuit vacated the Board's determination of unpatentability of claims 1, 3, 10, 22, and 23 and remanded to the Board. *Id*.

Finally, the Federal Circuit considered Microsoft's appeal of the Board's decision that claim 24 was not rendered unpatentable by the Yohe and Perlman references. Microsoft challenged the Board's construction of the phrase "searching for data with the same digital digest in said network cache memory" appearing in that claim. The Federal Circuit concluded that the Board correctly construed that phrase. Because Microsoft's only argument for reversing the Board's determination on claim 24 was that the construction of this limitation was wrong, the Federal Circuit affirmed the Board's determination that claim 24 was patentable. *Id*. at 1301–02.

Patentability of Claims 6, 7, and 9

These claims are drawn to the Figure 11 embodiment of the invention depicted *supra*. In our Final Written Decision, we concluded that these claims were anticipated by DRP. Final Dec. 47. Consequently, we did not reach Microsoft's separate challenge to those claims as obvious over the combination of Mattis and DRP. *Id*. at 53. In its brief on remand, Microsoft no longer challenges these claims as anticipated by DRP. Instead, Microsoft argues that the claims would have been obvious over Mattis and DRP. Pet. Remand Br. 1–6. This is not a new argument, as it was presented in the Petition in IPR2013-00109, and Microsoft continues to rely upon the claim charts and expert declaration it filed in that proceeding. *Id*. at 1–2. Further, our Order of September 1, 2015, specifically authorized the parties to address the combination of Mattis and DRP in their post-remand briefing. Paper 77, 3.

Microsoft argues that the Federal Circuit's decision does not affect the showing that claims 6, 7, and 9 would have been obvious over Mattis and DRP. Pet. Remand Br. 5–6. Microsoft's Petition in IPR2013-00109 identified Mattis' proxy server as a gateway positioned as called for in the claims. IPR2013-00109, Ex. 1001, 3–4. This is illustrated in Figure 1 from Mattis, which follows:

FIGURE 1

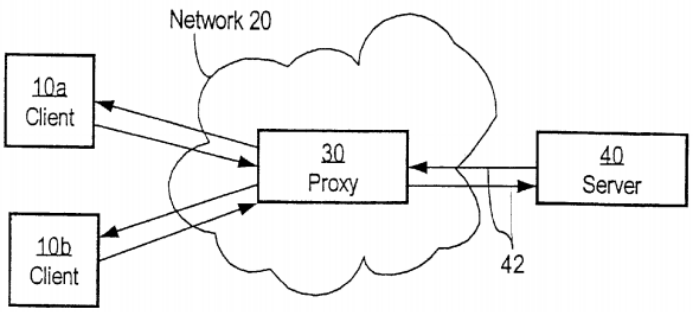

Figure 1 of Mattis shows proxy 30 positioned between client (10a, 10b) and server (40) computers. The proxy server in Mattis includes a cache. Mattis (at col 1, l. 65–col. 2, l. 4) describes this arrangement as follows:

> In one arrangement, as shown in FIG. 1, the cache is located in a proxy server 30 that is logically interposed between the clients 10*a*, 10*b* and the server 40. The proxy server provides a "middleman" gateway service, acting as a server to the client, and a client to the server. A proxy server equipped with a cache is called a caching proxy server, or commonly, a "proxy cache".

The integration of the proxy server and cache in Mattis is consistent with the disclosure of the '717 patent. According to the description of Figure 11 in the '717 patent, "gateway computer 60 may be integrally formed with the caching computer." Ex. 1002, col. 9, ll. 6–8.

Based on the foregoing, we are persuaded that consistent with the Federal Circuit's guidance, Mattis discloses a gateway and caching computer connected between "two other computers" as recited in claims 6, 7, and 9. Pet. Remand Br. 5 (identifying Mattis' proxy server 30 and computer system 1100 as examples of the gateway, and citing IPR2013-00109, Ex. 1004, Figs. 1–2, and 11, col. 1, l. 14–col. 2, l. 14, col. 9, l. 65–col. 10, l. 10, col. 27, l. 50–col. 28, l. 2, col. 37, ll. 26–31, and col. 37, ll. 42–45). We are persuaded, therefore, that the Federal Circuit's instruction that the gateway be separate from the "other" computers recited in the claims is met by the combination of Mattis and DRP.

Microsoft argues that Proxyconn responded to this challenge in its Patent Owner Response by arguing that there was no motivation to combine Mattis and DRP. *Id*. at 3. Microsoft, therefore, asserts that Proxyconn has admitted that Mattis discloses a cache file system intermediate between a

server and multiple clients, thus meeting the "gateway" claim element as construed by the Federal Circuit. *Id*. While not dispositive of this issue, we agree with Microsoft that Proxyconn has not challenged this assertion.

Proxyconn argues that because Microsoft did not "raise" it on appeal, this obviousness challenge based on Mattis and DRP is waived and, therefore, "[t]here is nothing more for this Board to do." PO Remand Br. 5. We disagree. The argument was presented in Microsoft's second Petition and was addressed in Patent Owner's Response. PO Resp. 42–43; IPR2013-00109, Pet. 18–26. The Board did not reach the merits of the argument in its Final Written Decision. Consequently, there was no final decision on that issue that Microsoft could appeal. *See* 35 U.S.C. § 141(c) (party "who is dissatisfied with the *final written decision* of the Patent Trial and Appeal Board" may appeal the Board's decision to the Federal Circuit (emphasis added)). It would be unfair to preclude Microsoft from raising a ground that the Board previously determined to be "moot" in light of another challenge that was later reversed, especially when Proxyconn addressed the issue fully during the trial.

Proxyconn further argues that because the Federal Circuit has determined that DRP no longer anticipates the correctly construed claims, "the combination of Mattis and DRP likewise does not make the claims obvious." PO Remand Br. 5. This is a non sequitur. The Federal Circuit's reversal was based on the absence in DRP of a gateway separate from the two "other" computers. *See supra*. It was not based on the absence in DRP of the "other" computers, namely, the client and server. In fact, such "other" computers are described by Proxyconn and shown as the "client" and "server" in Proxyconn's own illustration of DRP. *Id*. at 4. In any event, as

Microsoft points out, and as is illustrated *supra*, Mattis describes the proxy server as a gateway located between a client computer and a server computer. IPR2013-00109, Ex. 1004, Figs. 1–2, and 11, col. 1, l. 14–col. 2, l. 14, col. 9, l. 65–col. 10, l. 10, col. 27, l. 50–col. 28, l. 2, col. 37, ll. 26–31, and col. 37, ll. 42–45. For at least these reasons, we do not find Patent Owner's argument persuasive.

Nor are we persuaded by Proxyconn's argument, based on the Board's statement at page 17 of the Institution Decision in IPR2013-00109, that because Mattis lacks the comparison means recited in the claim there is a "deficiency" in the Mattis-DRP combination. PO Remand Br. 5–6. The argument is misplaced because that portion of the Institution Decision addressed Mattis as an anticipatory reference. In the Institution Decision, we also concluded that DRP met this element, as established by Microsoft's claim charts and expert declaration. IPR2013-00109, Decision on Institution 15–16; IPR2013-00109, Ex. 1001, 12–13; IPR2013-00109, Ex. 1013, 12. We conclude, therefore, that such a "deficiency" does not exist in the combination of Mattis and DRP.

Finally, we note that persuasive evidence of a rationale to combine DRP and Mattis is found in the Long Declaration. IPR2013-00109, Ex. 1013, 10–16. Proxyconn does not challenge this evidence. We, therefore, conclude that, taking into account the Federal Circuit's decision, Microsoft has demonstrated that claims 6, 7, and 9 of the '717 patent would have been obvious over DRP and Mattis and are not patentable.

Patentability of Claims 1, 3, and 10

These claims are directed to the Figure 4 embodiment of the '717 patent. *See supra*. Unlike the claims just discussed, they include recitation

of the sender/computer and receiver/computer, but not the gateway. All three claims require the sender/computer and receiver/computer to have permanent storage memory.

Microsoft contends that the Federal Circuit's decision does not affect the Board's decision that these claims are obvious over Perlman and Yohe. Pet. Remand Br. 6–11. Microsoft points to evidence presented in the Petition in this case and accompanying claim charts, as well as the Long Declaration (Ex. 1007). *Id*. at 7. In those submissions, Microsoft identifies certain "routers" shown in Perlman as corresponding to the "sender/computer" and "receiver/computer" identified in these claims. *Id*. (citing Ex. 1001, 3, 5). Microsoft asserts that Yohe provides the only feature of these claims arguably missing from Perlman, namely, storing of digital digests in permanent, rather than volatile, memory. Pet. Remand Br. 7 (citing Pet. 36–38; Ex. 1007 11–15).

In the Petition, Microsoft contended that Perlman anticipates claims 1, 3, and 10. Pet. 9; Ex. 1001. Proxyconn responded that Perlman was not an "access system" and did not disclose "permanent storage memory." PO Resp. 17–18. Proxyconn did not assert that Perlman's routers failed to meet the "sender" and "receiver" requirements, even under Proxyconn's proposed construction of those terms, namely: "Neither the sender/computer nor the receiver/computer includes *separate* intermediary computers, such as gateways, proxies, routers, and caching computers." *Id*. at 16.

As a consequence, Microsoft now asserts that Proxyconn has "conceded" that Perlman discloses a "sender" and "receiver," even under Proxyconn's narrower definition of those terms reflected in the Federal Circuit decision. Pet. Remand Br. 7. On remand, Proxyconn does not

dispute this assertion. Instead, Proxyconn asserts that it should prevail simply because the Board's decision was based on a "rejected claim construction." PO Remand Br. 8. We are not persuaded by this argument. Instead, we are persuaded that Perlman meets the "receiver" and "sender" limitations of the claims, even under Proxyconn's construction of "sender/computer" and "receiver/computer."

Perlman discusses an illustrative network embodiment using routers. *See supra*. A router is an intermediary device and, under Proxyconn's construction, might not be considered a "sender" or "receiver."[7] Nevertheless, we agree with Microsoft that the disclosure of Perlman is not confined to networks using routers, but expressly applies to "any type of distributed system requiring efficient synchronization of the contents of data bases stored on nodes of a computer network." Pet. Remand Br. 8; Ex. 1003, col. 8, ll. 57–60. Perlman's express disclosure of nodes is referred to in Microsoft's Petition at pages 32–33, 35, 37, and 39. And Proxyconn's Patent Owner Response states, "Perlman discloses a sending node that broadcasts a database identifier to a plurality of receiver nodes, and updates the receiver nodes so that all of the nodes are synchronized." PO Resp. 29.

Although a router, like a gateway computer, may be considered an "intermediary" differentiated from the "sender" and "receiver" under Proxyconn's construction (*see infra*), a node is not. A dictionary definition of "node" is as follows: "In networking, a device, such as a client computer, a server, or a shared printer, that is connected to the network and is capable of communicating with other network devices." THE MICROSOFT COMPUTER

[7] The IBM DICTIONARY OF COMPUTING 588 (10th ed. 1993) defines "router" as "A computer that determines the path of network traffic flow." Ex. 3001.

DICTIONARY 312 (4th ed. 1997).[8] Ex. 3002. We are persuaded that Perlman's disclosure of using nodes meets the "sender/computer" and "receiver/computer" limitations of these claims consistent with the Federal Circuit's decision.

We are further persuaded that Microsoft and Dr. Long provide a compelling rationale for combining Perlman and Yohe. Pet. 12–14; Ex. 1007, 9–18. We, therefore, conclude that, taking into account the Federal Circuit's decision, Microsoft has demonstrated that claims 1, 3, and 10 of the '717 patent are unpatentable for obviousness over Perlman and Yohe.

Patentability of Claims 22 and 23

These method claims are directed to the operation of the receiver/computer. The claims, therefore, recite the receiver/computer, but not the sender/computer.

Santos is described in the Final Written Decision at pages 26–30. Santos describes a compression architecture that prevents transmission of replicated data to increase bandwidth in a packet switched environment such as the Internet. Final Dec. 26. In Santos, the messages are exchanged between a "compressor" and a "decompressor." Ex. 1004, Fig. 4. In one embodiment, these elements are implemented as a pair of Pentium II computers directly connected to each other via a dedicated Ethernet connection. Final Dec. 27–28; Ex. 1004, 9.

[8] This is consistent with the definition for "node" in the IBM DICTIONARY OF COMPUTING 459 (10th ed. 1993): "In a network, a point at which one or more functional units connect channels or data circuits." Ex. 3003.

Citing this Pentium II implementation, Microsoft contends that even under the Federal Circuit's "narrower" interpretation of "receiver," Santos discloses a "receiver" as recited in the claims. Pet. Remand Br. 13–14 (citing Ex. 1004, 9–10, Fig. 3). Microsoft recognizes that Santos also discloses an embodiment in which the compressors and decompressors are described as routers. Pet. Remand Br. 14. A router is defined as an intermediary device. *See supra*. However, in the test implementation described in Santos, the Pentium II PCs were directly connected, with the "decompressor" PC as one endpoint of the communications channel. *Id*. at 15.

Proxyconn contends that Santos' compressor and decompressor are "intermediate computers" as opposed to sender or receiver computers, because Santos says they are routers. PO Remand Br. 7. Proxyconn provides a diagram that it says is based on Figure 3 of Santos, showing the compressor and decompressor as separate from the server and clients, respectively. *Id*. Proxyconn contends that as a result, Santos fails to disclose the "receiver/computer" recited in claims 22 and 23. *Id*. at 13.

We are not persuaded by this argument because it ignores the Pentium II implementation in Santos. We are, instead, persuaded that the use of a Pentium II computer to implement the decompressor as described in Santos meets Proxyconn's construction of "receiver/computer," and is consistent with the Federal Circuit's guidance. For the reasons discussed *supra*, we determine that the decompressor machine in Santos's Pentium II implementation is not an intermediary device.

Proxyconn contends that "at no point" did Microsoft attempt to show that Santos had a "receiver/computer" without intermediaries. PO Remand

Br. 13. This argument is unavailing. Microsoft contended in its claim charts accompanying the Petition that Santos provided such a receiver/computer. As stated in the claim charts: "Receiver implementation is an 'Intel-based PentiumII' computer running Linux Operating system (Santos § 3.4, ¶ 1)." Ex. 1001, 6.

We, therefore, conclude that taking into account the Federal Circuit's decision, Microsoft has demonstrated that claims 22 and 23 of the '717 patent are anticipated by Santos.

ORDER

In view of the foregoing, it is

ORDERED that claims 1, 3, 6, 7, 9, 10, 22, and 23 of U.S. Patent No. 6,757,717 are not patentable; and

FURTHER ORDERED that this is a final written decision of the Board under 35 U.S.C. § 318(a). Parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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