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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MIKAEL GIDLUND, TOMAS LENNVALL, and
JONAS NEANDER

Appeal 2016-000833
Application 13/693,850
Technology Center 2400

Before CARL W. WHITEHEAD JR., MICHAEL J. STRAUSS, and
AARON W. MOORE, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

THE INVENTION

The application is directed to an energy efficient method for communication between a wireless sensor network and an industrial control system. Spec., Title. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for communication between a device node of a wireless sensor network and control equipment of an industrial control system, said network comprising a plurality of said device nodes and a gateway, said method comprising
 - receiving a data packet from a said device node of said network, said data packet including at least one encrypted part,
 - examining said received data packet received at the gateway from a said device node in said network and checking for presence of at least one indicator for data packet aggregation indicating an aggregated data packet,
 - reconstructing, on finding at least one data packet aggregation indicator, a first data packet included in the aggregated data packet by
 - a) retrieving a source address of the first data packet, and retrieving a decryption key associated with the source address,
 - b) extracting data from the first data packet, and decrypting using said decryption key one or more encrypted data parts of the first data packet, and
 - transmitting the reconstructed first data packet to the industrial control system.

REFERENCES

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

Raissinia	US 2008/0130538 A1	June 5, 2008
Pratt	US 2009/0054033 A1	Feb. 26, 2009

REJECTION

The Examiner rejected claims 1–19 under 35 U.S.C. § 103(a) as being unpatentable over Raissinia and Pratt. Ans. 6–15.

APPELLANTS' CONTENTION¹

Raissinia's encapsulation of a management frame into a data frame fails to teach or suggest the disputed limitation of "a first data packet included in the aggregated data packet" as required by the independent claims. App. Br. 11–12.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred in rejecting independent claims 1, 10, 14, and 15 under 35 U.S.C. § 103(a) as being unpatentable over Raissinia and Pratt. We agree with Appellants' conclusions as to this rejection of the claims.

Appellants argue "[e]ncapsulating a management frame [as disclosed by Raissinia] is not the same thing as the claimed data packet aggregation." App. Br. 12. According to Appellants, "Raissinia does not even disclose aggregating data packets." *Id.* Therefore, Appellants argue, Raissinia additionally fails to teach or suggest the claimed steps directed to data packets including (i) "a first data packet included in the aggregated data packet" (*id.*); (ii) "at least one indicator for data packet aggregation indicating an aggregated data packet" (*id.*); and (iii) "reconstructing, on finding at least one data packet aggregation indicator, a first data packet included in the aggregated data packet" (*id.*). The Examiner responds by finding Raissinia's (i) management frame and data frame aggregation

¹ We note Appellants raise additional contentions of error but we do not reach them as our resolution of this contention is dispositive of the appealed rejections under 35 U.S.C. § 103(a).

teaches or suggests data aggregation (Ans. 4); (ii) provision of indications of an encapsulated management frame teaches or suggest the disputed aggregated data packet indicator (Ans. 6); and (iii) “*module 1604 for de-aggregating the aggregated data frame into individual data frames*” teaches or suggests the disputed step of reconstructing a first data packet included in the aggregated data packet (Ans. 11).

We are not persuaded by the evidence cited by the Examiner that data *frame* aggregation as disclosed by Raissinia teaches or suggests data *packet* aggregation. Although we appreciate both a frame and packet are protocol delivery units (PDUs), a packet (or “datagram”) is a layer 3 or “network layer” PDU, while a frame is a layer 2 or “data link” PDU.² The Examiner has failed to provide evidence or technical reasoning explaining why Raissinia’s frame aggregation teaches or suggests data packet aggregation. Although it may well be that one skilled in the art at the time of the invention would have appreciated frame and packet aggregation are interchangeable techniques or otherwise render each other obvious, we decline to speculate. 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

² See, e.g., InetDaemon, Frames, Packets, Datagrams, and PDU’s, retrieved January 31, 2017, from http://www.inetdaemon.com/tutorials/basic_concepts/communication/frames_packets_n_pdus.shtml.

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examination, we will not engage in the *de novo* examination that would be required to supplement the Examiner's findings in connection with the disputed limitations of the independent claims. Therefore, absent a finding including evidence or persuasive explanation bridging the divide between aggregating frames and aggregating packets, we are constrained not to sustain the rejection of independent claims 1, 10, 14, and 15 and dependent claims 2–9, 11–13, and 16–19.

DECISION

We reverse the Examiner's decision to reject claims 1–19.

REVERSED