Commissioner's Decision #1401

Décision du commissaire #1401

TOPICS: F00 Novelty

O00 Obviousness

SUJETS: F00 Nouveauté

O00 Évidence

Application No: 2,806,527

Demande no: 2 806 527

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,806,527 having been rejected under subsection 30(3) of the *Patent Rules* (SOR/96-423), has consequently been reviewed in accordance with Paragraph 30(6)(*c*) of the *Patent Rules*. The recommendation of the Board and the decision of the Commissioner is to refuse the application.

Agent for the Applicant

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INTRODUCTION

[1] This recommendation deals with a review of the rejection under subsection 30(3) of the *Patent Rules* of CA Patent Application Number 2,806,527 entitled "MOBILE NETWORK TRAFFIC COODINATION ACROSS MULTIPLE APPLICATIONS." The application has a filing date of May 25, 2011. The Applicant is SEVEN NETWORKS, INC.

[2] The present application relates to the coordination of wireless network traffic associated with multiple software applications running on a mobile device, such as a smartphone. When such multiple applications frequently transmit small amounts of data (e.g., in the case of push email and instant messaging), a mobile device must frequently be in a high-power mode, which leads to higher power consumption and a shortened battery life.

[3] The invention set out in the present application seeks to alleviate this problem by grouping these frequently small data transfers together into larger data transfers that can be sent less frequently, therefore reducing the time that a mobile device needs to be in a high-power mode and conserving battery life.

PROCEDURAL HISTORY

[4] This application was rejected in a Final Action dated July 21, 2014 on the grounds that certain claims lacked novelty, contrary to the requirements of paragraph 28.2(1)(*b*) of the *Patent Act*, RSC 1985, c P-4 ("*Patent Act*") and that certain claims would have been obvious, contrary to section 28.3 of the *Patent Act*. In this manner, all of claims 1-32 ("claims on file") were considered to be unpatentable in view of the prior art of record.

[5] In a response to the Final Action dated October 21, 2014, the Applicant submitted claims 1-23 ("proposed claims") and arguments in favor of their patentability.

[6] The application was forwarded to the Patent Appeal Board on December 24, 2014 with a Summary of Reasons ("SOR") setting out why the Examiner considered the claims on file to be defective. The SOR also set out why the proposed claims did not overcome the prior art defects. The SOR set out an additional defect relating to a lack of clarity in the proposed claims, contrary to subsection 27(4) of the *Patent Act*. The SOR was forwarded to the Applicant on February 3, 2015.

[7] The present panel was formed to review the application under paragraph 30(6)(*c*) of the *Patent Rules*.

[8] A written communication dated April 27, 2015 indicated that the Applicant neither wished to participate in a hearing, nor to provide written submissions in response to the SOR.

[9] In our letter dated March 30, 2016, the present panel set out its preliminary analysis of the issues relevant to the claims on file, namely novelty and obviousness. Our letter set out our rationale as to why, based on the record before us, claims 9, 10, 12-14, 17-19, 21, 29 and 30 on file lack novelty in view of prior art document D2 of record. In particular, with respect to claim 9, the letter states that prior art document D2 discloses a method of managing mobile device application traffic, provided by a broker-managed client communications system between a mobile client and one or more servers providing data to one or more corresponding client components (i.e., applications) running on a mobile device, and that in light of the construction of claim 9, which encompasses various manners of formatting the data transfer requests, D2, through multiplexing of messages, does disclose a "single transfer operation." The letter also stated that since D2 discloses grouping of data transfer requests based on a specified polling frequency, D2 discloses the claimed alignment of content requests from multiple mobile device applications based on the application behavior.

[10] Our letter also set out our rationale as to why, based on the record before us, claims 1-7, 9, 10-13, 15-17, 20, 22-24, 27 and 29-32 on file lack novelty in view of prior art

document D3 of record. In particular, with respect to claim 1, the letter states that prior art document D3 disclosed a method of coordinating traffic among applications on a mobile device by a system which minimizes the time needed to communicate small amounts of data over a communication network using a transmit probability function to determine the likelihood of additional data requests, which if likely to occur, causes a delay in the transfer of already received requests and the subsequent combination and transfer of the combined requests.

[11] Our letter also set out our rationale as to why, based on the record before us, claims 1-32 on file would have been obvious in view of prior art documents D2 and/or D3 of record, taken with the common general knowledge of the skilled person. In particular, the letter stated that claims 1-7, 9, 10-23, 27 and 29-32 contain no differences over the state of the art and therefore would have been obvious to the skilled person. In addition, the letter stated that in considering prior art documents D2 and D3 together, it would have been obvious to delay a data transfer request based on whether a response to the data transfer request has changed, in light of the method of coordinating mobile device network traffic disclosed by D3 and the method and system for optimizing server polling in D2, where polling requests grouped based on polling interval are sent together once a response to one request is received. The letter also stated that, in light of D2 and D3 taken together, user configurability of the delay for a transfer request associated with a mobile device application would have been obvious in light of the disclosure in D2 of configurable polling intervals, as would have been the prioritization of data transfer based on application priority, in light of the disclosure in D2 of prioritization of data transfer based on user interface resizing (foreground v background functionality).

[12] Our letter also set out our rationale as to why, based on the record before us, proposed claims 1-23 would have been obvious. In particular, the letter stated that proposed claims 1, 20 and 23, with the additional feature relating to the correlation of timing characteristics to effect the delay of data transfer requests, would have been obvious in light of D2 and D3 taken together, since D2 discloses the grouping of polling tasks associated with mobile device applications based on polling frequency, which is then

used to manage network traffic, and D3, like D2, is concerned with the more efficient use of mobile device resources. The letter also stated that proposed claim 8, which is an amended version of former claim 9, would have been obvious in light of D2 and D3 taken together since the only difference over D2 (using the nature of the data to delay content requests), was disclosed in D3, the combination of features being obvious since both D2 and D3 are focussed on addressing mobile device resource issues.

[13] Our letter also provided the Applicant with a further opportunity to provide submissions in relation to any of the defects identified by the Examiner or the panel.

[14] In a letter dated April 28, 2016, the Applicant declined the opportunity to make further submissions.

RECOMMENDATION OF THE BOARD

[15] In view of the Applicant's letter of April 28, 2016, in which our preliminary analysis of the issues was not disputed, we conclude that the claims on file lack novelty and/or would have been obvious and we recommend that the application be refused for the reasons set out in our letter of March 30, 2016.

[16] Further, as proposed claims 1-23 suffer from an obviousness defect, they are not considered "necessary" under subsection 30(6.3) of the *Patent Rules*.

Stephen MacNeil	Lambros Pezoulas	Andrew Strong
Member	Member	Member

DECISION

[17] I concur with the conclusions and recommendation of the Patent Appeal Board that the application be refused because:

- Claims 1-7, 9-24, 27, and 29-32 on file lack novelty and therefore do not comply with paragraph 28.2(1)(*b*) of the *Patent Act*; and
- Claims 1-32 on file would have been obvious and are therefore non-compliant with section 28.3 of the *Patent Act*.

[18] Therefore, in accordance with section 40 of the *Patent Act*, I refuse to grant a patent on this application. Under section 41 of the *Patent Act*, the Applicant has six months within which to appeal my decision to the Federal Court of Canada.

Johanne Bélisle
Commissioner of Patents
Dated at Gatineau, Quebec,
this 20th day of July, 2016