

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 48

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte AUBREY CHERNICK
and
SAM GREENBLATT

Appeal No. 2001-2127
Application No. 08/660,730

ON BRIEF

Before HAIRSTON, KRASS and BARRETT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-3, 5-7, 9-11, 13, 14, 17 and 18.

The invention is directed to providing communications over a network via a remote procedure calling (RPC) facility between client and server entities on computer platforms interconnected by a transport network. More particularly, in order to eliminate overhead and delay, the instant invention provides for

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transferring a message to the server from the client via the RPC call on the transport network when the client and server are not located on the same local platform. However, when the client and server are located on the same local platform, and the server is unavailable to respond to the RPC call, the message is stored with an object identifier in a local memory queue on the local platform, so that the RPC call does not have to be re-tried by the client.

Representative independent claim 1 is reproduced as follows:

1. A method of communicating via a remote procedure calling (RPC) facility between client and server entities on computer platforms interconnected by a transport network, comprising:

determining if a server is located on the same local platform as a client wishing to communicate a message using an RPC call to the server;

transferring the message to the server via the RPC call on the transport network when the client and server are not located on the same local platform;

storing the message with an object identifier in a local memory queue on the local platform when the client and server are located on the local platform and the server is unavailable to respond to the RPC call, so that the RPC call does not have to be re-tried by the client;

causing the server to interrogate the local memory queue when the server is available to respond to the RPC call, wherein the remote procedure calling facility asynchronously accesses the messages in the local memory queue; and

transferring the message to the server from the local memory queue.

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The examiner relies on the following references:

Brandle et al. (Brandle)	5,218,699	Jun. 08, 1993 (filed June 8, 1992)
Tantry et al. (Tantry)	5,398,336	Mar. 14, 1995 effective filing date Oct. 16, 1990)
Duault et al. (Duault)	5,428,781	Jun. 27, 1995 (effective filing date Aug. 6, 1990)

W. Stevens, UNIX Network Programming 692-708 (Prentice Hall, Inc. 1990)

Claims 1-3, 5-7, 9-11, 13, 14, 17 and 18 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner offers Brandle, Tantry and Duault with regard to claims 1-3, 5-7, 11, 13, 17 and 18, adding Stevens to this combination with regard to claims 9, 10 and 14.

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

OPINION

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or

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to combine prior art references to arrive at the claimed invention. Such reason must stem from some teachings, suggestions or implications in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1040, 228 USPQ 685, 687 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1051, 189 USPQ 143, 146-47 (CCPA 1976). Only those arguments actually made by appellant have been considered in this

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decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived (see 37 CFR 1.192 (a)).

With regard to independent claims 1 and 11, it is the examiner's position that Brandle substantially discloses the claimed subject matter except for storing the message in a local memory queue when the client and server are on the same platform and the server is unavailable to respond to the RPC call and for causing the server to interrogate the local memory queue when the server is available and for transferring the message to the server from the local memory.

The examiner turns to Tantry for a communication manager that communicates a request from a client to a server wherein, when the server is unavailable to respond to the request, the request is queued until the server becomes available. The examiner makes the combination of Brandle and Tantry because "it would have been obvious to include a local memory queue into the RPC facility of Brandle and store a message [sic, message]/ service request in the local memory queue . . . when the local server is unavailable to respond to the message [sic, message]/ service request" and it would have been obvious "to apply queuing

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to the local server because the local service requests of Brandle are those frequently called . . ." (answer, page 5).

Additionally, the examiner applies Duault for teaching queue management whereby a server interrogates a memory queue before dequeuing a message, finding that since Brandle, as modified, requires queue management and Duault provides such a mechanism, it would have been obvious to apply the teaching of Duault to the system of Brandle, as modified, "so as to permit better fault tolerance" (answer, page 5).

Appellants argue that the combination of references does not teach the instant claimed subject matter because Tantry describes the Communication Manager "as always buffering requests when no Application Server is available, regardless of whether the Application Server is local or remote" (principal brief, page 4). Appellants then proceed to list the "transferring . . .," "storing . . .," and "causing . . ." elements of claim 1, arguing that "nothing in Tantry teaches or suggests" these limitations (principal brief, page 4).

It is a little difficult to discern appellants' arguments. Since appellants identify most of the claim language, it is difficult to ascertain just what specific claim language

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appellants contend distinguishes over the combination of applied references. If appellants are referring to "storing the message . . . on the local platform when the client and server are located on the local platform and the server is unavailable . . ." (principal brief, sentence bridging pages 4-5), Tantry would seem to teach this. Column 14, lines 65-67, of Tantry states that "[i]f no Application Server of the type requested is available, the Communication Manager buffers the request until one is available." This would seem to imply that Tantry buffers, or queues, the message when a server is unavailable, whether or not the server is local or remote, and does not buffer, or queue, a message when a server is available. That being the case, Tantry does store a message on the local platform when the client and server are located on the local platform and the server is unavailable, as claimed. It is true that Tantry also implies that a message is stored on the local platform when the client and server are not located together on the local platform, but that is not precluded by the language of the claim.

However, independent claims 1 and 11 also require the transferring of the message to the server via the RPC call on the transport network when the client and server are not located on

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the same local platform. It appears to be the examiner's position that this is also suggested by Tantry because Tantry transfers the message to the server when the client and server are not located on the same local platform, but that, in Tantry, the message is not transferred to the remote server when that server is unavailable. Instead, when the remote server is unavailable in Tantry, the message is queued at the local platform where the client is located until the remote server becomes available. This is contrary to appellants' invention where the message is *always* transferred to the server when the client and server are not located on the same local platform, whether or not the server is available.

Now, the examiner's position is understandable because the claims do not recite the message "always" being transferred or that the message is transferred "whether or not the server is available." However, it is our view that such limitations are implied in the instant claim language. This is because the claims state that the message is transferred on the transport network when, i.e., whenever, the client and server are not located on the same platform. The recitation is not limited to only when the server is available. The only condition is that the client and server are not located on the same local platform

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and when this condition is satisfied, the message is transferred to the server on the transport network, *whether or not the server is available*. This interpretation is even more reasonable when read in light of the next claimed step wherein the message is stored in a local memory queue on the local platform when the client and server are located on the local platform and the server is unavailable. Taken together, the "transferring" and "storing" steps strongly imply that when the client and server are located on the same local platform and the server is unavailable, then the message is stored in a local memory queue while, if the client and server are not located on the same local platform, then the message is *always* transferred to the server on the transport network *whether or not the server is available*. While the claim language could have been made clearer in this regard, we hold that these limitations are, *implicitly*, part of the instant claimed subject matter and will not sustain the examiner's rejection based on our interpretation.

Since none of the applied references teach or suggest always transferring the message to the server when the client and server are not located on the same local platform, whether or not

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the server is available, we will not sustain the rejection of
claims 1-3, 5-7, 9-11, 13, 14, 17 and 18 under 35 U.S.C. § 103.

The examiner's decision is reversed.

REVERSED

KENNETH W. HAIRSTON)	
Administrative Patent Judge)	
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ERROL A. KRASS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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