

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAY WILLIAM BENAYON  
and BRIAN WARD THOMSON

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Appeal No. 2002-0759  
Application 09/088,747

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ON BRIEF

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Before HAIRSTON, JERRY SMITH and DIXON, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 13, 15 through 17 and 20 through 22. In an Amendment After Final (paper number 24), claims 1, 8, 11, 15 and 21 were amended. As a result of the amendment, and the filing of the last brief (paper number 25), the examiner has limited the appeal to claims 11 through 13, 15, 16, 21 and 22.

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The disclosed invention relates to a mechanism and to a process for user heap management.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A mechanism for user heap management during program execution in an operating system having means for allocating dynamic memory and a runtime library, the mechanism comprising user-controlled means for directing heap allocation requests, said user-controlled means being located in the memory supplied by an executing program and including therein heap control data defining heap type and semaphores for multithreading.

The reference relied on by the examiner is:

Benayon et al. (Benayon)                      5,809,554                      Sept. 15, 1998

Claims 11 through 13, 15, 16, 21 and 22 stand rejected under the judicially created doctrine of double patenting over claims 1 through 3 of Benayon.

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

#### OPINION

In response to the rejection, appellants state (brief, page 1) that "[t]his rejection will be addressed by the filing of a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) upon the finding of allowability of any of the claims in question." In view of appellants' response, the judicially created double

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patenting rejection of claims 11 through 13, 15, 16, 21 and 22 is sustained pro forma.

DECISION

The decision of the examiner rejecting claims 11 through 13, 15, 16, 21 and 22 under the judicially created doctrine of double patenting is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

KENNETH W. HAIRSTON	)	
Administrative Patent Judge	)	
	)	
	)	
	)	BOARD OF PATENT
JERRY SMITH	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
	)	
JOSEPH L. DIXON	)	
Administrative Patent Judge	)	

KWH:dal

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