

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WINDSOR WEE SUN HSU, SHAUCHI ONG
and HONESTY CHENG YOUNG

Appeal No. 2002-1314
Application 09/412,902

ON BRIEF

Before THOMAS, JERRY SMITH and RUGGIERO, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 9 and 18-20. Claims 1-8, 10-17 and 21-25 were indicated to contain allowable subject matter by the examiner. In response to the appellants' appeal brief, the examiner has indicated that claims 18-20 now contain allowable subject matter [supplemental answer, page 2]. Therefore, the only claim remaining in this appeal is claim 9.

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The disclosed invention pertains to a computer-implemented method for clustering related pages in close physical proximity on a data storage medium. The data pages are clustered by identifying relationships between the pages that are established by more than time of page access.

Sole claim 9 is reproduced as follows:

A computer-implemented method for clustering related data pages in close physical proximity on a data storage medium, comprising:

identifying relationships between the pages, the relationships being established by more than time of page access; and

clustering the pages based on the relationships.

The examiner relies on the following reference:

Courts et al. (Courts) 5,394,537 Feb. 28, 1995

Claim 9 stands rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of Courts.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the examiner and the evidence of anticipation relied upon by the examiner as support for the

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rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejection and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon does not support the examiner's rejection. Accordingly, we reverse.

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner has indicated how he reads the invention of claim 9 on the disclosure of Courts. Appellants argue that in Courts data pages are clustered based on when they are first accessed which is a time of page access. Appellants note that claim 9 requires that the clustering be based on something more

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than time of page access [brief, pages 3-4]. The examiner refers to column 10, lines 56-68 of Courts and simply asserts that this passage teaches the clustering of pages based on more than time of page access [answer, page 4].

We will not sustain the examiner's rejection of claim 9. The portion of Courts relied on by the examiner states that pages are clustered "which have previously exhibited a sequential time sequence of first usage" [column 10, lines 58-60]. This passage appears to suggest that the clustering of pages is based on a time of page access as argued by appellants. It is not apparent to us how the examiner has interpreted this passage to represent a relationship that is "more than time of page access" as recited in claim 9. The examiner has failed to elaborate on his position and to rebut appellants' argument with an explanation as to why the clustering described in Courts meets the recitation of "more than time of page access" as claimed. Since the portion of Courts relied on by the examiner does not appear to disclose the claimed invention, and since the examiner has failed to explain why he deems his position to be correct, we are constrained to reverse the examiner's rejection based on this record.

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For the reasons discussed above, the decision of the
examiner to reject claim 9 is reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
)	
)	
JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	

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John L. Rogitz
Rogitz & Associates
750 B Street
Suite 3120
San Diego, CA 92101

JS/ki