

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 38

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GEORGE P. COPELAND,
GEOFFREY M. HAMBRICK
and
ROBERT H. HIGH, JR.

Appeal No. 2002-1398
Application 08/572,474

ON BRIEF

Before THOMAS, KRASS, and DIXON, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 4-6, 8, 9, 11, 13-18, 20-25 and 27-30. The examiner has indicated that claim 26 is directed to allowable subject matter and is no longer on appeal before us.

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The invention is directed to a handling system for object oriented information. In particular, according to the instant invention, a key is returned at the creation of an object and that same key is thereafter used in finding or activating that object.

Representative independent claim 27 is reproduced as follows:

Claim 27. In an object oriented information handling system including one or more processors, a storage system, one or more I/O controllers, a system bus operatively connecting the processors, storage system and I/O controllers, and a system control program for controlling the operation of the system,

an improved object adapter having an instance manager for managing in a protocol neutral manner all aspects of physical and logical life cycles of an object comprising:

means, responsive to a request, for finding or activating a particular object, given a key and an object class;

means for returning an object key in response to a request from a requester to create a new object; and

means for invoking an object method in response to a request, said means for invoking being a selected one of at least two different means for invoking said selected means for invoking being chosen in response to said instance manager object finding or activating.

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The examiner relies on the following references:

Brandle et al. (Brandle)	5,218,699	Jun. 8, 1993
Travis et al. (Travis)	5,280,610	Jan. 18, 1994

OMG, "The Common Object Request Broker: Architecture and Specification," (CORBA) OMG Doc. No. 91.12.1, Rev. 1.1, Draft 10, pp. 36, 40-43, 147-151, 154 (Dec. 1991).

OMG, "Common Object Services, Specification, (COSS) Vol. 1," OMG Doc. No. 94-1-1, Rev. 1.0, First Ed., pp. 74-82 (Mar. 1, 1994).

Claims 4-6, 8, 9, 11, 13-18, 20-25 and 27-30 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner cites COSS/CORBA and Travis with regard to claims 4-6, 13-16, 20-24, 27 and 30, adding Brandle with regard to claims 8, 9, 17, 18, 25 and 28. With regard to claims 29 and 11, the examiner cites CORBA, Travis and Brandle.

Reference is made to the brief 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,

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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 to combine prior art references to arrive at the claimed invention. Such reason much 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

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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, 146-147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants 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 27 and 30, the examiner cites COSS/CORBA as teaching an object oriented information handling system with an improved object adapter having an instance manager for managing all aspects of physical and logical life cycles of an object, being responsive to a request, finding or activating a particular object, requesting creation of a new object, and returning an object key, i.e., an object reference including a component of id. The examiner particularly cites pages 36, 40-43, 147-151 and 154 of CORBA and pages 74-82 of COSS.

The examiner recognizes that COSS/CORBA does not explicitly teach (1) one or more processors, storage system, one or more I/O

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controllers, system bus, system control program; (2) protocol neutral manner; (3) finding or activating of the particular object using a key and an object class; and (4) invoking an object method with one of at least two different invoking means.

The examiner cites Travis for an object oriented information handling system which includes the elements alleged to be missing from the COSS/CORBA combination, citing various portions of Travis at page 4 of the answer.

With Travis' teaching in mind, the examiner concludes that it would have been obvious to include one or more processors, storage system, one or more I/O controllers, system bus, system control program, into COSS/CORBA. Further, the examiner concludes that it would have been obvious to invoke an object in a protocol neutral manner, to find or activate the particular object using a key and an object class, and to invoke an object method with one of at least two different invoking means in COSS/CORBA.

The rationale offered by the examiner for making the combination is that COSS/CORBA is but a software architecture for

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a distributed object management system without the implementation details such as the mechanism to resolve a method invocation. Travis discloses such a mechanism for a distributed object management system. Accordingly, the examiner concludes that the skilled artisan would have been led to use the method resolution mechanism of Travis in the object adapter/instance manager of COSS/CORBA to resolve a method invocation (answer-page 5).

Appellants' position is that the instant claimed subject matter would not have been obvious over the applied references because of "the lack of any teaching or suggestion in the references alone or in combination of returning a key upon object creation and subsequently using that key to find or activate that object" (brief-page 7).

We agree with appellants (brief-page 8) that the "primary issue in all the rejections has to do with 'key' as it appears in each independent claim." As explained by appellants, at page 8 of the brief, appellants' invention is an improved OMG compliant object adapter which, *inter alia*, "returns a key when requested to create an object and uses a key in order to find or activate

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an object. The invention proceeds from Appellants' use of a key for each object, which key is permanent, unchanging."

For a particular object, the key returned at object creation is the same key used for finding or activating that same particular object. The question is whether the instant claims, in fact, require the *same* key.

Appellants agree that COSS/CORBA teach object creation and return of an object reference. Appellants also agree that Travis uses an instance key and class in finding or activating. But, appellants maintain that these teachings "do not make their claim elements relating to returning a key as part of object creation and thereafter using that key to find or activate" (brief-page 9).

It is the examiner's position that the instant claims do not require the key from the object creation to be the same key used for object finding/activating. Appellants respond that "[w]hile that position is strenuously opposed by Appellants with regard to claims 27, 28 and 30, that position is categorically untrue with regard to claim 29" (brief-page 10).

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Looking at independent claim 29, we agree with appellants that this claim requires the *same* key to activate an object as was returned as part of the object creation. This is clear from the recitation that the instance manager "locate or activate an object if said object request message includes an object key, returned in response to object creation, and class." Since the object request message must include the object key that was returned in response to object creation in order for the instance manager to "locate or activate" the object, and the clear implication in the claim language is that it is the same object which was created that is being located or activated, we do not agree with the examiner that this claim does not require the key from the object creation to be the same key used for finding/activating. The claim language, though it could be clearer, does, in our view, require the same key.

Since the examiner has not provided persuasive evidence in the references of returning a key as part of object creation and thereafter using that key to find or activate, relying, instead, on the position that this is not required by the claim language, we will not sustain the rejection of instant claim 29, or of claim 11, dependent thereon, under 35 U.S.C. §103.

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Our view is the opposite as to independent claims 27, 28 and 30 since, contrary to appellants' view, these claims do not require the key from the object creation to be the same key used for finding/activating. While appellants "strenuously" oppose this position, appellants point to no specific claim language which would indicate that, e.g., in claim 30, "returning **an** object key" (emphasis added) and "finding or activating **an** object, given **an** object key," (emphasis added) refers to the **same** key. Contrary to appellants' view, the clear language of claims 27, 28 and 30 does not require the **same** key.

Thus, appellants' argument as to this point, regarding claims 27, 28 and 30, is not persuasive. Since no other arguments are presented by appellants with regard to these independent claims, we will sustain the examiner's rejection of claims 27, 28 and 30 under 35 U.S.C. §103. However, it is our view that the rejection of the instant claims would not be sustainable if the claims were amended to make it clear that the key returned at object orientation is the key that is thereafter used in finding or activating that object.

With regard to claims 4, 8, 15 and 22, appellants refer to

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the examiner's reference to Travis' teaching re unpacking and packing (brief-page 11). But, instead of arguing why it is believed that this teaching would not have made the instant claimed subject matter obvious, appellants merely assume, arguendo, that the unpacking/packing is analogous to appellants' demarshalling/marshalling, and rely on their arguments with regard to the independent claims.

Similarly, appellants do not separately argue the merits of the sending a return message limitation of claims 5, 9, 16 and 23, but let the patentability of these claims stand or fall with the patentability of the independent claims (brief-page 11). Also, claims 13, 14, 18, 20, 21 and 25 stand or fall with their independent claims because they are not argued individually (see brief-page 12).

As to claim 6, appellants argue that the instance handle of Travis is not equivalent to a key, as claimed, and that there is no mention "in the applied portion of Travis of component keys (ckeys). Appellants agree that Travis teaches an instance handle comprising multiple parts, but they are not component keys" (brief-page 12).

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We do not find appellants' arguments regarding claim 6 to be persuasive. In view of the examiner's apparently reasonable assessment that the object instance handle of Travis is an identification means for finding/activating an object, as described in the Invoker Operation portions of Travis, apparently meeting the key/object key limitation of the claims, and in view of the examiner's assessment that the object instance handle of Travis includes several components, namely, <class>, <storage_class>, <location>. <instance_reference_data>, meeting the language of claim 6, appellants' mere general allegations that they "do not believe that the instance handle discussed in Travis is equivalent to a key" and that "there is no mention in the applied portion of Travis¹ of component keys (ckeys)" are not persuasive of unobviousness.

We have sustained the rejection of claims 4-6, 8, 9, 13-18, 20-25, 27, 28 and 30 under 35 U.S.C. §103 but we have not sustained the rejection of claims 11 and 29 under 35 U.S.C. §103.

¹We note that appellants do not argue that Travis nowhere discloses the claimed component keys, only that the "applied portion" of Travis does not disclose such.

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Accordingly, the examiner's decision is affirmed-in-part.

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

AFFIRMED-IN-PART

JAMES D. THOMAS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
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Administrative Patent Judge)	INTERFERENCES
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