

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SACHIN GARG,
YENNUN HUANG, JÜRGEN SCHÖNWÄLDER,
ADRIANUS PETRUS ANTONIUS VAN MOORSEL,
and SHALINI YAJNIK

Appeal No. 2002-1797
Application 09/129,338¹

ON BRIEF

Before THOMAS, BARRETT, and BARRY, Administrative Patent Judges.
BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-25.

We reverse.

¹ Application for patent filed August 5, 1998, entitled "Methods and Apparatus for Managing Middleware Service in a Distributed System."

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network connection. The network performance assessment ensures whether minimum hardware requirements are met, assesses the effect on performance from background or concurrent processes running on the user's machine, assists the user in selecting a zone (a group of servers) with the most desirable performance characteristics, and after entry into a zone, verifying that the use's connection has acceptable communications characteristics (col. 2, lines 21-29).

THE REJECTIONS

Claims 1-10, 13-18, and 21-25 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Lipa.

Claims 11, 12, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lipa and Official Notice that using agents or subagents to gather information was an old and notoriously well known method of gathering information.

We refer to the final rejection (Paper No. 10) (pages referred to as "FR__") and the examiner's answer (Paper No. 16) (pages referred to as "EA__") for a statement of the examiner's rejection, and to the brief (Paper No. 15) (pages referred to as "Br__") and reply brief (Paper No. 17) (pages referred to as "RBr__") for a statement of appellants' arguments thereagainst.

OPINION

The examiner finds that the operation center 101 monitors an application process with a fault-tolerance service (FR2; FR5).

Appellants argue that there is no fault-tolerance service in Lipa to adjust (Br3). It is argued that the operations center 101 in Lipa does not provide "a fault-tolerance service for monitoring said application process," as required by claim 21, or "monitoring said application process with a fault-tolerance service," as required by claims 1 and 22, but is only tolerant of faults within itself (Br3-4).

The examiner responds that appellants mischaracterize what the operations center entails (EA9):

The operations system manages the health rating of the network. In response to the ratings that [the] user receives, the user can be moved to a new server through reconnect options, this is a fault-tolerant system because it provides the user with options for connections on the system networks by monitoring the system connections, thereby preventing a system-wide failure, as well as local failures. Furthermore, the environmental factors that affect the network performance are monitored for changes and compensated for; see col. 2, lines 7-20 and figs 1-4. The Examiner maintains that the maintenance of multiple servers for the access and use by end-users, wherein the network performance is monitored and altered based upon the efficiency of the connections, provides a fault-tolerance method; see col. 8, lines 9-24.

The only portions of Lipa relied upon by the examiner as to the independent claims are column 2, lines 7-20, and column 8, lines 9-24.

We find it difficult to understand the examiner's position because it does not clearly point out the correspondence between the claim limitations and the teachings of Lipa. While we understand that the examiner considers the operations center 101 to correspond to the fault-tolerance service and the middleware service, the examiner does not state what corresponds to the claimed "application process" or how the operations center 101 monitors that application process, as claimed. Although not relied on by the examiner, Lipa refers to a "fault-tolerant network of [servers]" (col. 3, lines 51-52) and states that "multiple redundant lobby list servers 102 are provided for fault tolerance" (col. 3, line 67 to col. 4, line 1), but this fault tolerance is for servers of the operations center, not for the application process, as argued by appellants. In addition, we are not persuaded by the examiner's finding that Lipa is a fault tolerant system because it moves a user to a new server through reconnect options, thereby preventing a system-wide failure, as well as local failures. The only reference we find to "reconnect options" is a menu option that appears when all of the zones are rated "Forget It" (col. 7, line 55). We agree with appellants' argument (at RBr4) that there is no detail about what "Reconnect Options" may comprise, but at most it suggests that the user can manually try to connect to the system if the network connections for a zone are rated "Forget It." There is no absolutely no

suggestion that a user who was in an arena of a zone on one server is moved (migrated) to a different server in response to environmental information as might happen in a fault tolerant system. Nor do we find any discussion in Lipa about modifying the system to prevent system-wide failure, as stated by the examiner. Merely measuring the network performance and determining which servers have the best performance is not fault tolerance. Thus, we find that Lipa does not provide "a fault-tolerance service for monitoring said application process," as required by claim 21, or "monitoring said application process with a fault-tolerance service," as required by claims 1 and 22. Nevertheless, we do not rest our decision on these limitations.

Appellants argue that each of the independent claims 1, 13, and 21-25 specify a method or system for reducing faults in an application process by "dynamically adjusting the operation of a fault-tolerance (or middleware) service associated with the application process in response to the environmental information," which is not taught by Lipa (Br3; RBr3-5). It is argued that Lipa merely makes a static determination of whether to grant access, and makes no attempt to reconfigure (i.e., "dynamically adjust") the user's computer of any applications or services associated therewith (Br4).

The examiner provides three reasons why Lipa is "dynamically adjusting" the fault tolerance system.

First, the examiner relies on Lipa's statement that "once the user is in the selected area, additional network performance assessment is performed to obtain a more accurate measurement of the quality of the user's connection to the specific arena, with respect to the particular requirements of that arena" (emphasis added) (col. 8, lines 10-13).

Appellants argue that the "additional network performance assessment" is performed after a given user enters an arena and the result of the access control evaluation is to grant or deny access to the game (Br4; RBr3). It is argued that there is no support for the examiner's statement that the "additional network performance assessment" is an ongoing assessment (RBr3-4).

There may be some support for the examiner's finding that the "additional network performance assessment" is ongoing in the latency history graphs of Figs. 7 and 8 (see col. 10, lines 37-56), although this is not pointed out by the examiner. However, the important thing is that there is no "adjusting" of anything in response to the performance assessment, much less "dynamically adjusting" anything: the "additional network performance assessment" is just a measurement taken once the user is in the selected arena. The examiner conspicuously fails to point out what is being dynamically adjusted in response to the measurement.

Second, the examiner relies on Lipa's statement that "[t]he connection assessment measurements are filtered so that any events or actions that would degrade the accuracy of the data are removed or compensated for" (emphasis added) (col. 8, lines 19-22).

Appellants argue that this passage is directed only to the assessment data processed by the server 115 and not the client 122 (user terminal) or a fault tolerance service associated therewith and, consequently, there is no suggestion to modify the user configuration in any way if the user fails the network performance assessment (Br4; RBr3).

The implicit argument by appellants is that "dynamically adjusting" the operation of a service has to be the adjusting a service on the client 122. Although the examiner states that appellants interpret "dynamically adjusting" too narrowly because there is nothing about the client in the claims (EA9), the examiner does not point out where the service is that is adjusted if it is not the client 122 in Lipa. However, the important thing is that filtering and compensating does not cause anything to be "dynamically adjusted": the filtering is done to improve the accuracy of the performance assessment, not to dynamically alter the working of the system. Again, the examiner conspicuously fails to point out what is being dynamically adjusted in response to the filtering.

Third, the examiner finds that Lipa is "dynamically adjusting" the fault tolerance system because the list of zones which can be selected is dynamically adjusted based upon the results of the system measurement (EA10).

Appellants argue that the overall ratings of each available zone are provided to the user for selection of a zone for game play (RBr4). It is argued that the zone selection method is a one-time assessment performed prior to the start of a game and is not updated as play progresses (RBr4).

We agree with appellants. The determination of the overall ratings of each zone prior to user selection of a zone is a one-time occurrence and does not result in "dynamically adjusting" anything. Moreover, even if the list was changed dynamically, we fail to see how this meets the limitation of "dynamically adjusting the operation [of a service]" since adjusting a list (a thing) is not adjusting the operation of a service (a function).

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For the reasons stated above, the examiner has failed to establish a prima facie case of anticipation. The anticipation rejection of claims 1-10, 13-18, and 21-25, and the obviousness rejection of claims 11, 12, 19, and 20, which depend therefrom, are reversed.

REVERSED

JAMES D. THOMAS)	
Administrative Patent Judge)	
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