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. 30

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHNSON R. APACIBLE, KIM STEBBENS, and KWAN TERENCE

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Appeal No. 2002-2297
Application No. 08/980,585

_____

ON BRIEF

_____

Before HAIRSTON, KRASS, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-35, which are all of the claims pending in the present application.

The disclosed invention relates to the logging of network server data relating to client requests in which end users of a server program can create logging modules having a predefined interface defined by the server program. Logging modules that have been designated by a system administrator are called by the

server program in response to client requests and potential log data is passed to the logging modules. Each logging module makes its own decisions on log entries and recording formats, thereby removing constraints on end users to given formats or sets of logging criteria.

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

> 1. A network server comprising:
>
> one or more data processors;
>
> a network server program that is executable by said one or more data processors to receive and process data requests from network clients; and
>
> the network server program being configurable by a system administrator to provide log data to any one or more of a plurality of executable logging modules designated by the system administrator, wherein the executable logging modules selectively log the log data in accordance with different logging criteria.

The Examiner relies on the following prior art:

Maritzen et al. (Maritzen)	5,899,990	May 04, 1999 (filed Mar. 31, 1997)
Abraham et al. (Abraham)	5,983,270	Nov. 09, 1999 (filed Apr. 02, 1997)

Claims 1-35, all of the appealed claims, stand finally rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner offers Abraham alone with respect to claims 1, 5-7, and 11, and adds Maritzen to Abraham with respect to claims 2-4, 8-10, and 12-35.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs[1] and Answer for the respective details.

OPINION

We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs 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 and the level of skill in the

[1] The Appeal Brief was filed March 12, 2002 (Paper No. 25). In response to the Examiner's Answer dated June 5, 2002 (Paper No. 26), a Reply Brief was filed August 9, 2002 (Paper No. 27), which was acknowledged and entered by the Examiner as indicated in the communication dated August 16, 2002 (Paper No. 28).

particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as recited in claims 1-35. Accordingly, we reverse.

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, 1073-74, 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, 17-18, 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 must stem from some teaching, suggestion or implication 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).

With respect to the Examiner's 35 U.S.C. § 103(a) rejection of appealed independent claims 1, 5, and 11, Appellants assert that the Examiner has failed to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied Abraham reference. In particular, Appellants contend (Brief, pages 13 and 14) that the Examiner has not pointed to anything in the disclosure of Abraham that would correspond to the presently claimed logging modules which are designated by a system administrator to selectively log data in accordance with independent criteria.

After reviewing the arguments of record from Appellants and the Examiner, we are in general agreement with Appellants' position as stated in the Briefs. Our interpretation of the disclosure of Abraham coincides with that of Appellants, i.e., we find no basis for the Examiner's conclusion that the database tables illustrated in Abraham's Figures 9A-9D and 25A-25B correspond to the claimed logging modules. As asserted by Appellants, there is no indication in the disclosure of Abraham that these database tables are designated by an administrator to

perform logging according to independent criteria or, for that matter, perform any logging function at all.

We recognize that the Examiner (Answer, pages 4 and 11) has clarified the stated position concerning the alleged correspondence of Abraham's disclosure to the claimed logging modules by calling attention to the "logging threads" discussed at columns 46 and 47 in Abraham and illustrated in Figure 23. In our view, the Examiner at this point has correctly recognized that it is the filter engine 78 in Abraham which is performing a logging function. We fail to see, however, where the Examiner has established any support for the conclusion that Abraham's "logging threads" are logging modules which are designated by a system administrator to perform logging according to selected independent criteria, features which are present in each of the independent claims 1, 5, and 11. As asserted by Appellants (Reply Brief, page 2), from the disclosure of Abraham, the "logging threads" appear to be nothing more than transactions or messages which are started by filter executive 76 and which are common to any multi-threaded operating system.

In view of the above discussion, it is our view that even assuming, arguendo, that proper motivation existed for the artisan to modify the disclosure of Abraham in the manner

suggested by the Examiner (Answer, page 5), all of the claim limitations would not be taught or suggested by the applied Abraham reference. Accordingly, it is our opinion that, since the Examiner has not established a prima facie case of obviousness, the 35 U.S.C. § 103(a) rejection of independent claims 1, 5, and 11, as well as claims 2-4, 6-10, and 12-14 dependent thereon, cannot be sustained.

Turning to a consideration of the Examiner's obviousness rejection of claims 2-4, 8-10, and 12-35 in which Maritzen is added to the Abraham reference, we do not sustain this rejection as well. The Maritzen reference has been applied by the Examiner to address the interface features of several of the rejected claims. We find nothing in this reference, however, which would overcome the innate deficiencies of Abraham as discussed supra. In our view, even if the applied references could be combined in the manner suggested by the Examiner, the end result would not arrive at the claimed invention since, for all of the previously discussed reasons, there would be no executable logging modules that are configured to log data in accordance with different criteria as specifically set forth, for example, in independent claims 15, 21, and 25. Similarly, we agree with Appellants that there is no indication from the Examiner as to how and in what

manner the Abraham reference would be modified with Maritzen so as to address the particular limitations set forth in independent claims 30 and 33, each of which requires the setting and/or returning of logging configurations in accordance with the specified interfaces.

In conclusion, we have not sustained the Examiner's obviousness rejection of any of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-35 under 35 U.S.C. § 103(a) is reversed.

REVERSED

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

JFR:hh

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