

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte WILLIAM CRAIG RAPP  
and KRISTIANN JOY SCHULTZ

---

Appeal No. 2003-0873  
Application No. 08/896,245

---

ON BRIEF

---

Before THOMAS, SAADAT, LEVY, Administrative Patent Judges.  
LEVY, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 3-5, 8, 11-13, 15, 17, 18, 20, 26-28, and 30, which are all of the claims pending in this application.

BACKGROUND

Appellants' invention relates to an apparatus and method to provide persistence for application interfaces. Specifically, a persistent CGI model is used to provide a CGI program extent.

The persistent CGI program is executed as a sub-process of the web server (specification, page 5). An understanding of the invention can be derived from a reading of exemplary claim 8, which is reproduced as follows:

8. A persistent CGI apparatus, the apparatus comprising:

at least one CPU;

a memory coupled to the CPU

a persistent CGI program residing in the memory and being executed by the CPU, wherein the persistent CGI program is capable of receiving and transmitting data to and from a web browser via a non-continuous communication connection which is established between the web browser and a first instance of the persistent CGI program, said first instance of the persistent CGI program remaining active after processing a request received from the web browser, whereby said first instance of the persistent CGI program processes a plurality of discrete requests from said web browser; and

an identification mechanism residing in the memory, the identification mechanism identifying at least one resource-specific address from the at least one web browser that will be accepted by said first instance of the persistent CGI program.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Montulli	5,774,670	Jun. 30, 1998 (filed Oct. 6, 1995)
Smith	5,835,724	Nov. 10, 1998 (filed Jul. 3, 1996)

Claims 3-5 and 8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith.

Claims 11-13, 15, 17, 18, 20, 26-28, and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of Montulli.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellants regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 23, mailed November 29, 2002) for the examiner's complete reasoning in support of the rejections, and to appellants' brief (Paper No. 22, filed May 1, 2002) for appellants' arguments thereagainst. 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. See 37 CFR 1.192(a).

#### OPINION

In reaching our decision in this appeal, we have carefully considered the subject matter on appeal, the rejections advanced by the examiner, and the evidence of obviousness relied upon by the examiner as support for the rejections. 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 rejections and arguments in rebuttal set forth in the examiner's answer.

We begin with the rejection of claims 3-5 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Smith. We turn first to independent claim 8.

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, 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 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. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985); 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. See id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (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, 1052, 189 USPQ 143, 147 (CCPA 1976).

The examiner's position<sup>1</sup> is that Smith teaches a persistent server-side interface program that retains client/server state information to facilitate further client/server interactions (answer, page 7 and 8). The, examiner asserts that Smith teaches a session manager (112) that retains client data previously conveyed which reduces or eliminates a client's need to navigate through the entire hierarchy of states to reaccess information (answer, page 7 and 8). According to the examiner, it would have

---

<sup>1</sup> While referring to an issued U.S. patent, it is suggested that the examiner reference specific sections through the use of column and line numbers, instead of uncorrelated page and line numbers which fail to specifically point out the sections relied on in the reference. "[T]he examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable..." 37 CFR 1.104(c)(2).

been obvious to move the subtask of saving session data, to be a subtask of the CGI program because the session manager's preservation subtask is functionally equivalent to the claimed retentive feature in the persistent CGI apparatus (answer, pages 4 and 9).

Appellants assert that essential to all appealed claims is a recitation of a CGI program (brief, page 6). Appellants dispute the examiner's contention that Smith's "session manager" is or is equivalent to appellants' claimed "persistent CGI program" (id.). Relying on Fig. 3, appellants' contend Smith's session manager is a process downstream of the claimed persistent CGI program, and fails to conform with necessary protocol to communicate with a browser (brief, page 8). Appellants admit that Smith discloses a persistent session manager and contains a CGI program which handles the transactional interface with a browser; however, appellants argue that the examiner improperly equated this downstream process to their claimed persistent CGI process because the reference is lacking any suggestion to apply persistent concepts to the CGI program (brief, page 9). Appellants further argue that, applying the examiner's reasoning, if one were to modify Smith to provide a persistent CGI program, this would require doing away with the session manager which

appears to be an integral construct of Smith (brief, page 9-10). Additionally, appellants assert that Smith teaches away from a persistent CGI process because it clearly discloses multiple instances of a transient CGI program (brief, page 10-11).

From our review of Smith, we find that the reference relates to an Internet communication system wherein a client establishes a first connection to a server whereby a session server generates and conveys session data to the requesting client; the session server maintains this previously conveyed session data after termination of the first connection to reconvey it to the client who establishes a second connection in order to reduce or eliminate the need for redundant information retrieval (col 1, line 49 to col. 2, line 26). Upon establishing the initial connection with the server, the client is assigned a unique session identifier used to identify the client during subsequent connections (col. 5, line 67 to col. 6, line 6). Client (12) may establish an unlimited number of connections with the session server (24) and a new CGI may handle communications during each new connection (col. 9, lines 52-55). More specifically, Smith discloses (col. 14, lines 43-46) that:

If client **12** establishes another connection with session server **24** within the first specified time interval,

communications server **22** spawns or otherwise generates CGI **102** to service client **12**.

From these teachings of Smith, we find that a client makes an initial connection, is assigned a unique session identifier, and then receives the requested data. This CGI connection is then terminated. If the client attempts to reestablish a connection with the server, a second and unique CGI process is started to handle this communication request. Since these transient CGI processes terminate within a single session period, these CGI processes do not remain persistent (Fig. 5, step 172 and 176).

The examiner's position appears to be that since the session manager of Smith is persistent, that it would have been obvious to make the CGI persistent. However, we find no evidence to support the examiner's position that it would have been obvious to make the CGI of Smith persistent. We are not persuaded by the examiner's assertion (answer, page 4) that "it would have been a simple variation to relocate/incorporate this [persistence] subtask into the CGI process. The examiner's unsupported assertion is not a substitute for evidence.

In addition, we find no reason to make the CGI of Smith persistent because to do so would require deletion of the session manager which is an integral construct of Smith's invention.

Thus, we agree with appellants (brief, page 10) that "[a]ppellants submit that Smith, read as a whole and without benefit of hindsight from appellant's disclosure, discloses a session manager (which is persistent) and separate CGI processes which are not persistent, and is utterly lacking any suggestion to make the CGI processes persistent."

From all of the above, we find that the examiner has failed to establish a prima facie case of obviousness of independent claim 8. Accordingly, the rejection of claim 8, and claims 3-5 dependent therefrom, is reversed.

We turn next to the rejection of claims 11-13, 15, 17, 18, 20, 26-28 and 30 under 35 U.S.C. § 103 as being unpatentable over Smith in view of Montulli. However, the addition of Montulli provides no teaching or suggestion to overcome the deficiencies of Smith with respect to the independent claim 8 as discussed, supra. Therefore, we find that the teachings of Smith and Montulli fail to establish a prima facie case of obviousness of claims 11-13, 15, 17, 18, 20, 26, 28 and 30. Accordingly, the rejection of claims 11-13, 15, 17, 18, 20, 26-28 and 30 under 35 U.S.C. § 103(a) is reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claim under 35 U.S.C. § 103(a) is .

REVERSED

JAMES D. THOMAS	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
	)	BOARD OF PATENT
STUART S. LEVY	)	APPEALS
Administrative Patent Judge	)	AND
	)	INTERFERENCES
	)	
	)	
	)	
MAHSHID D. SAADAT	)	
Administrative Patent Judge	)	

SSL/kis

JAMES R. NOCK  
IBM CORPORATION DEPARTMENT 917

Appeal No. 2003-0873  
Application No. 08/896,245

Page 11

3605 HIGHWAY 52 NORTH  
ROCHESTER, MN 55901-7829