The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CARL PHILLIP GUSLER, RICK ALLEN HAMILTON II,
and STEPHANIE E. WOODS

Appeal No. 2003-1517
Application No. 09/389,192

ON BRIEF

Before JERRY SMITH, RUGGIERO, and GROSS, ***Administrative Patent Judges***.

GROSS, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 30, which are all of the claims pending in this application.

Appellants' invention relates to an automated risk assessment method and system for providing risk indications for a computer system. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for implementing an automated risk assessment tool for performing a risk assessment and providing standardized and accurate risk indications for a computing system, comprising:

executing a first sub-system risk test on a system, wherein the first sub-system risk test on the system is specific to the first sub-system;

receiving an output in response to executing the sub-system risk test;

categorizing the output from a plurality of risk categories;

assessing a first risk level with the risk category of the output; and

determining sub-system action based on the first sub-system risk test and the first risk level.

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

Hill et al. (Hill)	5,047,977	Sep. 10, 1991
Skeie	5,500,940	Mar. 19, 1996

Claims 1 through 9, 11 through 22, and 24 through 30 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Skeie.

Claims 10 and 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Skeie in view of Hill.

Reference is made to the Examiner's Answer (Paper No. 9, mailed January 28, 2003) for the examiner's complete reasoning in support of the rejections, and to appellants' Brief (Paper No. 8, filed November 25, 2002) and Reply Brief (Paper No. 11, filed April 8, 2003) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by appellants and the examiner. As a consequence of our review, we will reverse both the anticipation rejection of claims 1 through 9, 11 through 22, and 24 through 30 and also the obviousness rejection of claims 10 and 23.

Each independent method claim (claims 1, 6, and 12) recites executing or providing sub-system risk tests which generate outputs and assessing risk levels or ranks based on the outputs of the tests. The independent system claims (claims 14, 19, and 25) recite the means for executing or providing sub-system risk tests which generate outputs and means for assessing risk levels or ranks based on the outputs of the tests. Independent claim 27 recites instructions for executing sub-system risk tests which generate outputs and instructions for assessing risk levels based on the outputs of the tests. Thus, all of the claims require sub-system risk tests, a generation of outputs by the tests, and an assessment of risk level based on the risk test outputs.

The examiner asserts (Final Rejection, page 2) that Skeie's disclosure in column 2, lines 52-58 of "analyzing the entire storage system (computing system) and evaluating how partial or

full failure of one component adversely affects operation and data availability in the system" equates to "executing a sub-system risk test." Further, the examiner contends (Answer, page 4) that analyzing the storage system and evaluating how partial or full failure of a component adversely affects operation of the system in Skeie is a sub-system risk test.

Appellants argue (Brief, page 7) that Skeie teaches evaluating how an existing failure may affect the system, but does not teach executing a sub-system risk test on a system. Further, appellants argue that Skeie fails to disclose assessing a first risk level with the risk category of the output of the risk test. Instead, appellants explain that Skeie discloses detecting and evaluating a storage component that has failed and determining the degree of failure.

Skeie discloses (column 2, lines 52-58) analyzing the entire system and evaluating how part or full failure of a single component adversely affects operation and data availability on the system. The analysis is based on prior failure of a component and is done for the entire system. The analysis is not performed on individual subsystems nor does it perform a risk test, as is claimed. Further, Skeie does not assess a risk level or rank from the output of the analysis. Skeie also discloses

(column 3, lines 13-31, column 7, lines 18-24, and column 6) a method for preempting failure in an electronic data storage system. However, the method for preempting does not involve a sub-system risk test, but rather involves setting for components failure threshold values at which the faulty components experience events sufficient to degrade the system. Thus, as Skeie fails to teach or suggest sub-system risk tests and assessing risk levels from the outputs of the tests, Skeie fails to anticipate the claims. Consequently, we cannot sustain the anticipation rejection of claims 1 through 9, 11 through 22, and 24 through 30.

Regarding the obviousness rejection of claims 10 and 23, Hill fails to cure the above-noted deficiencies of Skeie. Accordingly, we will reverse the rejection of claims 10 and 23.

CONCLUSION

The decision of the examiner rejecting claims 1 through 9, 11 through 22, and 24 through 30 under 35 U.S.C. § 102(b) and claims 10 and 23 under 35 U.S.C. § 103 is reversed.

REVERSED

JERRY SMITH Administrative Patent Judge	)	
JOSEPH F. RUGGIERO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
ANITA PELLMAN GROSS Administrative Patent Judge	)	

AGP/RWK

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