

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VEDRAN LERENC and JOCHEN SANDVOSS

Appeal No. 2004-0354
Application No. 09/240,118

ON BRIEF

Before KRASS, FLEMING and SAADAT, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-21.

The invention pertains to the display of connection-related performance data in networks. In particular, performance data, such as loading speed and/or time, is integrated into the layout of a document, such as a web page. Files having references (e.g., hyperlinks) to other files are identified, and the

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performance data for loading each of the files associated with the references is generated and integrated into a graphical display of the references prior to selection of one of the references. Thus, a user is informed of the performance of the computing system with regard to the retrieval of the files associated with the reference prior to the user selecting the reference.

Representative independent claim 1 is reproduced as follows:

1. A method of transmitting and displaying files requested from an inquiring system (client) to a replying system (server) via a data network, wherein files of a defined format are stored on the server with references (hyperlinks) to other files, comprising the steps of:

a) identifying files with references (hyperlinks) to other files;

b) generating performance data for loading each of said files associated with said references; and

c) integrating said performance data into a graphical display of said references prior to selection of one of said references.

The examiner relies on the following references:

Barrick, Jr. et al. (Barrick)	6,006,260	Dec. 21, 1999 (filed Jun. 3, 1997)
Matthews, III et al. (Matthews)	6,025,837	Feb. 15, 2000 (filed Mar. 29, 1996)
Habusha et al. (Habusha)	6,205,498	Mar. 20, 2001 (filed Apr. 1, 1998)

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generally available to one of ordinary skill in the art would lead the individual to combine the relevant teachings of the references. In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988).

With regard to the independent claims, it is the examiner's position that Barrick transmits and displays files by the steps of identifying files with references (hyperlinks) to other files, identifying column 7, lines 46-47, for the selection of a hyperlink within the HTML page containing the browser agent; generating performance data for loading (column 7, line 26, for downloading performance) each of the files with references (with the browser agent selected to download the test page at column 7, lines 46-47); and integrating the performance data into a graphical display (identifying display frame 480 in Figure 4B) of the references (identifying column 7, lines 9 through column 8, line 46, and Figures 4A and B and contending that "an HTTP GET request is sent as a result").

It is the examiner's position that Barrick teaches the claimed subject matter of the independent claims but for displaying the performance data "prior to" selection of the reference.

The examiner turns to Luzzi for a disclosure of a client

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based application system that incorporates the displaying of the performance data prior to selection of the reference, and concludes that it would have been obvious to combine Luzzi with Barrick so as "to enable the user a more informed decision with regards to the accessing of a hyperlink" (answer-page 4).

Appellants contend that the examiner's rejection is deficient in several aspects. First, say appellants, Barrick does not teach to integrate the performance data into a graphical display of references/documents "prior to selection of one of said references" because Barrick teaches that there must be a selection of a hyperlink in the web page before the browser agent can begin to measure a download interval (column 7, lines 46-48) (principal brief-page 5). Appellants contend that only in certain embodiments of Barrick are hyperlinks to test pages even displayed, and these embodiments all require that the user select a hyperlink prior to performance data being measured.

Appellants disagree with the examiner's assertion that Barrick teaches integration of performance data into a graphical display of a reference because the display frame 480, relied on by the examiner for this teaching, does not display performance data at all. In fact, argue appellants, display 480 of Barrick is only used to display the actual test page that is downloaded.

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Appellants admit that Barrick does teach a qualitative indicator of a download interval may be displayed to the user but Barrick does not suggest that this qualitative indicator is integrated into a graphical display of the reference to the test page prior to selection of the hyperlink to the test page.

Appellants also point out that Barrick requires a hyperlink, if there is one, to be selected in order for the browser agent to operate to obtain the download interval, so that it is only after the hyperlink is selected and the browser agent measures the download interval that a qualitative identification can be made and displayed to the user.

Moreover, argue appellants, Luzzi does not provide for these deficiencies of Barrick because Luzzi has nothing, whatsoever, to do with file references, i.e., hyperlinks. Thus, Luzzi does not teach or suggest anything remotely similar to identifying files with references (hyperlinks) to other files, generating performance data for loading each of said files associated with said references, or integrating said performance data into a graphical display of said references prior to selection of one of said references (principal brief-page 8).

Because Luzzi teaches only a monitoring agent for collecting performance data of an application program on a server and

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providing a graph or table of the performance data collected by the monitoring agent, and there is no teaching or suggestion that the graphs and tables are even integrated into a display of a reference (principal brief-page 8).

Appellants further contend that it would not have been obvious to combine the references to Barrick and Luzzi because Barrick is directed to a browser agent for measuring the download time of test pages associated with hyperlinks after the hyperlink is selected by a user, while Luzzi is directed to an agent for measuring the performance of "server applications" in response to service requests. Moreover, appellants point out, both references may be directed to obtaining performance data but the performance data obtained is very different, Barrick measuring connection performance and Luzzi measuring application performance (principal brief-page 9). Therefore, conclude appellants, there would have been no motivation for the combination suggested by the examiner.

We agree with appellants for the reasons set forth in the principal and reply briefs.

All of the independent claims require integrating performance data into a graphical display of the references (hyperlinks) prior to selection of one of the references. While

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the examiner relies on Barrick's display frame 480 in Figure 4B, it is very clear from Barrick's column 8, lines 49-51, that display frame 480 is initially blank and eventually contains the test page that is downloaded. There is no indication in Barrick that display frame 480 displays performance data. The examiner's only purported response, at page 10 of the answer, is to cite column 7, line 47, et seq. of Barrick, stating that an "HTTP GET request is sent as a result." It is not understood how this is responsive to a finding that Barrick's display frame 480 does not teach performance data being integrated thereinto.

While our finding that there is no performance data integrated into the display 480 of Barrick is sufficient to reverse the examiner's rejections, we further note that we agree with appellants that there would appear to be no reason for combining Luzzi with Barrick because Luzzi is not concerned with identifying files with references (hyperlinks) to other files or for generating performance data for loading each of the files associated with said references, or with integrating the performance data into a graphical display of said references prior to selection of one of the references. The graphs disclosed by Luzzi relate only to the performance of applications on servers, not performance associated with references to files.

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Thus, one must ask why a skilled artisan would have been led to combine the references in such a manner as to provide for integrating performance data associated with references (hyperlinks) to files in Barrick and to so integrate the performance data "prior to" selection of one of the references. The simple answer, in our view, is that the artisan would not have been led to do so from the combined teachings of Barrick and Luzzi.

Accordingly, we will not sustain the rejection of claims 1-3, 6-17 and 19-21 under 35 U.S.C. § 103. Since the other references to Matthews and Habusha, added for the rejection of claim 4 and claims 5 and 18, respectively, do not provide for the deficiencies of Barrick and Luzzi, we also will not sustain the rejection of claims 4, 5 and 18 under 35 U.S.C. § 103.

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The examiner's decision rejecting claims 1-21 under
35 U.S.C. § 103 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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MICHAEL R. FLEMING)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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