

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GURUDUTH SOMASEKHARA BANAVAR,
KEVAN LEE MILLER and MICHAEL JAMES WARD

Appeal No. 2004-1082
Application No. 09/106,166

ON BRIEF

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

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-16, all of the pending claims.

The invention is directed to a technique for improving responsiveness of a user interface in a distributed groupware application environment. In particular, there is dynamic

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Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

A claim is anticipated only when a single prior art reference expressly or inherently discloses each and every element or step thereof. Constant v. Advanced Micro-Devices Inc., 848 F.2d 1560, 7 USPQ2d 1057 (Fed. Cir. 1988); RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 USPQ 385 (Fed. Cir. 1984).

With regard to the anticipation rejection based on Alonso, as it is applied to independent claim 1, the examiner contends that Alonso teaches, at column 2, line 20, through column 3, line 67, a system including a plurality of distributed sites wherein each site is adapted to run at least one application (a database) and application state information is maintained at a plurality of local (server computer) and remote (remote computers) sites.

The examiner identifies a first command sequence, with commands, as receiving a request for an update (i.e., a modification) to the state information at a local site (a server computer). The examiner contends that since the modifications are "updates," Alonso discloses generating an update to the state information maintained at the local site, in response to the

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request for an update to the state information. The examiner cites column 9, lines 32-67, of Alonso for a teaching of generating a notification of the update to the application, i.e., confirmation of modifications. Finally, the examiner identifies column 10, lines 30-64, of Alonso, as teaching dynamically switching (i.e., the change in operating mode can ensue automatically) between an optimistic notification mode and a pessimistic notification mode.

It is appellants' view that Alonso fails to teach the claimed "dynamically switching between an optimistic notification mode and a pessimistic notification mode." In particular, appellants contend that the examiner has erroneously analogized the "notifications" of the instant claimed invention with the "confirmations" and "information about the modifications of the shared data" disclosed by Alonso. At page 4 of the principal brief, appellants argue that Alonso's "confirmations" are like acknowledgments in that they are performed synchronously in response to a particular request or action which has been taken, such as a modification of shared data, and that a confirmation is always received by the party initiating the request or action. Appellants contrast this to a "notification," as used in the instant invention, which is an autonomous message, from the

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standpoint of the entity receiving the notification, in the sense that the entity receiving the notification may not be the same as the entity initiating the action corresponding to the notification.

More particularly, appellants argue, at page 2 of the reply brief, that Alonso discloses, at column 9, lines 32-35, that a confirmation refers to "modifications of the shared data GD since the last updating of the replicated data unit," while the present invention, with regard to a "notification," informs the application of a local change to state information and does not relate to modifications of shared data. Referring to page 9, lines 13-15, of the instant specification, i.e., "optimistic view objects 113 receive notifications as soon as the data has changed locally; pessimistic view objects 110 receive notifications only when the distributed sites have agreed there are no conflicts among them in the changes to the data," appellants argue that, in the instant invention, it is only after the application determines how to respond to the notification that the shared data may be modified.

Thus, appellants contend that the meaning given to the claimed term "notification," as defined in the instant

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specification, is different from the "confirmation" of Alonso and Alonso cannot anticipate the instant claimed invention.

Moreover, contend appellants, even if, arguendo, Alonso's "confirmation" might be considered to be a "notification," Alonso still does not disclose the claimed step of "dynamically switching between an optimistic notification mode and a pessimistic notification mode." This is so because, while Alonso does disclose the switching between optimistic and pessimistic operating modes, in general, Alonso does not disclose the step of dynamically switching between an optimistic notification mode and a pessimistic notification mode.

We have reviewed the evidence before us, including the arguments of appellants and the examiner, and we find that the examiner has presented a prima facie case of anticipation with regard to independent claim 1, which has not been successfully overcome by appellants.

First, with regard to the "dynamically switching" aspect of the claimed subject matter, we think it is clear, from column 10, lines 43-47, of Alonso, that the reference teaches a dynamic switch between optimistic and pessimistic operating modes. The issue is whether Alonso discloses the claimed optimistic and pessimistic "notification" modes.

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Appellants argue that Alonso's optimistic and pessimistic operating modes refer to update modes wherein shared data is modified (column 10, lines 27-64, of Alonso), whereas the instant claimed subject matter requires "notification" modes. Since "notification" modes, by the description in the instant specification, do not involve accessing or modifying data, and the examiner does not contend that they do, appellants' position is that since the examiner has not adequately shown that the optimistic and pessimistic operating modes of Alonso are reasonably analogous to the claimed optimistic and pessimistic notification modes, the rejection must fail.

We have reviewed the arguments of appellants and the examiner and we have reviewed the instant specification for a specific definition of optimistic and pessimistic "notification" modes, but, frankly, we do not understand why the "confirmation" in Alonso (e.g., column 10, line 63) may not be considered to be a "notification," as claimed. Clearly, whenever there is some update, there is a confirmation, or notification, to that effect.

If appellants could point to a specific definition of the terms "optimistic notification mode" and "pessimistic notification mode," perhaps we could ascertain the difference between these modes and the "operating" modes of Alonso. But,

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appellants merely point to page 9 of the instant specification,
wherein it is stated:

The three types of view objects respond to notifications that data has changed locally. The purpose of all three types of view objects is to compute some function (rendering) of some or all of the model objects 150 bound to them.

The three types differ in when each receives notifications that data has changed: optimistic view objects 113 receive notifications as soon as the data has changed locally; pessimistic view objects 110 receive notifications only when the distributed sites have agreed there are no conflicts among them in the changes to the data. According to the present invention, adaptive view objects 116 may receive notifications as an optimistic view object would or a pessimistic view object would and may dynamically switch between the two notification behaviors.

We find nothing within this passage indicating some particular definition of the terms, "optimistic notification mode" and "pessimistic notification mode," as claimed. Since appellants have been unable to point to a specific definition of these terms in the specification, and we find it difficult to ascribe any meaning to these terms different from the confirmations received in Alonso regarding optimistic and pessimistic operating modes, we will accept the examiner's interpretation of Alonso's operating modes to include the claimed notification modes.

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Appellants attempt to distinguish Alonso's confirmations from the claimed "notification," at page 4 of the principal brief, arguing that confirmations are performed synchronously in response to a particular request or action which has been taken, and that such confirmations are always received by the party initiating the request or action, while a notification is an autonomous message in the sense that the party receiving the notification may not be the same entity initiating the action corresponding to the notification. We are unpersuaded as this argument is based on limitations not appearing in the instant claims. Moreover, it is unclear as to the evidence being relied on by appellants for this distinction since the instant specification makes no such distinction regarding notification modes constituting autonomous messages.

Accordingly, we will sustain the rejection of independent claim 1 under 35 U.S.C. § 102(e) over Alonso. We will also sustain the rejection of claims 7 and 12-16 under 35 U.S.C. § 102(e) since appellants do not separately argue the merits of these claims, considering them to stand or fall with independent claim 1 (see pages 3 and 5 of the principal brief).

We will, however, not sustain the rejection of claims 2-6 under 35 U.S.C. § 102(e) based on Alonso. These claims require a

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conflict "rate" to be monitored or specified and that the dynamic switching is based on this conflict rate. The examiner relies on column 10, lines 15-59, of Alonso for such a teaching, finding that the disclosed upper and lower limits for a number of conflicts is, somehow, indicative of the claimed conflict "rate." We disagree. A "rate" is clearly something that occurs per unit of time and there is simply no disclosure or suggestion in Alonso of any conflict per unit of time. The upper and lower limits of Alonso may establish a range for conflicts, but there is no suggestion of monitoring conflict "rates" and basing the dynamic switching of the optimistic and pessimistic operating modes on such "rates." Therefore, we find that the examiner has not established a case of prima facie anticipation by Alonso with regard to claims 2-6.

We also will not sustain the rejection of claims 1-16 under 35 U.S.C. § 102(e) over Strom.¹

At page 5 of the reply brief, appellants appear to admit that Strom teaches optimistic notifications and pessimistic

¹There is a question as to whether Strom is even a viable reference under 35 U.S.C. § 102(e) since appellants point out that this reference is appellants' own work, and it bears a date only two months prior to the filing of the present application. The examiner provides no comment on this allegation.

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notifications. But, as argued by appellants, the instant invention is an extension of the framework taught by Strom, extending the teaching of Strom to include a mechanism for dynamically switching between an optimistic notification mode and a pessimistic notification mode. It is noted by appellants, and appears to be factual, that the mechanism by which dynamic switching between the optimistic notification mode and the pessimistic notification mode is achieved "are adaptive view objects and adaptive view proxy objects, neither of which are [sic, is] disclosed in Strom" (reply brief-page 6).

As above, the critical claimed step is "dynamically switching between an optimistic notification mode and a pessimistic notification mode." The examiner contends that this is taught by Strom at page 4, the left column, paragraphs 2-5. That cited portion of Strom recites that a "view object is a user-defined object that can be dynamically attached to one or more model objects."

While the attachment may be "dynamic," this does not, necessarily, mean that the switching between modes is "dynamic." In fact, as pointed out by appellants, the bottom of the left-hand column at page 2 of Strom recites that "writers can choose whether views see updates to model objects as they occur

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(*optimistic*) or only after commit (*pessimistic*).” If writers do the choosing as to optimistic mode or pessimistic mode, then the switching between modes would appear to be static, rather than dynamic, as required by the claimed subject matter. At best, Strom would appear to be unclear on the teaching of “dynamically switching.” Accordingly, at best, we could only reach a conclusion of anticipation by speculating and a proper rejection under 35 U.S.C. § 102(e) cannot be based on speculation. Therefore, we will not sustain the rejection of claims 1-16 under 35 U.S.C. § 102(e) based on Strom.

Since we have sustained the rejection of claims 1, 7 and 12-16 over Alonso, under 35 U.S.C. § 102(e), but we have not sustained the rejection of claims 2-6 over Alonso, or the rejection of claims 1-16 over Strom, under 35 U.S.C. § 102(e), the examiner’s decision is affirmed-in-part.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

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Administrative Patent Judge)	
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LEE E. BARRETT)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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