

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD F. AULT, ERNEST S. BENDER and JOHN A. HELMBOLD

Appeal No. 2004-1430
Application 09/080,504

ON BRIEF

Before JERRY SMITH, FLEMING and DIXON, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-15, which constitute all the claims in the application.

The disclosed invention pertains to an information handling system having a plurality of interacting tasks. More particularly, the invention relates to a method and apparatus for providing notification of abnormal task termination.

Representative claim 1 is reproduced as follows:

1. In an information handling system having a plurality of interacting tasks, a method of providing for notification of abnormal task termination, comprising the steps of:

defining for each of one or more target tasks an affinity list containing one or more entries for other tasks that interact with the target task and are to be notified on abnormal termination of the target task;

in response to receiving an affinity request specifying a target task and another task, adding an entry for the other task to an affinity list defined for the target task; and

in response to detecting abnormal termination of a target task, notifying each other task contained in the affinity list defined for the target task.

The examiner relies on the following references:

Tulpule et al. (Tulpule)	4,980,824	Dec. 25, 1990
Huras et al. (Huras)	6,125,401	Sep. 26, 2000
		(filed Mar. 28, 1996)

Claims 1-15 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Tulpule in view of Huras.

Appeal No. 2004-1430
Application 09/080,504

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

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, the 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 particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-15. Accordingly, we reverse.

Appellants have indicated that for purposes of this appeal the claims will all stand or fall together as a single group [brief, page 5]. Consistent with this indication appellants have made no separate arguments with respect to any of the claims on appeal. Accordingly, all the claims before us will

Appeal No. 2004-1430
Application 09/080,504

stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Accordingly, we will consider the rejection against independent claim 1 as representative of all the claims on appeal.

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.), 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

Appeal No. 2004-1430
Application 09/080,504

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 and the relative persuasiveness of the arguments. 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). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR § 41.37(c)(1)(vii)(2004)].

The examiner has indicated how he finds the invention of representative claim 1 to be obvious over the collective teachings of Tulpule and Huras [answer, pages 3-4]. Appellants argue that the claimed invention differs from Tulpule because in the claimed invention, the notification is of an abnormal termination of a target task and the notification is sent to

Appeal No. 2004-1430
Application 09/080,504

objects which interact with the target task, whereas in Tulpule, the notification relates to normal completion of a task and the notification is sent to processors having tasks which have not yet run. Appellants assert that the dependency relationship of the tasks in Tulpule do not interact in the manner claimed. With respect to Huras, appellants argue that although Huras detects the abnormal termination of a task, Huras does not provide for notification of the surviving task as claimed. Specifically, appellants argue that Huras performs a detection as opposed to a notification. Finally appellants argue that the examiner has not provided a reasonable motivation for combining the teachings of Tulpule and Huras [brief, pages 7-10].

The examiner responds that Tulpule is relied on for the teaching of a task interdependency list that alerts related tasks of the completion or termination of a target task. Thus, it is the position of the examiner that the dependency relationship of the tasks in Tulpule teaches tasks that interact with each other. The examiner also responds that Huras teaches the concept of conveying abnormal task termination to another task. The examiner maintains his position that the artisan would have been motivated to combine the teachings of Tulpule and Huras [answer, pages 5-8].

Appeal No. 2004-1430
Application 09/080,504

Appellants respond that the dependent tasks of Tulpule do not interact with the prerequisite tasks on which they depend because interacting is not a synonym for interrelated. Appellants also respond that the entity that Tulpule notifies of a prerequisite task termination is the processor that runs the dependent task and not the dependent task itself as claimed. Appellants also still dispute that the examiner has provided a reasonable motivation for the combination of Tulpule and Huras [reply brief].

We will not sustain the examiner's rejection of claims 1-15. Although we do not agree with several of appellants' arguments in the briefs, we do agree with appellants that Tulpule's teachings do not relate to interacting tasks. The examiner has simply asserted that the dependency relationship of the tasks in Tulpule constitutes a teaching of interacting tasks. As noted by appellants, the dictionary definition of interact is to act upon one another. Thus, interaction requires some form of reciprocal action between two things. The dependency relationship described in Tulpule, however, does not fit this definition because the dependent tasks in Tulpule do not act on the tasks which must precede them. There is one way action only, not reciprocal action.

Appeal No. 2004-1430
Application 09/080,504

Whether it would have been obvious to the artisan to apply the teachings of Tulpule to interacting tasks we cannot say because, on this record, the arguments necessary to make such a determination are lacking. Our holding is based only on the fact that the operation of Tulpule does not relate to interacting tasks as claimed.

In summary, we have not sustained the examiner's rejection of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-15 is reversed.

REVERSED

JERRY SMITH)	
Administrative Patent Judge)	
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JOSEPH L. DIXON)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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Appeal No. 2004-1430
Application 09/080,504

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