

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

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

~~Ex parte~~ MICHAEL D. LADWIG

Appeal No. 2005-1243
Application 10/017,739

ON BRIEF¹

Before THOMAS, DIXON, and MACDONALD, ~~Administrative Patent Judges.~~

THOMAS, ~~Administrative Patent Judge.~~

~~DECISION ON APPEAL~~

Appellant has appealed to the Board from the examiner's final rejection of claims 1, 2, 4-6, 8, 14-20, 22-24, 26-29, 31 and 32.

Representative claim 1 is reproduced below:

¹ Appellant's attendance at the Oral Hearing set for July 12, 2005, was waived in a communication received on July 11, 2005.

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1. A method of monitoring a computer network for specified events at a presence, comprising:

gathering heterogeneous data, as directed by the presence, at two or more remote computers and placing the gathered data in a data stream and forwarding the data stream to the presence;

receiving, at the presence, the at least one data stream sent from the two or more remote computers, the data stream including data representative of events; and

applying rules to the at least one data stream at the presence for sorting data representative of events and for taking one or more actions based on a specified event.

The following reference is relied on by the examiner:

McCreery et al. (McCreery)	5,787,253	July 28, 1998
	(filing date	May 28, 1996)

Claims 1, 4-6, 8, 15-19, 22, 24, 26, 28, 31 and 32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McCreery. Claims 2, 14, 20, 23, 27 and 29 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner relies upon McCreery alone.

Rather than repeat the positions of the appellant and the examiner, reference is made to the brief and reply brief for the appellant's positions, and to the answer for the examiner's positions.

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OPINION

For the reasons set forth by the examiner in the answer, we sustain the rejection of the noted claims on appeal under 35 U.S.C. § 102 and 35 U.S.C. § 103. Since appellant has presented arguments only as to representative independent claim 1 and claims 4-6 and 16 rejected under 35 U.S.C. § 102, and to claim 2 under 35 U.S.C. § 103, all remaining claims fall with their respective parent claims. The subject matter of independent claims 1, 22, 24 and 26 is to be considered together with respect to representative independent claim 1 on appeal since they are stated to have similar limitations as noted at the top of page 6 of the principal brief on appeal.

We add the following to round out the examiner's positions in the answer.

McCreery's system captures or otherwise gathers data from/on/at the Internet by means of the entire Internet activity analyzer in Figures 2 and 3. Even though appellant recognizes at the top of page 7 of the principal brief on appeal that McCreery captures and analyses data packets and is even said to gather them, appellant asserts at the top of page 9 of the

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principal brief on appeal that McCreery does not gather data, all the while recognizing at the top of page 2 of the reply brief that McCreery does gather data to the extent recited in representative claim 1 on appeal.

It is noted that the claimed "a presence" is not defined to be any type of structural or software element in the claims on appeal and may be physically located anywhere on the broadly defined computer network of this claim. It appears then that even in McCreery and the claimed the presence, any gathering function may take place at any point on the Internet, on any local area network associated with the Internet, and even internal to the Internet analyzer itself such as its network interface 240 in Figure 2 and element 316 in Figure 3 as well as the remote access interface 310 in Figure 3. The various nodes or remote computers associated with them in McCreery process, send, and otherwise gather data which are intercepted or captured (answer page 10) in McCreery's analyzer. The assertion at page 7 of the principal brief on appeal that claim 1 requires the heterogeneous data not be intercepted between nodes of computers as in McCreery is misplaced since such a feature is not recited in claim 1 on appeal.

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The filtering capability of McCreery is taught throughout this reference to be able to select/specify computer/nodes/events. Indeed, specific packets may be captured representative of heterogeneous data or events. Note column 5, lines 15-20; column 6, lines 65-67; column 8, lines 1-9; column 12, lines 22-38 and column 13, lines 57-60. These are consistent with appellant's contemplation of events in the specification at pages 9, 11 and 12.

Correspondingly, the captured data is sorted by nodes by the packet analysis section 220 in Figure 2 and the data sorter 340 in Figure 4c as well as the sorting and filtering module 362 in Figure 4d. The compare functions are analogous to a sorting operation as discussed at column 8, lines 45-49 and column 14, beginning at line 17. The application of rules feature at the end of claim 1 on appeal is taught by the use of the inference analyzer 358 in Figure 4d and the discussion at column 2, lines 43-46; column 5, lines 48-53 and column 7, lines 50-59.

The additional assertion at page 7 of the principal brief on appeal that McCreery does not take any actions based on the events detected is misplaced. Even as asserted by the examiner in the Statement of the

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Rejection at page 5 of the answer, this is plainly taught at column 5, lines 44-57 in addition to column 6, lines 65-column 7, line 5. The entire ability of an alarm function such as the alarm generation element 270 in Figure 2 is instructive as to this feature as well.

Thus, generally all these locations specified here plainly teach that the specific data is gathered as directed by the Internet activity analyzer at least in this reference. Specific packets or types of packets may be gathered or filtered according to the general repeated teachings in McCreery of filtering which are then selectively sorted by the user and organized in such a manner as to eliminate undesired data. This is most succinctly revealed in the Summary of the Invention at column 2.

The features of dependent claims 2, 4, 5, 6 and 16 in the remaining pages of the principal brief on appeal are only generally argued not to be taught by this reference. Each of these features of each of these claims is asserted by the examiner in the Statement of the Rejection to have been taught by specific portions of McCreery, which views are not challenged by appellant in the reply brief.

In this regard, page 2 of the reply brief generally states that the

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examiner contends that McCreery discloses an agent. The discussion here merely asserts an agent is a software agent as defined by a handbook. It is significant to note that appellant does not challenge or assert here that McCreery does not teach such an agent or a software agent. The examiner first asserts that the network interface 240 in Figure 2 and the corresponding element 316 in Figure 3 within McCreery works on behalf of the analyzer, thus acting as an agent. Specific teachings also exist of a software-based user agent at column 11, lines 29-51 and the so-called GET function discussed beginning at column 12, line 39, both of which appear to be conventional in well-known Internet protocols.

In view of the foregoing, the decision of the examiner rejecting various claims on appeal under 35 U.S.C. § 102 and 35 U.S.C. § 103 is affirmed.

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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)(1)(iv)(effective Sept. 13, 2003; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat., Office 21 (Sept. 7, 2004)).

AFFIRMED

James D. Thomas)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
Joseph L. Dixon)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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