

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 DANIEL W. HEPNER and ERIC M. SODERBERG

Appeal No. 2006-2504
Application No. 09/422,998
Technology Center 2100

Decided: March 27, 2007

Before JAMES D. THOMAS, KENNETH W. HAIRSTON, and ALLEN R. MACDONALD, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-5, 7-14, 16-18, and 20-22. Claims 6, 15, and 19 have been canceled.

THE INVENTION

The disclosed invention relates generally to notification of system attributes, and more specifically to a reporting application that derives data about system attributes according to a query specified by a client. The reporting application reports to the client the existence of specified attribute conditions, such as changes in the attributes (Specification 1).

Representative claim 1 is illustrative:

1. A computer method of reporting existence of a specified condition in a system attribute, said method comprising:

receiving by a reporting application, which includes computer-executable software code stored to a computer-readable medium, a request from a client to notify said client of a condition of an attribute of a system, wherein said request comprises information specifying a query for said system attribute;

using by said reporting application said query for querying said system as specified by said request, for existence of said condition of said attribute;

receiving by said reporting application raw data from said system; deriving said data about said system attribute to determine if said condition exists; and

upon determining that said condition exists, notifying said client of the existence of said condition.

THE REFERENCES

The Examiner relies upon the following references as evidence of unpatentability:

Wookey US 6,182,249 B1 Jan. 30, 2001

Wookey US 6,023,507 Feb. 8, 2000

(Note: Wookey '507 is incorporated by reference into Wookey '249)

Sybase, "Transact-SQL User's Guide", Chapters 1, 2, 7, 8 and 14.

THE REJECTIONS

The following rejections are on appeal before us:

1. Claims 1-5, 8-13, 16-18, and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wookey.
2. Claims 7 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Wookey in view of Sybase.

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

Only those arguments actually made by Appellants have been considered in this decision. It is our view, after consideration of the record before us, that the evidence relied upon supports the Examiner's rejection of the claims on appeal. Accordingly, we affirm.

Claims 1-3, 5, and 11-12

We consider first the Examiner's rejection of claims 1-3, 5, and 11-12 as being unpatentable over the teachings of Wookey. Since Appellants' arguments with respect to this rejection have treated these claims as a single group which stand or fall together, we will select independent claim 1 as the representative claim for this rejection because it is the broadest independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

Appellants argue that an artisan would not have been motivated to modify Wookey to use a diagnostic test as a *query* relating to an attribute

condition because Wookey already issues an alert indicating a predefined condition exists in the computer system (Br. 6). Appellants further argue that Wookey does not teach or suggest *a reporting application* that receives a *request* from a *client* and *queries* the system as specified by the request because Wookey's monitoring system allegedly *sends no request to the monitored system and has no control over the tests that are run* (Br. 7, ¶ 2).

The Examiner disagrees. The Examiner asserts that Wookey's monitor control software operates as a *reporting application* that runs periodic diagnostic tests as *queries* to extract *system attributes* in order to determine if a particular *system attribute* condition occurs. The Examiner points out that Wookey teaches "the tests can be selectively enabled (or disabled) according to the monitored system" (col. 16, ll. 19-20). The Examiner further asserts it would have been well known to an artisan that a *test name* must be specified to enable a specific test, and therefore it follows that a *query* is specified by the *enable request* for a particular test. The Examiner buttresses this position by pointing to Wookey's '507 patent (incorporated by reference) that teaches a Graphical User Interface (GUI)-based administrator tool having an edit mode that enables creation of *test schema*. The Examiner also broadly construes the claim term "*query*" according to its plain and accustomed meaning as set forth in the Microsoft Press Computer Dictionary, Third Edition ¹ (Answer 23-25). Specifically, the Microsoft Dictionary definition broadly defines a "*query*" as:

¹ "Microsoft Press Computer Dictionary, Third Edition", Microsoft Press, 1997, p. 392.

1. The process of extracting data from a database and presenting it for use.
2. A specific set of instructions for extracting particular data repetitively.

We begin our analysis by noting the Examiner relies upon Wookey's '507 patent that is incorporated by reference in Wookey's '249 patent (col. 1, line 7, i.e., co-pending application Ser. No. 08/819,501). Our reviewing court has determined that "[i]ncorporation by reference provides a method for integrating material from various documents into a host document ... by citing such material in a manner that makes clear that the material is effectively part of the host document as if it were explicitly contained therein." *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282, 54 USPQ2d 1673, 1679 (Fed. Cir. 2000) (citations omitted). "To incorporate material by reference, the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents." *Id.*

In the instant case, we find Wookey's '507 patent has been identified with *detailed particularity*, and is thus *fully integrated* into the host '249 patent document relied upon by the Examiner in the Final Rejection. We note that Wookey '507 describes a "*test schema*" as a "collection of *diagnostic tests*, together with status information indicating whether they are *disabled* or *enabled* and when they are scheduled to run" (col. 8, ll. 62-64, emphasis added). We note that "monitoring system 100" and "monitored system 102" (Wookey '249, Figs. 1A and 1B) correspond to "service center 101" and the "monitored system" shown in Wookey '507 (Figs. 3 and 4,

respectively). We further note that Wookey '507 teaches the administrator provides user control over which tests are executed and how frequently they are executed (Fig. 4, col. 11, ll. 18-24, *see also* Fig. 9 and associated discussion col. 14, ll. 7-38). In particular, Wookey '507 teaches that "Schedule Test button 915" invokes a *schedule editor* that enables the administrator to control how often an enabled test is run on the selected monitor (col. 15, ll. 6-11, Fig. 9).

After considering all the evidence before us, we find the limitations argued by Appellants are suggested by Wookey's '507 patent disclosure of a *schedule editor* (i.e., a *client* - a requester of services) as invoked by the *system administrator* (col. 15, ll. 6-11, col. 8, ll. 33-42). We note that Wookey '507 specifically teaches an embodiment where the *administrator* operates from a *client* system:

An RPC is a common protocol for implementing the *client-server model of distributed computing*, in which a request is sent to a remote system to execute a designated procedure, and the result is returned to the caller. *Thus, all monitors in a subnet can be viewed with an administrator.*

(Wookey '507, col. 8, ll 37-42, emphasis added).

In particular, we find that Wookey teaches the schedule editor (i.e., *client administrator*) requests the diagnostic tests (i.e., *queries*) be performed by the individual monitor programs (i.e., *reporting applications*) in Wookey's "monitored system" (Fig. 4) accordingly to a schedule designated by the system administrator using the schedule editor (Fig. 4, col. 11, ll. 23-24).

We agree with the Examiner that each of Wookey's diagnostic tests consists of *a specific set of instructions for extracting particular data*

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repetitively, in accordance with the plain meaning of the recited term “*query*” (Wookey ‘249, col. 3, l. 63 through col. 4, l. 1). We also note that Appellants have failed to disclaim or disavow the Examiner’s reliance upon a dictionary definition as representing the plain meaning of the recited term “*query*.” Thus, we find the weight of the evidence supports the Examiner’s position that an artisan would have been motivated to use each of Wookey’s diagnostic tests as a *query* to test for predefined *system attribute* conditions for the purpose of issuing an alert (i.e., as requested and scheduled by a *client* administrator). For at least the aforementioned reasons, we find the integrated disclosure of Wookey ‘249 and Wookey ‘507 (incorporated by reference) teaches or suggests all that is claimed. Accordingly, we will sustain the Examiner’s rejection of representative claim 1 as being unpatentable over Wookey.

We note that Appellants have not presented any substantive arguments directed separately to the patentability of dependent claims 2, 3, 5, and 11-12. In the absence of a separate argument with respect to the dependent claims, those claims stand or fall with the representative independent claim. *See In re Young*, 927 F.2d 588, 590, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991). *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004). Therefore, we will sustain the Examiner’s rejection of these claims as being unpatentable over Wookey for the same reasons discussed *supra* with respect to representative claim 1.

Claim 4

We consider next the Examiner’s rejection of independent claim 4 as being unpatentable over the teachings of Wookey. Appellants restate their

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argument that there is no motivation to modify Wookey in the manner suggested by the Examiner (Br. 8). We have fully addressed Appellants' arguments regarding motivation (*see* claim 1 discussion *supra*). With respect to Appellants' argument that Wookey does not teach or suggest receiving a *request* from a *client* and *querying* a system as specified by that *request*, we have also fully addressed these limitations with respect to claim 1. Therefore, we will sustain the Examiner's rejection of independent claim 4 as being unpatentable over Wookey for the same reasons discussed *supra* with respect to independent claim 1.

Claim 8

We consider next the Examiner's rejection of dependent claim 8 as being unpatentable over the teachings of Wookey. Appellants restate their argument that there is no motivation to modify Wookey in the manner suggested by the Examiner (Br. 11). We have fully addressed Appellants' arguments regarding motivation *supra*. Appellants further argue that Wookey does not teach or suggest "wherein said information specifying a query for said system attribute comprises multiple transactions bracketed together," as claimed (*id.*). Appellants acknowledge that the passage of Wookey relied upon by the Examiner teaches a variety of possible *operators* to define alerts (col. 15, ll. 24-54). Nevertheless, Appellants maintain that Wookey does not teach where any of the operators *can be bracketed together* (Br. 11).

We disagree. We find Wookey teaches *set operators* that necessarily require multiple (i.e., *bracketed*) transactions, e.g., *see* the "UNION," "INTERSECTION," and "DIFFERENCE BETWEEN 2 SETS" operators

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(col. 15, ll. 33-35). Wookey also teaches the operator “ALL OF TYPE” that extracts *all the values* (i.e., *multiple values*) of a certain type (col. 15, ll. 47-48). Finally, Wookey teaches the operator “ALL OVER TIME” that obtains a *range of data* for a token *over a period of time* (i.e., necessarily requiring multiple transactions over a period of time) (col. 15, ll. 49-50). Therefore, we agree with the Examiner that Wookey teaches or suggests multiple transactions bracketed together, as claimed. Accordingly, we will sustain the Examiner’s rejection of dependent claim 8 as being unpatentable over Wookey.

Claims 9, 10, and 17

We consider next the Examiner’s rejection of dependent claims 9, 10, and 17 as being unpatentable over the teachings of Wookey. Appellants restate their argument that there is no motivation to modify Wookey in the manner suggested by the Examiner. We note that we have fully addressed Appellants’ arguments regarding motivation *supra*. With respect to each of claims 9, 10, and 17, Appellants restate the same argument previously presented for claim 8 (i.e., “While the passage teaches a variety of possible operators to define alerts, it does not teach or suggest that any of the operators can be bracketed together”) (Br. 12). We note that we have fully addressed this argument with respect to claim 8, *supra*. Therefore, we will sustain the Examiner’s rejection of dependent claims 9, 10, and 17 as being unpatentable over Wookey for the same reasons discussed *supra* with respect to claim 8.

Claims 13, 16, and 21

We consider next the Examiner's rejection of claims 13, 16, and 21 as being unpatentable over the teachings of Wookey. Since Appellants' arguments with respect to this rejection have treated these claims as a single group which stand or fall together, we will select independent claim 13 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

With respect to this group, Appellants essentially restate the same arguments previously presented for claim 1 (Br. 13-15). Because we have found *supra* that Wookey teaches receiving a request from a client, and querying the system as specified by the request, we will sustain the Examiner's rejection of representative claim 13 as being unpatentable over Wookey for the same reasons discussed *supra* with respect to claim 1.

Appellants have not presented any substantive arguments directed separately to the patentability of dependent claims 16 and 21. In the absence of a separate argument with respect to the dependent claims, those claims stand or fall with the representative independent claim. *See In re Young*, 927 F.2d at 590, 18 USPQ2d at 1091. *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004). Therefore, we will sustain the Examiner's rejection of these claims as being unpatentable over Wookey for the same reasons discussed *supra* with respect to representative claim 13.

Claims 18, 20, and 22

We consider next the Examiner's rejection of claims 18, 20, and 22 as being unpatentable over the teachings of Wookey. Since Appellants' arguments with respect to this rejection have treated these claims as a single

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group which stand or fall together, we will select independent claim 18 as the representative claim for this rejection. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2004).

With respect to this group, Appellants essentially restate the same arguments previously presented for claim 1 (Br. 16-18). Because we have found *supra* that Wookey teaches receiving a request from a client, and querying the system as specified by the request, we will sustain the Examiner's rejection of representative claim 18 as being unpatentable over Wookey for the same reasons discussed *supra* with respect to claim 1.

Appellants have not presented any substantive arguments directed separately to the patentability of dependent claims 20 and 22. In the absence of a separate argument with respect to the dependent claims, those claims stand or fall with the representative independent claim. *See In re Young*, 927 F.2d at 590, 18 USPQ2d at 1091. *See also* 37 C.F.R. § 41.37(c)(1)(vii)(2004). Therefore, we will sustain the Examiner's rejection of these claims as being unpatentable over Wookey for the same reasons discussed *supra* with respect to representative claim 18.

Claim 7

We consider next the Examiner's rejection of independent claim 7 as being unpatentable over the teachings of Wookey in view of Sybase. Appellants argue the Examiner's motivation for combining Wookey with Sybase is improper because Wookey, without modification or combination with Sybase, already provides the function of issuing an alert indicating a predefined condition exists in a computer system (Br. 19).

We disagree with Appellants' contention that the Examiner has improperly combined Wookey with Sybase. We note that we have fully addressed Appellants' arguments regarding motivation to modify Wookey (*see* discussion of claim 1 *supra*). In addition, we find the Examiner has merely relied upon the Sybase reference as being exemplary of the notoriously well known use of SQL (Structured Query Language). Indeed, we note that Appellants' own Specification expressly discloses SQL as known prior art:

Also existing in the prior art are database query languages that allow a user to specify a particular query, whereby the user can be notified of a specified condition existing with the derived data resulting from the specified query For instance, the user may specify a query using Structured Query Language ("SQL") that results in derived data, such as whether a new employee record has been added to the database. That is, the result of such query is derived data about information contained within the database.
(Specification, p. 6, ¶ 2).

With respect to specific limitations of claim 7, Appellants again argue that Wookey does not teach or suggest receiving a request from a client and querying a system as specified by the request (Br. 19). Because we have found *supra* that Wookey teaches receiving a request from a client, and querying the system as specified by the request, we will sustain the Examiner's rejection of claim 7 as being unpatentable over Wookey for the same reasons discussed *supra* with respect to claim 1.

Claim 14

Lastly, we consider the Examiner's rejection of dependent claim 14 as being unpatentable over the teachings of Wookey in view of Sybase.

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Appellants argue that claim 14 is patentable over the prior art of record for the same reasons that independent claim 13 is allegedly patentable. Accordingly, we will sustain the Examiner's rejection of claim 14 as being unpatentable over Wookey in view of Sybase for the same reasons discussed *supra* with respect to independent claim 13, and also for the same reasons discussed *supra* with respect to independent claim 7.

DECISION

In summary, we have sustained the Examiner's rejection of all claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-5, 7-14, 16-18, and 20-22 is affirmed.

In the event prosecution is reopened in this application, we direct the Examiner's attention to U.S. Pat. 5,809,238 to Greenblatt. Greenblatt discloses a system directed to data processing techniques for collecting and managing data such as techniques for monitoring the performance of computer networks, and in particular to database techniques, such as relational databases including those using SQL engines, for collecting and managing data in a network. In particular, Greenblatt discloses monitoring and comparing performance data from computers in a network.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED.

ARM

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