

The opinion in support of the decision being entered today is *not* binding  
precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* KEIJI FUKUMOTO

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Appeal 2006-2936  
Application 10/013,714  
Technology Center 2100

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Decided: October 1, 2007

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Before JAMES D. THOMAS, KENNETH W. HAIRSTON,  
MAHSHID D. SAADAT, ALLEN R. MacDONALD and  
JEAN R. HOMERE, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

### STATEMENT OF THE CASE

In a paper filed February 07, 2007, Appellant requests reconsideration under 37 C.F.R. § 41.52 from a Decision of the Board of Patent Appeals and Interferences dated December 08, 2006 (Decision, hereinafter.)

In the Decision, the Board affirmed the Examiner's rejection of claims 1 through 63.

Appellant contends that the Board overlooked or misapprehended Appellant's separate arguments for patentability for dependent claims 4 and 16, 8, 6 and 18, 7 and 19, 27 and 45, 30 and 48, 47, 50, 51 and 5, as they were not addressed in the Decision. (Request 2-4.)

We grant the Request.

### ISSUES

(1) Has Appellant shown that the Examiner failed to establish that Britton anticipates claims 4 and 16, 8, 6 and 18, 7 and 19, 27 and 45, 30 and 48, 47, 50, 51 under 35 U.S.C. § 102(e)?

(2) Has Appellant shown that the Examiner failed to establish that the combination of Britton and Dan renders claim 5 unpatentable under 35 U.S.C. § 103(a)?

### FINDINGS OF FACT

1. Britton teaches a method for adding property level security to an object-oriented database. Property access levels are set for each object in the database such that a user may access a desired property of an object provided that such property is in the object's property ACL. (Col. 8, ll. 20-30.)

2. As depicted in Figure 1, Dan teaches a third party certification agency (15) that signs a certificate to identify the author of a program associated therewith and an ACL to ensure the integrity of the program. (Abstract, Col. 1, ll. 40-48.)

## ANALYSIS

Having decided to grant Appellant's request, we have modified our prior decision with respect to dependent claims 4 and 16, 8, 6 and 18, 7 and 19, 27 and 45, 30 and 48, 47, 50, 51 and 5 as follows:

### Claims 4 and 16

Appellant contends that Britton does not anticipate claims 4 and 16 since Britton fails to teach the limitation of verifying the safety of the program before making the data access permission setting for the program to access the database. (Br. 13, Reply Br. 7-8.) We agree with Appellant. We find that Britton's teaching is limited to verifying that a desired property of an object is contained in the access list of the object before allowing a user to access such property. (Finding 1.) Britton is otherwise silent on the notion of verifying that the interface program is safe for use. In our view, Britton's teaching of checking the property of an object does not particularly lend itself to verifying whether the interface program is safe before setting data access permission for each user. We therefore reverse this rejection.

### Claim 8

Appellant contends that Britton does not anticipate claim 8 since it fails to teach the limitation of verifying the safety of the program before

making the data access permission setting for the program to access the database when the program is installed in the service database. (Br. 14, Reply Br. 8-9.) We agree with Appellants for the reasons set forth in our discussion of claim 4 above from which claim 8 directly depends. We therefore reverse this rejection.

#### Claims 6 and 18

Appellant contends that Britton does not anticipate claims 6 and 18 since it fails to teach the limitation of verifying the safety of the program before making the data access permission setting for the program to access the database by checking additional information recorded on the program. (Br. 15.) We agree with Appellants for the reasons set forth in our discussion of claims 4 and 16 above from which claims 6 and 18 directly depend respectively. We therefore reverse this rejection.

#### Claims 7 and 19

Appellant contends that Britton does not anticipate claims 7 and 19 since it fails to teach the limitation of verifying the safety of the program before making the data access permission setting for the program to access the database by analyzing the code of the program. (Br. 16.) We agree with Appellants for the reasons set forth in our discussion of claims 4 and 16 above from which claims 7 and 19 directly depend respectively. We therefore reverse this rejection.

Claims 27 and 45

Appellant alleges that Britton's teachings are insufficient to anticipate claims 27 and 45. (Br. 22.) However, mere allegations do not amount to an argument that particularly shows how the Examiner's reliance on the cited textual portions of Britton does not anticipate the cited claims. In our view, such allegations do not rebut the Examiner's prima facie case of anticipation against the cited claims.

Further, we note that dependent claims 27 and 45 require the limitation of making the data access permission setting for the program to access a database that stores sets of data for each of which a security level setting is made. (Br. Appendix A.) We find that Britton reasonably teaches this limitation. As discussed in the original Decision, we found that Britton teaches an access control list (ACL) which serves as a gatekeeper to control the user's access of the database. (*Decision* 12, ll. 16-22.) We also found that Britton teaches assigning an ACL level to an interface program, which serves as a proxy for the user, each time a request to access the database is made. (*Decision* 11, ll. 10-21.) Particularly, the ACL reviews the user's profile in the interface program and subsequently uses such information to set appropriate access levels of data in the database for the interface program. (*Id.* 11, ll. 2-7, ll. 10-14.) It is therefore our view that one of ordinary skill in the art would readily recognize that Britton's disclosure of setting access levels in the database for the user via the interface program teaches setting access levels program as well. It follows that the Examiner did not err in finding that Britton teaches making a data access permission setting to access data in the database. We therefore affirm this rejection.

Claims 30, 48, 50 and 51

Here, Appellant reiterates the argument submitted for claims 4 and 6. Appellant contends that Britton does not anticipate claims 30, 48, 50 and 51 since it fails to teach the limitation of verifying the safety of the program before making the data access permission setting for the program to access the database. (Br. 23-25.) We agree with Appellant for the same reasons set forth in our discussion of claims 4 and 6 above. We therefore reverse this rejection.

Claim 47

Appellant alleges that Britton's teachings are insufficient to anticipate claim 47. (Br. 23.) However, Appellant does not show that the Examiner failed to establish that Britton anticipates the cited claims. Particularly, Appellant's allegations failed to show that the portions of Britton upon which the Examiner relies in the rejection do not teach at least one of the claim limitations. In our view, such allegations do not rebut the Examiner's prima facie case of anticipation against the cited claims.

Further, Appellant's assertion that claim 47 recites "a data access permission setting for the program by verifying the safety of the program" is inaccurate. Nowhere in claim 47 is there any recitation pertaining to verifying the safety of the program. It is our view that Appellant failed to persuasively rebut the Examiner's rejection of claim 47. Consequently, we affirm the rejection.

Claim 5

Appellant contends that neither Britton nor Dan teaches the limitation of verifying the safety of a program by checking a certification issued by a third party certification organization. (Br. 27.) Appellant therefore contends that the combination of Britton and Dan does not render claim 5 unpatentable. We find that the combination of Britton and Dan reasonably teaches that limitation. Particularly, we found that Dan teaches an authentication system wherein a trusted third party certification agency signs a certificate to identify the author of a program and to secure its integrity. The program is associated with the certificate and an ACL. (Finding 2.) One of ordinary skill in the art of the time of the invention would have readily recognized that Dan's disclosure of securing the integrity of a program by using a third party certification to identify the author of said program teaches the claimed limitation. Further, the ordinarily skilled artisan would have readily recognized that modifying Britton to incorporate therein Dan's teaching would predictably result in reinforcing Britton's ACL by ensuring that only properly authorized users can access the database via a safe program. It has been held that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 82 USPQ2d 1385, 1395 (2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). It follows that the Examiner did not err in finding that the combination of Britton and Dan renders claim 5 unpatentable. We affirm this rejection.

Rejection under 37 C.F.R. § 41.50(b)

We make the following new ground of rejection using our authority under 37 C.F.R. § 41.50(b). Claims 4, 30 and 48 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Britton and Dan. As discussed above, we find that Britton does not particularly teach verifying the safety of the interface program. However, as detailed in the preceding section with respect to claim 5 which depends from claim 4, we find that Dan teaches that limitation. Consequently, we find for the same reasons detailed above that the combination of Britton and Dan renders claims 4, 30 and 48 unpatentable.

OTHER ISSUES

The Board of Patent Appeals and Interferences is a review body, rather than a place of initial examination. We have rejected claims 4, 30 and 48 above under 37 C.F.R. § 41.50(b). We have, however, not reviewed claims 6 through 8, 18, 19, 50 and 51 to the extent necessary to determine whether these claims are patentable over the combination of Britton and Dan. We leave it to the Examiner to determine the appropriateness of any further rejections based on these references.

CONCLUSION OF LAW

(1) Appellant has shown that the Examiner failed to establish that Britton anticipates claims 4, 6 through 8, 18, 19, 30, 48, 50 and 51 under 35 U.S.C. § 102.

(2) Appellant has not shown that the Examiner failed to establish that Britton anticipates claims 27, 45, and 47 under 35 U.S.C. § 102. Further, Appellant has not shown that the Examiner failed to establish that the combination of Briton and Dan renders claim 5 unpatentable under 35 USC § 103 (a).

(3) On the record before us, claims 6 through 8, 18, 19, 50, and 51 have not been shown to be unpatentable.

(4) Claims 4, 5, 27, 30, 45, 47, and 48 are not patentable.

#### DECISION

In light of the foregoing, Appellant's request is granted and we modify our previous decision to the following extent:

(1) the Examiner's rejection of claims 4, 6 through 8, 18, 19, 30, 48, 50 and 51 under 35 U.S.C. § 102 is reversed, and

(2) we reject claims 4, 30 and 48 under 35 U.S.C. § 103(a).

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

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37 C.F.R. § 41.50(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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

REQUEST FOR REHEARING-GRANTED

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