

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 HANY A. SALEM

Appeal No. 2007-0428
Application 10/210,361
Technology Center 2100

Decided: March 23, 2007

Before KENNETH W. HAIRSTON, JEAN R. HOMERE, and JOHN A. JEFFERY, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals from the Examiner's final rejection of claims 1 through 20 pursuant to 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal.

The Examiner rejects the pending claims as follows:

A. Claims 1 through 20 stand rejected under 35 U.S.C. § 102 (b) as being anticipated by Miller.

The Examiner relies on the following reference:

Miller WO 00/68793 Nov. 16, 2000

Independent claim 1 is illustrative and representative of the Appellant's invention. It reads as follows:

1. A method in a data processing system for dynamically tuning recovery actions in a server, the method comprising:
 - retrieving dynamic tuning information from a local cache of rules for decision making;
 - updating the local cache of rules for decision making based on hints and symptom entries in a knowledge base to form an updated local cache of rules and directives for decision making;
 - receiving an incident by a log analysis engine;
 - analyzing the updated local cache of rules and directives for decision making by the log analysis engine to determine a recovery action for the incident;
 - responsive to a diagnostic engine receiving a directive, executing a diagnostic module using the diagnostic engine, wherein the diagnostic module is selected based on the incident; and
 - invoking the recovery action based on the directive.

Appellant contends that claims 1 through 20 are not anticipated by Miller.¹ Particularly, Appellant contends that Miller teaches away from the present invention, and that Miller does not fairly teach or suggest a log

¹ This decision considers only those arguments that Appellant submitted in the Appeal Brief. Arguments that Appellant could have made but chose not to make in the Brief are deemed to have been waived. *See* 37 CFR 41.37(c)(1) (vii)(eff. Sept. 13, 2004). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1458 (Fed. Cir. 2004).

analysis engine for receiving an incident and for analyzing rules and directives in a local cache to determine a recovery action. Appellant further contends that Miller does not teach a diagnostic engine for executing a diagnostic module selected based on an incident to invoke a recovery action. (Br. 12). The Examiner, in contrast, contends that Miller teaches the claimed analysis and diagnostic engines as a database system having at least one entry that matches a received incident and at least another entry that provides a solution for the incident. (Answer 4, 8). Consequently, the Examiner concludes that Miller anticipates claims 1 through 20.

We affirm.

ISSUE

The *pivotal* issue in the appeal before us is as follows:
Under 35 U.S.C. § 102 (b), does Miller anticipate the claimed invention when Miller teaches a software-driven system that utilizes a customer knowledge base, an engine and primitives for diagnosing and resolving problems?

FINDINGS OF FACT

Appellant invented a remote data processing system and a computer software for providing a recovery action for an identified incident. First, a utility module (500) uses the hints and symptoms² entries as a knowledge base (510) to update a local cache of rules (520) for decision making with the latest information pertaining to an identified incident for which a

² Appellant's specification defines a symptom as data that uniquely identifies an incident. The specification also defines a hint as output text that provides the descriptive association between the incident and the cause. Also, a hint describes the recovery action for the user. (Specification 11, ll. 12-18).

recovery action is to be located. (Specification 13). Upon receiving the identified incident, a log analysis engine (400, 530) compares the incident against known incidents in the updated local cache (520) to locate directives and hints associated with such known incidents. Then, the log analysis engine (400, 530) forwards the collected directives³ to a diagnostic engine (460), which in turn, executes the corresponding diagnostic modules (470, 472, 474) that provide a recovery action associated with the identified incident. (Specification 11, 12).

Miller discloses a software-driven system for automatically detecting, diagnosing and solving a problem. (Abstract). Miller's system primarily utilizes three components as part of the customer's site software (61) to automate the monitoring, diagnosing, and solution processes.⁴ First, it uses a customer knowledge base (73) that stores logic to diagnose and solve each particular problem. Second, it uses an engine (65) for managing the execution code of the customer knowledge base to diagnose and solve each particular problem. Last, it uses primitives (74) to generate an interface to access the entries in the knowledge base. (Miller 13, ll. 12-19).

The customer knowledge database taught by Miller contains a plurality of entries, each addressing a specific problem, and each entry having a four-part executable code. (*Id.* 4, ll. 10-17). First, an initialization process executes codes to a database entry with the customer site software. Second, an immediate response process executes codes to cache locally a database

3 Appellant's specification, at page 10, lines 27-28, defines a directive as the dynamic tuning of information for incident handling.

4 Miller indicates that in lieu of an inference engine that provides solutions to specific problems, the disclosed system uses a database containing entries of very specific symptoms and solutions. (Miller 3, ll. 10-14).

entry to enable immediate access to the data. Third, a symptom process executes codes to determine if the database entry actually applies to the process. Fourth, a solution process executes codes to modify the state of the system to implement a solution to the problem. (*Id.* 5, ll. 3-12). Overall, when a data set matches those identified by the initialization of the database entry, the immediate response code for that entry is executed. Then, the symptom code for that entry is retrieved, loaded, and executed. If the symptom code indicates that the database entry applies, then the solution code for the entry is retrieved, loaded, and executed. (Miller 5, ll. 24-28).

Miller also teaches a process for extracting a subset of database entries from the master knowledge base when solution data for a particular problem is not readily available in the customer database. Upon downloading new data entries from the master knowledge base into the customer knowledge base, the engine uses the updated data in the customer knowledge base to retrieve a solution for a given problem. (*Id.* 7, ll. 14-20).

PRINCIPLES OF LAW ANTICIPATION

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. *See In re King*, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

In rejecting claims under 35 U.S.C. § 102, a single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation. *Perricone v. Medicis Pharmaceutical*

Corp., 432 F.3d 1368, 1375-76, 77 USPQ2d 1321, 1325-26 (Fed. Cir. 2005), citing *Minn. Mining & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 1565, 24 USPQ2d 1321, 1326 (Fed. Cir. 1992). Anticipation of a patent claim requires a finding that the claim at issue “reads on” a prior art reference. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

“A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994); *Para-Ordnance Mfg. v. SGS Importers Int’l*, 73 F.3d 1085, 1090, 37 USPQ2d 1237, 1241 (Fed. Cir. 1995), *cert. denied*, 117 S. Ct. 80 (1996).

ANALYSIS

As set forth above, Appellant’s representative claim 1 requires a log analysis engine for receiving an incident and for analyzing entries in an updated local cache to determine a recovery action. The claim also requires a diagnostic engine for executing a diagnostic module in response to a directive received from the log analysis engine. We also note that the functions of both the claimed log analysis and diagnostic engine, as recited in independent claim 15, are implemented through software codes.

As set forth in the facts section above, Miller teaches a software-driven system that utilizes an engine, a knowledge database and primitives to locate solutions to a problem. Similarly to the claimed invention, Miller teaches executing software codes to enable the engine to diagnose and resolve problems. Particularly, Miller matches a specified problem with entries in the customer knowledge database to identify a corresponding solution. We consequently find that both Miller and the claimed invention diagnose and resolve a specific problem by using an engine to match the problem with entries in the knowledge base, and to identify an entry/module that provides a corresponding solution. Thus, we conclude that Miller's teaching of software modules that implement and perform the functions of the claimed log analysis and diagnostic engines anticipates representative claim 1.

We note that Miller's remarks, reproduced in footnote 4 *supra*, indicating a preference for the present approach, as opposed to using an inference engine, does not have any bearing on its ability to perform the functions of Appellant's log analysis engine. This is because the functions of comparing a problem with entries in a database do not necessarily require performing any inference. Therefore, an inference engine is not required in the claimed invention, and Miller need not particularly teach it. Thus, we find that Miller's disclosure does not teach away from Appellant's invention since it would not lead one of ordinary skill in a direction divergent from the path that was taken by the Appellant. After considering the entire record before us, we find that the Examiner did not err in rejecting representative claim 1 as being anticipated by Miller. We find for the same reasons that the

Examiner did not err in rejecting dependent claims 2 and 5 through 19 as being anticipated by Miller.

Next, we find that the Examiner properly rejected dependent claims 3, 4, and 20 as being anticipated by Miller. Particularly, we find that Miller's disclosure of matching a specified problem with entries in the customer knowledge base to locate a solution teaches the incident and dynamic tuning information, as recited in claim 3. Similarly, we find that Miller's update process allows the customer knowledge base to capture new recovery data, against which an identified problem is matched to retrieve a solution. Thus, Miller does teach the limitations of claims 4 and 20. After considering the entire record before us, we find that the Examiner did not err in rejecting dependent claims 3, 4 and 20 as being anticipated by Miller.

CONCLUSION OF LAW

On the record before us, Miller anticipates the claimed invention under 35 U.S.C. § 102 (b) when Miller teaches a software-driven system that utilizes a customer knowledge base, an engine and primitives for diagnosing and resolving problems.

DECISION

We affirm the Examiner's decision to reject claims 1 through 20 under 35 U.S.C. § 102 (b) as being anticipated by Miller.

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).

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AFFIRMED

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