

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not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ALAN B. BUTT, DAVID A. EATOUGH, and TONY SARRA

Appeal 2007-0727
Application 09/951,711
Technology Center 2100

Decided: July 11, 2007

Before JAMES D. THOMAS, KENNETH W. HAIRSTON,
and HOWARD B. BLANKENSHIP, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 1, 3-9, 11-17, 19-25, and 27-32. We have jurisdiction under 35 U.S.C. §§ 6(b) and 134(a).

As best representative of the disclosed and claimed invention, independent claim 1 is reproduced below:

1. An apparatus comprising:

a local application proxy (LAP) arrangement to provide a machine-to-network proxy interface and proxy services for local applications resident on an electronic machine wherein the LAP arrangement further comprises an automatic network awareness arrangement to automatically gain network awareness of a network which becomes connected thereto, a gained network awareness being used to effect provision of proxy services.

The following references are relied on by the Examiner:

Kralowetz	US 5,657,452	Aug. 12, 1997
Schloss	US 5,878,233	Mar. 2, 1999
Puranik	US 6,003,090	Dec. 14, 1999
Wookey	US 6,023,507	Feb. 8, 2000

Claims 1, 6-9, 14-17, 22-25, and 30-32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kralowetz. Claims 3-5, 11-13, 19-21, and 27-29 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness, the Examiner combines Kralowetz with Puranik for claims 3, 11, 19, and 27. Kralowetz is combined with Wookey for claims 4, 12, 20, and 28. Kralowetz is combined with Schloss for claims 5, 13, 21, and 29.

Rather than repeat the positions of the Appellants and the Examiner, reference is made to the Brief and Reply Brief for the Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

We affirm.

Of independent claims 1, 9, 17, and 25 included within the rejection under 35 U.S.C. § 102(b), Appellants only present arguments to these independent claims collectively, and present no separate arguments to the remaining dependent claims encompassed by this rejection.

We initially note that claims 1, 9, 17, and 25 contain several limitations directed to acts intended to occur in the future. Claim 1 recites “a local application proxy . . . *to provide* a . . . proxy interface”, “an automatic network awareness arrangement *to automatically gain* network awareness”, “a network *which becomes* connected thereto”, and “network *awareness being used to effect* provision” (emphasis added). These “provide”, “gain”, “become connected” and “used to effect” steps are merely passively recited and need not actually occur for the claim to be anticipated. Nonetheless, even if these steps were positively recited, Kralowetz discloses each of them and anticipates claims 1, 9, 17, and 25, as discussed below.

In support of the rejection under 35 U.S.C. § 102(b), the Examiner points to the Abstract, col. 4, lines 9-67; col. 6, lines 25-49 and Figs 2-3. Appellants’ characterization of col. 4, lines 9-67, appearing at page 8 of the Brief, actually discusses subject matter disclosed in column 9 of Kralowetz, so these arguments are not persuasive with respect to the Examiner’s reliance on col. 4, lines 9-67.

Appellants’ remaining argument at page 7 of the Brief characterizes col. 6, lines 25-49 of Kralowetz as describing the proxy engine’s “ability to facilitate communication between the local endpoint application and the network endpoint application” and goes on to argue that this section does not disclose or suggest “an ability *to automatically gain network awareness of a*

network which becomes connected thereto, a gained network awareness being used to effect provision of a proxy service” (emphasis in original). Appellants’ assertion at page 7 of the Brief that “[i]t is clear that the Kralowetz reference discloses the alleged ability to [facilitate communication] when prompted to do so” suggests that Appellants’ argument relies primarily on the “*automatically* gain network awareness of a network” (emphasis added) aspect of claim 1.

Attention is directed to col. 4, lines 21-28, cited by the Examiner at pages 4 and 8 of the Answer, which recites “[a]ll of this is done in a manner that is *transparent* to the user at the local endpoint application, . . . as it occurs *automatically*” (emphasis added). Kralowetz goes on to disclose that “the invention provides for ‘spoofing’ for quick *determination* and *implementation* of PPP network control protocols . . . during the call connection process” (emphasis added). We find that this section of Kralowetz anticipates an ability to automatically (col. 4, lines 21-24) gain awareness of a network which becomes connected thereto (determine network control protocols) (col. 4, lines 24-28), a gained network awareness being used to effect provision of a proxy service (determined protocols are implemented over one or more channels) (col. 4, lines 24-28).

While we note that the cited portion of column 4 appears in the background of the invention section, Kralowetz clearly indicates that this section is “[i]n accordance with the present invention” at col. 4, line 9. Kralowetz elaborates on the steps performed to determine the network control protocols and using them to effect provision of a proxy service at col. 7, line 31 to col. 10, line 55. Of particular interest are col. 8, lines

40-49, which describes determining which network control protocols are needed and learning information that is necessary for successful proxy operations, and col. 10, lines 4-7, which describes using the learned information to bring up the network control protocols of the network endpoint application with which the local endpoint wants to communicate.

All of this functionality is also supported by the problem-solution scenario discussed at column 1, lines 34-65 of Kralowetz. Additionally, Appellants' remarks at page 2 of the Reply Brief do not obviate all noted, compelling teachings in this reference.

Appellants have not presented any substantive arguments directed separately to the patentability of dependent claims 6-8, 14-16, 22-24, and 30-32. In the absence of separate arguments 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). Therefore, we will sustain the Examiner's rejection of these claims as being anticipated by Kralowetz for the same reasons discussed supra with respect to claims 1, 9, 17, and 25.

Appellants assert that claims 3-5, 11-13, 19-21, and 27-29 are allowable as depending from allowable base claims "for at least the reasons described above" with respect to claims 1, 9, 17, and 25 (pages 9-10 of the Brief). As discussed above, we see no deficiencies with respect to Kralowetz. We note that Appellants have not presented any substantive arguments directed separately to the patentability of dependent claims 3-5, 11-13, 19-21, and 27-29, instead relying only on the alleged deficiencies of Kralowetz. In the absence of separate arguments 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 (Fed. Cir. 1991). Therefore, we will sustain the Examiner's rejection of claims 3, 11, 19, and 27 as being unpatentable over Kralowetz in view of Puranik, claims 4, 12, 20, and 28 as being unpatentable over Kralowetz in view of Wookey, and claims 5, 13, 21, and 29 as being unpatentable over Kralowetz in view of Schloss for the same reasons discussed *supra* with respect to independent claims 1, 9, 17 and 25.

In summary, we sustain the Examiner's rejection of claims 1, 6-9, 14-17, 22-25 and 30-32 under 35 U.S.C. § 102(b). We also sustain the Examiner's rejections of claims 3-5, 11-13, 19-21 and 27-29 under 35 U.S.C. § 103(a). The rejections of these claims encompass all claims on appeal, and all rejections are affirmed. Therefore, the decision of the Examiner is affirmed.

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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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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