

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 AROOPRATAN D. PANDYA

Appeal 2007-0760
Application 09/974,373
Technology Center 2100

Decided: June 6, 2007

Before JOHN C. MARTIN, JEAN R. HOMERE, and JAY P. LUCAS,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Examiner's Final Rejection of claims 1 through 32. We have jurisdiction under 35 U.S.C. § 6(b) to decide this appeal.

Appellant invented a method and system for monitoring a client (150, 155) real-time activity on a server website (110) in a disconnected

environment where the client (150, 155) and the server (110) are not continuously connected to each other. Particularly, an application running on the client computer (150, 155) periodically sends status messages to a corresponding application running on the server (110) to inform the server that the client computer is still on-line as well as to inform the server of the on-line resources that the client is currently using. (Specification 4.)

Claims 1 and 8 are representative of the claimed invention. They read as follows:

1. A system for monitoring a communication connection between a client computer and a server application in a disconnected environment where there is no continuous connection between said client computer and said server application, running on a server computer, connected to said client computer over a network, said system comprising:

a client application running on said client computer,

wherein said client application subscribes to said server application and periodically sends a status signal to said server application in said disconnected environment so long as said client application continues to use resources of said server computer, and

wherein continued receipt of said status signal by said server computer informs said server application that said client computer is maintaining a connection with said server computer and said status signal comprises data identifying resources currently being used by said client computer.

8. A system for monitoring a communication connection between a client application, running on a client and a server computer connected to said client computer over a network in a disconnected environment wherein there is no continuous connection between said client computer and said server application, said system comprising:

a server application running on said server computer,

wherein said client application subscribes to said server application and periodically sends a status signal to said server application in said disconnected environment so long as said client application continues to use resources of said server computer, and

wherein continued receipt of said status signal by said server computer informs said server application that said client computer is maintaining a connection with said server computer and wherein said status signal comprises data identifying resources currently being used by said client computer, and

wherein said server application maintains statistics on client computer connections based on said status signals received from said client application such that said signals allow said server application to transparently track activity of said client computer in said disconnected environment.

In rejecting the claims on appeal, the Examiner relied upon the following prior art:

Barker	US 6,363,421 B2	Mar. 26, 2002
Foley	US 6,487,590 B1	Nov. 26, 2002

The Examiner rejected the claims on appeal as follows:

Claims 1 through 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Barker and Foley.

First, Appellant contends¹ that the combination of Barker and Foley does not render claims 1 through 32 unpatentable. Particularly, Appellant

¹ This decision considers only those arguments that Appellant submitted in the Appeal and Reply Briefs. Arguments that Appellant could have made but chose not to make in the Briefs are deemed to have been waived. See 37 C.F.R. § 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).

contends that the Barker-Foley combination does not teach a heartbeat signal that contains data identifying resources currently being used by the client computer. (Br. 16 and 18, Reply Br. 2.), as recited in representative claims 1 and 8. Further, Appellant reiterates these same arguments against the Examiner's rejection of claims 2 through 7 and 9 through 32.

The Examiner, in contrast, contends that Barker substantially teaches the limitations of representative claims 1 and 8. (Answer 3 and 9.) The Examiner further submits that Foley's teachings complement Barker's system. (Answer 4.) The Examiner therefore concludes that it would have been obvious to one of ordinary skill to combine teachings of the cited references to arrive to the claimed invention, as recited in representative claims 1 and 8. Similarly, the Examiner concludes that the combination of Barker and Foley renders claims 2 through 7 and 9 through 32 unpatentable. (*Id.*)

We reverse.

ISSUES

The *pivotal* issue in the appeal before us is as follows:

Has Appellant shown that the Examiner failed to establish that one of ordinary skill in the art, at the time of the present invention, would have found that the combination of Barker and Foley renders the claimed invention unpatentable under 35 U.S.C. § 103(a)?

FINDINGS OF FACT

The following findings of fact are supported by a preponderance of the evidence.

The invention

1. Appellant invented a method and system for tracking a client (150, 155) real-time activity on a server website (110) in a disconnected environment where the client (150, 155) and the server (110) are not continuously connected to each other. (Specification 4.)
2. As depicted in figure 2, a client application subscribes to a corresponding server application on the website via a subscribe heartbeat channel (125). (*Id.* 11.)
3. The client application periodically sends status messages (heartbeat signals) (175) to the server application to inform the server (110) that the client (150, 155) is still on-line as well as to inform the server of the on-line resources of the server that the client is currently using. (*Id.*)
4. The server (110) subsequently uses the received heartbeat signals to generate statistics about the client computer's activities on the server website in order to track such activities while the client (150, 155) is online. (*Id.*)

The Prior Art Relied upon

5. Barker teaches a telecommunication network for remotely managing the activities of online client computers. (Title, abstract and col. 2, ll. 18-33.)
6. Barker teaches that the client initially registers with the server to start a connection session with the server. (Col. 39, ll. 24-30.)

7. Barker also teaches that the client computer dispatches a periodic heartbeat signal to the server to inform the server that the client is still online. (Col. 39, ll. 31-32.)

8. Additionally, Barker teaches that the client sends a message to the server notifying the server that the client has ended the session. (Col. 39, ll. 41-54.)

9. Foley teaches a communication system for remotely managing the activities of a client computer on a server computer's website. (Abstract.)

10. Foley also teaches that after registering with a server to start a session, a session manager² tracks resources being used by the client. (Col. 4, ll. 38-40.)

11. Additionally, Foley teaches that the client periodically dispatches heartbeat signals to the server to confirm that the client is still online using associated resources of the server. (Col. 4, ll. 49-52.)

PRINCIPLES OF LAW

OBVIOUSNESS (Prima Facie)

The Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966), stated that three factual inquiries underpin any determination of obviousness:

Under § 103, (1) the scope and content of the prior art are to be determined; (2) differences between the prior art and the claims at issue are to be ascertained; and (3) the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is

² Foley describes a user session manager in Figure 4 as one having the primary function of maintaining a list of active client sessions and applications.

determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (Apr. 30, 2007) (*citing In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Piasecki*, 745 F.2d at 1472, 223 USPQ at 788. Thus, the Examiner must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the Examiner's conclusion.

ANALYSIS

35 U.S.C. § 103(a) REJECTION

As set forth above, representative claims 1 and 8 recite, *inter alia*, a client application that periodically sends to a server application a status signal indicating a continued connection with the server and identifying resources of the server currently being used by the client computer. As

detailed in the findings of fact section above, we have found that Barker teaches a client that periodically dispatches a heartbeat signal to a server to indicate a continued connection with the server. (Finding of Fact 7.) Similarly, we have found that Foley teaches that the client periodically dispatches heartbeat data to the server indicating that the client has maintained its connection with the server and further indicating that the client is still using the resources identified by the session manager. (Findings of Fact 10 and 11.) However, it is our view that the combined teachings of Barker and Foley do not demonstrate the client status message identifying the server resources currently being used by the client, as required by representative claims 1 and 8. One of ordinary skill in the art would have readily recognized that the Barker-Foley combination, at best, teaches a client periodically sending to the server a status message indicating that the client is still connected to the server and that it is still using resources previously identified by the session manager. However, the ordinary skilled artisan would have recognized that the combination relied upon by the Examiner does not particularly teach the dispatched message signal itself as containing data that identifies the server resources being used by client. It follows that the Examiner erred in rejecting representative claims 1 and 8 as being unpatentable over Barker and Foley.

It follows for the aforementioned reasons that the Examiner erred in rejecting claims 2 through 7 and 9 through 32 as being unpatentable over the combination of Baker and Foley.

Appeal 2007-0760
Application 09/974,373

CONCLUSION OF LAW

On the record before us, Appellant has shown that the Examiner failed to establish that one of ordinary skill in the art, at the time of the present invention, would have concluded that Barker in combination with Foley renders claims 1 through 32 unpatentable under 35 U.S.C. § 103(a).

DECISION

We reverse the Examiner's decision to reject claims 1 through 32 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Barker and Foley.

REVERSED

JRH:pgc

FREDERICK W. GIBB, III
Gibb & Rahman, LLC
2568-A RIVA ROAD
SUITE 304
ANNAPOLIS MD 21401