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 BENOIT DAGEVILLE and MOHAMED ZAIT

Appeal 2007-1048
Application 09/969,334
Technology Center 2100

Decided: May 25, 2007

Before KENNETH W. HAIRSTON, HOWARD B. BLANKENSHIP, and MAHSHID D. SAADAT, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal involves claims 23 and 31. We have jurisdiction under 35 U.S.C. §§ 6(b), 134(a).

INTRODUCTION

The claims are directed to management of electronic memory for computer data processing.

23. A computer-readable storage medium comprising:

a first storage location encoded with an estimate of size of data to be input;

a second storage location encoded with current size of a portion of data input so far;

a third storage location encoded with an instruction to increase the estimate when the current size has a predetermined relation to the estimate; and

a plurality of additional storage locations encoded with a corresponding plurality of instructions to be applied to the portion of data.

31. A computer comprising:

a database containing data;

means for applying an operator, to partially process a portion of data from the database, using a first amount of memory; and

means for applying the operator, to process an additional portion of data which remains to be processed, using a second amount of memory.

The Examiner relies on the following prior art reference to show unpatentability:

Trainin	US 6,757,802 B2	Jun. 29, 2004

The rejection as presented by the Examiner is as follows:

1. Claims 23 and 31 are rejected under 35 U.S.C. § 102(e) as being anticipated by Trainin.

Claims 1-22 and 39-45 have been allowed. Claims 24-26, 28-30, and 32-38 have been indicated as allowable if rewritten in independent form. Claim 27 has been canceled.

OPINION

Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

Instant claim 23 requires, *inter alia*, a first storage location encoded with an estimate of size of data to be input, a second storage location encoded with current size of a portion of data input so far, and a third storage location encoded with an instruction to increase the estimate when the current size has a predetermined relation to the estimate. The statement of the rejection (Answer 3) contends that the first, second, and third storage locations are described by Trainin at column 2, lines 21 through 23.

Trainin describes a prior art memory allocation (Fig. 2).

> In order to address the issue of the growth of memory needs for additional tasks over time, for both the data and stack portions, the prior art system **200** illustrated in FIG. 2 has been used. FIG. 2 illustrates memory allocation for both data and stack growth. A task may have several different portions to it. The first is the actual program **220**, or the code that is executed

> by task A, which is usually of a fixed size. Both the data portion **230** and the stack portion **250** are likely to change memory sizes over the duration of the execution of their respective program **220**. Therefore, in this method, certain additional memory space is allocated so that stack portion **250** and data portion **230** can grow into it. For efficiency purposes it would be advisable to have them grow into the same growth area **240**, as shown in FIG. 2.

Trainin col. 2, ll. 21-34.

Trainin thus describes memory allocation for a program 220, usually of a fixed size. The memory allocation may include a data portion and a stack portion, which are allowed to grow in size as needed, taking up a portion of growth area 240 (Fig. 2).

Trainin depicts several storage locations in Figure 2. However, the rejection does not specify which of the locations are deemed to correspond, respectively, to the first, second, and third storage locations that are claimed. We have a problem, as do Appellants, in understanding how the reference is believed to anticipate the subject matter of claim 23. Nor is it apparent how all the requirements of the first, second, and third storage locations may be met by Trainin's description of the prior art memory allocation.

We conclude that the Examiner has failed to set forth a prima facie case for anticipation of claim 23. We cannot sustain the rejection of the claim under 35 U.S.C. § 102(e) over Trainin.

Instant claim 31 is also rejected for anticipation over Trainin, with reliance on the above-quoted section that addresses prior art memory allocation.

Appellants argue in response that Trainin makes no mention of a database in the text. According to Appellants, the term "database" is well

understood in the art. Appellants proffer a definition, in view of provided evidence, that "[d]atabases are computerized information storage and retrieval systems." (Br. 10.)

By Appellants' definition, we find that Trainin describes a database containing data, as required by claim 31. Code that is executed by task A (program 220; Fig. 2) writes and retrieves data from the data portion and the stack portion of the memory. Trainin thus discloses a computerized information storage and retrieval system. With respect to Appellants' further argument (Br. 10) that claim 31 recites both a "database" and "memory," we do not see where the claim requires that the database and the memories be mutually exclusive. Even if read as mutually exclusive, the "database" as claimed could be in a third "amount" of memory, distinct from the first and second "amounts" of memories that are recited.

Appellants also suggest that claim 31 distinguishes over the reference because the term "operator" should be interpreted under 35 U.S.C. § 112, sixth paragraph, and is thereby limited to "databases." (Br. 12; Reply Br. 9.) The argument is unconvincing because, first, Appellants have not shown that Trainin fails to disclose a database. Second, claim 31 does not recite an "operator" in means plus function terms, but recites "means for applying" an operator. The "means for applying an operator" is, according to Appellants, a computer that contains appropriate code and data to achieve "database functionality." (Br. 3; Specification 27: 5-8.)

Trainin describes code and data that achieve "database functionality," to the extent claimed. The claim 31 required functions are to "partially process a portion of data from the database, using a first amount of memory" and "to process an additional portion of data which remains to be processed,

using a second amount of memory." The language of claim 31 fails to distinguish over, for example, the computer that uses an operator (code 220; Trainin Fig. 2) to process an amount (less than the total amount) of data that resides in a first part of data memory 230, and then process additional data that resides in a second part of data memory 230.

We are thus not persuaded that the Examiner's finding of anticipation is in error with respect to claim 31. We sustain the rejection of claim 31 under 35 U.S.C. § 102(e) over Trainin.

CONCLUSION

The rejection of claims 23 and 31 under 35 U.S.C. § 102(e) as being anticipated by Trainin is: (1) reversed for claim 23; and (2) affirmed for claim 31.

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

AFFIRMED-IN-PART

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