

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WARD SCOTT FOSTER
and SHELL STERLING SIMPSON

Appeal 2007-1725
Application 10/193,000¹
Technology Center 2100

Decided: March 14, 2008

Before HOWARD B. BLANKENSHIP, ALLEN R. MACDONALD,
and SCOTT R. BOALICK, *Administrative Patent Judges*.

BOALICK, *Administrative Patent Judge*.

¹ Application filed July 10, 2002. The real party in interest is Hewlett-Packard Development Company, LP.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-44, all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

STATEMENT OF THE CASE

Appellants' invention relates to a system for providing a first network resource with secure access to a second network resource in a distributed environment. (Spec. paragraphs [0001] and [0006].)

Claims 1 and 15 are exemplary:

1. In a computer network, a method for granting a request from a first resource to access a second resource, comprising:

receiving, from a client, a request to access the first resource;

directing the client to an authorization service;

the authorization service generating an authorization ticket and providing the authorization ticket to the first resource;

on behalf of the first resource, presenting the authorization ticket and requesting access to the second resource; and

granting the first resource access to the second resource only upon verification that the authorization ticket was generated by a source trusted by the second resource.

15. In a computer network, a method for facilitating the granting of a request from a first resource to access a second resource, comprising:

receiving data identifying the first resource;

identifying policy data for the first resource;

generating, according to the identified policy data, an authorization ticket authorizing a request from the first resource to access the second resource, the ticket including data identifying the source of the authorization ticket to be used by the second resource to verify the source of the authorization ticket as a trusted source; and

providing the authorization ticket to the first resource to be used to gain access to the second resource.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Gupta

US 6,226,752 B1

May 1, 2001

Claims 1-44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Gupta.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have

not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).²

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(b). The issue turns on whether Gupta teaches each and every limitation of the claims.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Gupta describes a method for authenticating users on a network. (Col. 1, ll. 6-7.) Gupta uses a login server 204 that is configured to handle various authentication mechanisms in order to "externalize" the authentication mechanisms from an application, running on an application server 202, that is being accessed by a user (client) 200. (Col. 6, ll. 54-67; col. 11, ll. 10-38; Fig. 2.) The application server checks whether a network request made by a user has an active and valid session, and if not, redirects the user to the login server. (Col. 7, ll. 2-6; col. 11, l. 39 to col. 12, l. 24; Fig. 3.) The login server attempts to authenticate the user using any desired authentication

² Except as will be noted in this opinion, Appellants have not presented any substantive arguments directed separately to the patentability of the dependent claims or related claims in each group. In the absence of a separate argument with respect to those claims, they stand or fall with the representative independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

mechanism and, once authenticated, redirects the user back to the application server. (Col. 7, ll. 6-9; col. 12, ll. 25-49; Fig. 3.) The application server verifies the authentication directly with the login server and, once verified, the application server processes the user's request. (Col. 7, ll. 9-12; col. 12, l. 50 to col. 13, l. 16; Fig. 3.) Gupta teaches that "the invention may utilize a user's cookies or tokens." (Col. 7, ll. 14-15; *see also* col. 11, l. 46 to col. 12, l. 12 and col. 12, ll. 52-61.)

2. In the Background Art section, Gupta describes the use of "cookies" as a prior art authentication mechanism. (Col. 5, l. 42 to col. 6, l. 45.) Gupta teaches that cookies have a name and value and can store a variety of information. (Col. 5, l. 58 and ll. 66-67.) In particular, Gupta teaches that cookies consist of a text-only string that:

contains information (referred to as "parameters") such as the name of the cookie, the value of the cookie, the expiration date of the cookie, the path the cookie is valid for, the domain the cookie is valid for, and the need for a secure connection to exist to use the cookie.

(Col. 5, ll. 62-66.) In addition, Gupta teaches that:

the name of a cookie may correspond to the web site owner's name (e.g., SUN_ID may be the name of the cookie for Sun Microsystems.TM.) and the value may be an identification number for the particular user. . . . The expiration parameter defines the lifetime of the cookie (e.g., how long the cookie is valid for). The path parameter defines the URL path the cookie is valid for (i.e., web pages outside of the specified path cannot

read or use the cookie). The domain parameter specifies the domain that can access the cookie. For example, if the domain parameter is ".sun.com", only cookie requests that originate from pages located on the ".sun.com" domain server will be permitted. Further, after a server sends a cookie to a browser, any future requests made by the browser to the parameters specified in the cookie (e.g., the specified path and domain) the browser forwards the cookie with the request. The secure parameter is either TRUE or FALSE depending on whether a secure server condition is required to access the particular cookie.

(Col. 5, l. 67 to col. 6, l. 20.) Gupta also teaches that:

[b]y utilizing cookies, a server can authenticate a user based on the cookie (i.e., by reading the name and variable stored in the cookie) and not require a user to reauthenticate itself each time. The first time a client/user accesses a server, the server may authenticate a user (e.g., using a user name and password mechanism) and issues a cookie with a name and variable that uniquely identifies the authenticated client. For example, after authenticating a user, a server may generate a unique random number, create a cookie with the unique random number as a value, and transmit the cookie back to the user's browser. The server may also store the user's information (in the server) using the unique random number as a key. Thereafter, the cookie is similar to a key in that the server merely retrieves the cookie (with the identifying information (e.g., using the unique random number as a key)) instead of requiring the user to reenter a username and password.

(Col. 6, ll. 21-37.)

PRINCIPLES OF LAW

On appeal, all timely filed evidence and properly presented arguments are considered by the Board. *See In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984).

In the examination of a patent application, the Examiner bears the initial burden of showing a prima facie case of unpatentability. *Id.* at 1472. When that burden is met, the burden then shifts to the applicant to rebut. *Id.*; *see also In re Harris*, 409 F.3d 1339, 1343-44 (Fed. Cir. 2005) (finding rebuttal evidence unpersuasive). If the applicant produces rebuttal evidence of adequate weight, the prima facie case of unpatentability is dissipated. *In re Piasecki*, 745 F.2d at 1472. Thereafter, patentability is determined in view of the entire record. *Id.* However, on appeal to the Board it is an appellant's burden to establish that the Examiner did not sustain the necessary burden and to show that the Examiner erred.

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

ANALYSIS

Appellants contend that the Examiner erred in rejecting claims 1-44 as being anticipated by Gupta. Reviewing the record before us, we find that Appellants have shown that the Examiner erred in rejecting claims 1-14, 24-26, and 36-44 as being anticipated by Gupta. However, we do not agree that the Examiner erred in rejecting claims 15-23 and 27-35. In particular,

we find that the Appellants have not shown that the Examiner failed to make a prima facie showing of anticipation with respect to claims 15-23 and 27-35. Appellants failed to meet the burden of overcoming that prima facie showing.

With respect to independent claim 1, we agree with Appellants that Gupta does not teach each and every limitation of the claim. The Examiner found that Gupta's teaching of a user request to access the application server met the limitation of "receiving, from a client, a request to access the first resource." (Ans. 3.) The Examiner also found that Gupta's teaching of a login server for authentication met the claimed "authorization service." (Ans. 3.) In other words, the Examiner found that the client 200 of Gupta corresponds to the claimed client, the application server 202 of Gupta corresponds to the claimed first resource, and the login server 204 of Gupta corresponds to the claimed authorization service. We do not disagree with these findings.

However, citing column 7, lines 1-23 of Gupta, the Examiner further found that Gupta teaches "on behalf of the first resource, presenting the authorization ticket and requesting access to the second resource." (Ans. 4.) We do not agree with this finding. The cited portion of Gupta teaches an interaction between the client, the application server, and the login server -- which, as explained above, correspond to the claimed client, first resource, and authorization service. (FF 1.) But the cited portion of Gupta does not teach the claimed "second resource." In addition, the Examiner did not point to, nor do we find, any other portion of Gupta that teaches a second resource, as claimed.

In the Response to Argument section of the Answer, the Examiner appears to equate the client 200 of Gupta with the first resource and the application server 202 with the second resource. (Ans. 13.) However, under that interpretation, the Examiner did not address, nor do we find, where Gupta teaches an element corresponding to the client, as claimed.

Therefore, we conclude that Appellants have shown that the Examiner erred in rejecting independent claim 1 and claims 2-14, which depend from claim 1.

Independent claims 24, 36, and 44 recite, similarly to independent claim 1, a client, a first resource, an authorization service, and a second resource. Therefore, for the reasons discussed with respect to claim 1, we conclude that Appellants have shown that the Examiner erred in rejecting independent claims 24, 36, and 44, as well as claims 25-26 and 37-43 which depend from independent claims 24 and 36.

Regarding independent claim 15, Appellants argue that Gupta does not anticipate because the claim recites "elements that are the same as or similar to" those discussed with respect to claim 1. (App. Br. 13; Reply Br. 5.) Appellants assert that there is nothing in Gupta analogous to the claimed second resource. (App. Br. 15; Reply Br. 6.) Appellants also argue that Gupta does not teach generating an authorization ticket, including data identifying the source of the authorization ticket, verifying the source of the authorization ticket as a trusted source, or using the authorization ticket to authorize a request from the first resource to access the second resource, as claimed. (App. Br. 14-15; Reply Br. 6.) We do not agree.

Appellants' analogy to claim 1 is flawed because the scope of claim 15 is different than the scope of claim 1. Unlike claim 1, claim 15 does not

recite a client. Therefore, the Examiner correctly found that the client of Gupta corresponds to the claimed first resource and the application server of Gupta corresponds to the claimed second resource. (Ans. 7, 13, 15; FF 1.)

We agree with the Examiner that the teachings of Gupta regarding the login server and the generation and transmission of a cookie meet the claimed limitations of generating an authorization ticket, including data identifying the source of the authorization ticket, verifying the source of the authorization ticket as a trusted source, and using the authorization ticket to authorize a request from the first resource to access the second resource. (Ans. 7, 11-18; FF 1-2.)

We also note that claim 15 is worded broadly enough to read on the teachings of an Internet browser cookie alone, as described in the Background Art section of Gupta. (FF 2.) In other words, the prior art client (user) corresponds to the claimed first resource and the prior art server corresponds to the claimed second resource. As Gupta teaches:

- the server (second resource) receives data identifying the client (first resource) when the server first authenticates a client/user (FF 2);
- policy data, such as an identification number for the particular user, is identified (FF 2);
- a cookie (authorization ticket) is generated according to the identified policy data authorizing a request from the client (first resource) to access the server (second resource), the cookie (authorization ticket) including data identifying the source of the authorization ticket (e.g., cookie parameters such as a name parameter corresponding to the web site owner's name) to be used by the server (second resource) to verify the

source of the authorization ticket as a trusted source (FF 2); and

- the cookie (authorization ticket) is provided to the client (first resource) to be used to gain access to the server (second resource) after the first time the client accesses the server (FF 2).

Accordingly, we conclude that Appellants have not shown that the Examiner erred in rejecting claim 15 under 35 U.S.C. § 102(b). Dependent claims 16-23 were not argued separately, and fall with claim 15.

Independent claim 27 recites limitations similar to independent claim 15. For the reasons discussed with respect to claim 15, we conclude that Appellants have not shown that the Examiner erred in rejecting claim 27 under 35 U.S.C. § 102(b). Dependent claims 28-35 were not argued separately, and fall with claim 27.

NEW GROUNDS OF REJECTION UNDER 37 C.F.R. § 41.50(b)

We make the following new grounds of rejection using our authority under 37 C.F.R. § 41.50(b).

35 U.S.C. § 112, Second Paragraph

Claim 24 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 24 recites "requesting, on behalf of the first resource, access to the second resource presenting the acquired authorization ticket." However, there is insufficient antecedent basis for the claim term "the second resource."

35 U.S.C. § 101

Claims 24-35 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Independent claims 24 and 27 each recite "A computer readable medium having instructions for." The Specification teaches that:

[a] "computer-readable medium" can be any medium that can contain, store, or maintain programs and data for use by or in connection with the instruction execution system. The computer readable medium can comprise any one of many physical media such as, for example, . . . electromagnetic . . . media.

(Spec. paragraph [0033].) Therefore, a computer readable medium includes electromagnetic radiation, i.e., carrier waves or signals. A carrier wave or signal is not statutory subject matter because it does not fall within any of the four categories of statutory subject matter. *See In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007).

We thus reject independent claims 24 and 27 as embracing non-statutory subject matter. Claims 25-26 and 28-35, each of which depends from one of claims 24 and 27, are rejected under 35 U.S.C. § 101 for the same reasons discussed with respect to claims 24 and 27.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b).

37 C.F.R. § 41.50(b) provides that, "[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review."

37 C.F.R. § 41.50(b) also provides that the Appellants, *WITHIN TWO MONTHS FROM THE DATE OF THE DECISION*, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of proceedings (37 C.F.R. § 1.197 (b)) 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 37 C.F.R. § 41.52 by the Board upon the same record ...

CONCLUSION OF LAW

We conclude that:

- (1) Appellants have shown that the Examiner erred in rejecting claims 1-14, 24-26, and 36-44 for anticipation under 35 U.S.C. § 102(b).
- (2) Appellants have not shown that the Examiner erred in rejecting claims 15-23 and 27-35 for anticipation under 35 U.S.C. § 102(b).
- (3) Claim 24 is unpatentable under 35 U.S.C. § 112, second paragraph because it is indefinite.
- (4) Claims 24-35 are unpatentable under 35 U.S.C. § 101 because they are directed to non-statutory subject matter.

DECISION

The rejection of claims 1-14, 24-26, and 36-44 for anticipation under 35 U.S.C. § 102(b) is reversed.

The rejection of claims 15-23 and 27-35 for anticipation under 35 U.S.C. § 102(b) is affirmed.

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Claim 24 is rejected as being indefinite under 35 U.S.C. § 112, second paragraph.

Claims 24-35 are rejected as being directed to non-statutory subject matter under 35 U.S.C. § 101.

New grounds of rejection have been entered under 37 C.F.R. § 41.50(b).

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).

AFFIRMED-IN-PART
37 C.F.R. § 41.50(b)

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