

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL E. BROWN and CHARLES T. PERUSSE, JR.

Appeal 2007-1950
Application 10/320,991
Technology Center 2100

Decided: September 24, 2008

Before RICHARD TORCZON, SALLY C. MEDLEY, and JAMES T.
MOORE, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL

A. Statement of the Case

Dell Products L.P. (“Dell”), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 1-4, 6-11 and 13-20. App. Br. 1-2. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

The application on appeal was filed 16 December, 2002.

The Examiner relies on the following prior art in rejecting the claims on appeal:

McAlister et al. (“McAlister”)	6,598,159	Jul. 22, 2003
Guheen et al. (“Guheen”)	6,615,166	Sep. 2, 2003
Multer et al. (“Multer”)	6,757,696	Jun. 29, 2004
Harrington et al. (“Harrington”)	2004/0030881	Feb. 12, 2004

B. Findings of Fact (“FF”)

Claims on Appeal

1. Claims 1, 10 and 17 are independent. App. Br.¹ 3, 7-9.
2. The Examiner rejected claims 1, 10 and 17 under 35 U.S.C. § 102(e) as anticipated by Guheen. Final Rejection 3-5 and Ans. 5-7.
3. Claim 1, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:
 1. A system for automated testing of information handling system application versions, the system comprising:
 - plural application development systems operable to create plural versions of an application;
 - an autocompile engine interfaced with the plural application development systems and operable to periodically compile the current application version; and
 - a test director interfaced with the autocompile engine and operable to initiate testing of the compiled current application version on one or more test information

¹ The Appeal Brief referenced hereinafter is the Supplemental Appeal Brief filed 05 September 2006.

handling systems and to detect faults in the compiled current application version.

4. Claim 10, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:

10. A method for automated testing of versioned information handling system applications, the method comprising:
developing plural versions of an application;
checking in the plural versions of the application to a common location as each version is completed;
automatically compiling checked in versions of the application at predetermined times;
automatically testing each compiled version of the application on plural test information handling systems to detect errors associated with each compiled version of the application.

5. Claim 17, reproduced from the Claim Appendix of the Appeal Brief, reads as follows:

17. An information handling system for testing versions of an application, the information handling system comprising instructions operable to:
track plural versions of an application, the plural versions generated over a time period;
automatically compile the versions at defined time intervals of the time period;
automatically load each of the compiled versions on test information handling systems;
and
detect errors on the test information handling systems, each error associated with a compiled version.

Prior Art

6. Guheen describes representing a system such as a web architecture framework pictorially and conveying information regarding its components. Col. 2, ll. 1-31; col. 7, ll. 1-10; fig. 1A.

7. Guheen depicts an example pictorial representation of the web architecture framework or “base chart” in figures 1L and 14.
8. The Examiner cites to column 126, ll. 53-54 (Ans. 20) which is related to Test Planning for Testing tools 136 in the System Building tools 218 of the Development Tools Framework and describes that a Test Plan includes a test schedule. Col. 67, l. 49-col. 68, l. 25; col. 95, ll. 63-67; col. 119, ll. 41-52; fig. 10.
9. The Examiner cites to column 183, lines 54-57 (Final Rejection 5, Ans. 7) which describes requiring user account or ID information to be stored on the remote server of a network for a definite period of time in the context of an electronic commerce environment. Col. 183, ll. 4-59.
10. The Examiner cites to column 208, lines 41-42 (Final Rejection 5, Ans. 7) which is related to the Push Technology Capabilities of Content Channel Related Web Application Services 1402 of the Web Architecture Framework, and describes that informal hardware and software audits could be performed automatically or at predetermined intervals. Col. 164, ll. 33-43; col. 208, ll. 22-47; fig. 14-C.
11. The Examiner cites to column 210, lines 1-5 (Final Rejection 4, 16; Ans. 6, 18) which is related to Content Channel Related Web Application Services 1402 of the Web Architecture Framework and describes that the content channels component permits generation of messages which may be sent to selected users at predetermined times or automatically upon occurrence of a particular event. Col. 164, ll. 33-43; fig. 14-C.
12. The Examiner cites to column 221, lines 47-54 (Ans. 21) which is related to Content Review and Testing Tools of Content Management &

Publishing Services 1408 of the Web Architecture Framework and describes that remote testing, periodic testing and durational testing may be performed on the content of a data interface (i.e., a website).

Col. 164, ll. 33-43; col. 213, l. 37-col. 214, l. 6; fig. 14-D.

13. The Examiner cites to column 265, lines 27-28 (Final Rejection 3, Ans. 5) which is related to Management and Operations 1430 of the Web Architecture Framework, particularly Community and Role Management and describes periodically updating the attributes of communities that comprise visitors (i.e., people) based on common characteristics and preferences. Col. 164, ll. 33-43; col. 263, 45-64; col. 265, ll. 17-28; fig. 14-F.
14. The Examiner cites to column 266 lines 61-63 (Final Rejection 3, 4, 5, 15; Ans. 5, 6, 7, 17) which is related to Web Application Debugging Utilities of Web Developer Services 1432 of the Web Architecture Framework and describes automatically compiling finished code to test its technical correctness. Col. 164, ll. 33-43; col. 266, ll. 19-30; fig. 14-F.

C. Principles of Law

“Anticipation under 35 U.S.C. § 102(e) requires that ‘each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.’” *In re Robertson*, 169 F.3d. 743, 745 (Fed. Cir. 1999) (quoting *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987)).

“[R]ejections under 35 U.S.C. § 102 are proper only when the claimed subject matter *is* identically disclosed or described in ‘the prior art.’” *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972) (emphasis in original). For a

proper 35 U.S.C. § 102 rejection, the prior art “reference must clearly and unequivocally disclose the claimed [invention] or direct those skilled in the art to the [invention] without *any* need for picking, choosing, and combining various disclosures not directly related to each other by the teachings of the cited reference.” *Id.* (emphasis in original).

D. Analysis

Rejection of Claims 1, 10 and 17

Claims 1, 10 and 17 are independent. FF² 1. Claim 1 recites “an autocompile engine . . . operable to periodically compile the current application version . . .”. FF 3. Similarly, claim 10 recites “automatically compiling checked in versions of the application at predetermined times . . .”. FF 4. Claim 17 is also similar and recites “automatically compile the versions at defined time intervals of the time period . . .”. FF 5. Dell and the Examiner disagree as to whether Guheen describes these limitations.

Dell’s position is that Guheen does not describe automatic compiling of the application version(s) on a temporal basis, such as “periodically”, at “predetermined times” or at “defined time intervals”. App. Br. 4-5. Specifically, Dell argues that Guheen addresses a web application development tool that automatically compiles finished code to test its technical correctness. App. Br. 4-5, citing Guheen col. 266, ll. 61-63. Dell also argues that Guheen’s description at column 126 of a test plan having a test schedule does not indicate the scheduling of automated compiling of checked in versions. Reply Br. 1-2, citing Guheen col. 126, ll. 53-55. Dell further argues that Guheen describes at column 221 periodic testing in the

² FF denotes Finding of Fact.

context of content review and testing, not periodic compiling of application versions. Reply Br. 1-2, citing Guheen col. 221, ll. 47-54.

In rejecting independent claims 1, 10, and 17, the Examiner picked various elements from various embodiments of the 325 page Guheen reference. The Examiner has not explained how the limitations of claims 1, 10 and 17 read on the various cited sections of Guheen, nor explained the interrelationship between the descriptions from the different cited sections. Instead, the Examiner has merely copied the claim language and listed citations to the Guheen reference or copied sections from Guheen and added emphasis to certain words. Final Rejection 3-5, 15-16 and Ans. 5-7, 17-21.

In particular, with respect to the disputed claim 1 limitation, the Examiner has not explained, nor is it readily apparent, how “an autocompile engine . . . operable to periodically compile the current application version. . .” reads on Guheen’s descriptions of: (1) Web Application Debugging Utilities that automatically compile finished code (FF 14); (2) periodic updating of attributes of communities of visitors (i.e., people) (FF 13); and (3) periodic testing of the content of a data interface (i.e., a website) (FF 12). The Examiner has not explained the interrelationship of automatically compiling finished code (FF 14) with periodic updating of visitor communities (FF 13) and periodic testing of a website (FF 12).

For the disputed claim 10 limitation, the Examiner did not explain the significance and interrelationship of automatically compiling finished code (FF 14), sending messages to selected users at predetermined times (FF 11) and a test plan and test schedule (FF 8). For the disputed claim 17 limitation, the Examiner did not explain the significance and interrelationship of automatically compiling finished code (FF 14),

Appeal 2007-1950
Application 10/320,991

performing hardware and software audits at predetermined intervals (FF 10) and storing user account or ID information for a definite period of time (FF 9).

The descriptions of Guheen that the Examiner relies on for the disputed limitations of claims 1, 10 and 17 are directed to separate and unrelated aspects of various disclosed embodiments. The Examiner has not established that any of the various Guheen descriptions, either taken alone, or when combined as suggested by the Examiner, meet the disputed limitations of claims 1, 10 or 17. For these reasons, Dell has shown that the Examiner erred in finding claims 1, 10 and 17 anticipated by Guheen.

Rejection of Claims 4, 6-9, 11, 15-16, 18 and 20

Claims 4, 6-9, 11, 15-16, 18 and 20 are directly or indirectly dependent on claims 1, 10 and 17 and were also rejected under 35 U.S.C. § 102(e) as anticipated by Guheen. App. Br. 3, 8-10, Final Rejection 3-7 and Ans. 5-9. For the same reasons explained above, we find that the Examiner erred in finding claims 4, 6-9, 11, 15-16, 18 and 20 anticipated by Guheen.

Rejections of Claims 2-3, 13-14 and 19

The Examiner rejected claims 2 and 13 under 35 U.S.C. § 103(a) as unpatentable over Guheen and Harrington and rejected claims 3, 14 and 19 under 35 U.S.C. § 103(a) as unpatentable over Guheen, Harrington and McAlister. Final Rejection 8-13 and Ans. 10-15. Claims 2-3, 13-14 and 19 are directly or indirectly dependent on claims 1, 10 and 17. App. Br. 3, 7-10. For the same reasons explained above, we find that the Examiner erred in determining that claims 2 and 13 are obvious over Guheen and Harrington and determining that claims 3, 14 and 19 are obvious over Guheen, Harrington and McAlister.

Appeal 2007-1950
Application 10/320,991

F. Decision

Upon consideration of the appeal, and for the reasons given herein, it is
ORDERED that the decision of the Examiner rejecting claims 1, 4, 6-11,
15-18 and 20 under 35 U.S.C. § 102(e) as anticipated by Guheen is reversed.
ORDERED that the decision of the Examiner rejecting claims 2 and 13
as unpatentable under 35 U.S.C. § 103(a) over Guheen and Harrington is
reversed.
ORDERED that the decision of the Examiner rejecting claims 3, 14
and 19 as unpatentable under 35 U.S.C. § 103(a) over Guheen, Harrington
and McAlister is reversed.

REVERSED

Appeal 2007-1950
Application 10/320,991

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