

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THILO JAHN

Appeal 2008-0115
Application 10/243,227¹
Technology Center 2100

Decided: August 21, 2008

Before HOWARD B. BLANKENSHIP, JAY P. LUCAS, and
STEPHEN C. SIU, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

STATEMENT OF CASE

Appellant appeals from a final rejection of claims 1 to 10 under authority of 35 U.S.C. § 134. The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

¹ Application filed September 13, 2002. Appellant claims the benefit under 35 U.S.C. § 119 of German application 10145621.2, filed 09/15/2001. The real party in interest is Robert Bosch GmbH of Stuttgart, Germany.

Appellant's invention relates to a method and device for monitoring the operation of random access memory (RAM) in a computer while running programs. In the words of the Appellant:

According to a preferred embodiment of the method according to the present invention the check sum is provided in the form of a CRC or cyclic redundancy check, in particular a 16-bit CRC or a 32-bit CRC. In particular 16-bit CRC's are appendable to contiguous RAM areas in a simple manner. By using them it is possible to check anytime whether the stored area has retained its inherently correct form, the execution of such a check being very quick.

(Spec. 3, bottom para.)

Claim 1 is exemplary:

1. A method of monitoring a memory coupled to an electronic control unit, comprising:

providing a contiguous memory area assigned to a program part corresponding to a selected individual task to be executed;

storing input data to be stored assigned to the program part in the contiguous memory area, the input data being changeable during operation of the electronic control unit;

upon exiting the program part, determining a check sum for the selected individual task on the basis of the data stored in the contiguous memory area;

appending the checksum to the contiguous memory area;

checking the check sum at least one of upon reentry into the program part and in regular intervals between exiting from and reentry into the program part; and

identifying a memory error on the basis of a comparison of the check sum determined upon exiting the program part and a subsequently determined and checked check sum.

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

Nishimura	US 4,646,307	Feb. 24, 1987
Slivka	US 5,493,649	Feb. 20, 1996
Hamada	US 5,511,162	Apr. 23, 1996
Zuravleff	US 5,737,547	Apr. 07, 1998
Garney	US 2002/0199152 A1	Dec. 26, 2002
Yoshimura	US 6,546,517 B1	Apr. 08, 2003

REJECTIONS

R1: Claims 1 to 5 and 8 to 10 stand rejected under 35 U.S.C. § 103(a) for being obvious over Slivka, Nishimura, Zuravleff, and Yoshimura.

R2: Claim 6 stands rejected under 35 U.S.C. § 103(a) for being obvious over Slivka, Nishimura, Zuravleff, Yoshimura, and Garney.

R3: Claim 7 stands rejected under 35 U.S.C. § 103(a) for being obvious over Slivka, Nishimura, Zuravleff, Yoshimura, and Hamada.

Groups of Claims:

The claims are grouped in accordance with the rejections indicated above.

Appellant contends that the claimed subject matter is not rendered obvious by Slivka in combination with the secondary references for failure of the references to teach an important claim limitation. The Examiner contends that each of the claims is properly rejected.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellant have been considered in

this opinion. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We affirm the rejections.

ISSUE

The issue is whether Appellant has shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 103(a). The issue turns on whether there is a teaching in the references of the limitations “providing a contiguous memory areas assigned to a program part corresponding to a selected individual task to be executed” and “determining a check sum for the selected individual task.”

PRINCIPLES OF LAW

Appellant has the burden on appeal to the Board to demonstrate error in the Examiner’s position. See *In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

“What matters is the objective reach of the claim. If the claim extends to what is obvious, it is invalid under § 103.” *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1742 (2007). To be nonobvious, an improvement must be “more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

“This court has held in a number of decisions that a United States patent speaks for all it discloses as of its filing date, even when used in combination with other references.” *In re Zenitz*, 333 F.2d 924, 925 (CCPA 1964) (internal citations omitted).

“All of the disclosures in a reference must be evaluated for what they fairly teach one of ordinary skill in the art.’ The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain.” *In re Lemelson*, 397 F.2d 1006, 1009 (CCPA 1968) (citing *In re Boe*, 355 F.2d 961, 965 (CCPA 1966)).

Appellants urge that the ultimate criterion of whether a rejection is considered “new” in a decision by the board is whether appellants have had fair opportunity to react to the thrust of the rejection. We agree with this general proposition, for otherwise appellants could be deprived of the administrative due process rights established by 37 CFR 1.196(b) of the Patent and Trademark Office. However, under the facts of this case we disagree with appellants that the board added a new ground of rejection. The basis for the examiner’s rejection was section 103 obviousness. The evidence considered by the examiner to demonstrate obviousness included, principally, the Hoechst, Holzrichter et al., Yasui et al., and Swift patents. In affirming, the board used the same basis, but, without disagreeing with the examiner’s approach, limited its discussion to the evidence contained in Holzrichter et al., Yasui et al., and Swift.

Application of Kronig, 539 F.2d 1300, 1303 (CCPA 1976).

ANALYSIS

From our review of the administrative record, we find that Examiner has presented a prima facie case for the rejections of Appellant’s claims under 35 U.S.C. § 103(a). The prima facie case is presented on pages 3 to

10 of the Examiner’s Answer. In opposition, Appellant presents the following arguments.

*Arguments with respect to the rejection
of claims 1 to 5 and 8 to 10
under 35 U.S.C. § 103(a) [RI]*

Appellant contends that Examiner erred in rejecting claims 1 to 5 and 8 to 10 under 35 U.S.C. § 103(a)) for being obvious over Slivka, Nishimura, Zuravleff, and Yoshimura. Specifically, Appellant argues “none of [the cited references] teaches or suggests the allocation of associated contiguous RAM cells for each selected individual program task, let alone providing a checksum for each selected individual program task (and therefore for the associated cell block of RAM cells).” (App. Br., page 6, bottom). Appellant argues more specifically that the Yoshimura reference, which the Examiner cites as teaching the feature of “determining a check sum for the selected individual task,” does not contain that teaching. Appellant indicates “the actual disclosure of Yoshimura clearly does not teach or suggest providing ‘a program part corresponding to a selected individual task’ and “determining a check sum for the selected individual task.” (App. Br., page 6, bottom, page 7, top).

We have reviewed the teachings of Yoshimura, and the Examiner’s arguments concerning those teachings. (Ans., page 11, middle). While we appreciate the Examiner’s argument, we feel that a clearer teaching of the cited limitations can be found in the primary reference Slivka.

Slivka teaches, in Figure 3, memory 202 and processor 204. Memory 202 holds an operating system 304 (col. 2, ll. 47-50) which contains a file management component 308 performing the task of file management, which

is stored in a contiguous memory area. That file management component contains memory for a code section and a data section. (Col. 3, ll. 21-25). We are reading the claimed “program part” as including both the data and code sections of the reference. Checksums are stored in locations indicated as #306 for both the program and the data sections, which is read on “appending the checksum to the contiguous memory area.” Checksums are calculated “[u]pon completion of the operation” (col. 3, l. 28), which is read on the claimed “upon exiting the program part, determining a check sum for the selected individual task on the basis of the data stored in the contiguous memory area.” Regular interval checking of the checksums looks for changes in both the program and the data sections, each performing part of the task of file management. (Col. 3, ll. 25-30). This corresponds to the claimed “checking the check sum …in regular intervals between exiting from and reentry into the program part.” There is also disclosed, with respect to the data part of the program part, checking on reentry into the program part as claimed. The claimed identification of error on the basis of a comparison of the checksums is disclosed in column 3, lines 54-58.

With this deeper understanding of the Slivka reference, we feel that the Appellant’s objection to the reference is overcome, as it is clear that the primary reference determines a check sum for the individual task of file management. See *Kronig*, 539 F.2d at 1303 (cited above).

We thus do not find error in the Examiner’s rejection of the claims of [R1] under 35 U.S.C. § 103.

*Arguments with respect to the rejections
of claims 6 and 7
under 35 U.S.C. § 103(a) [R2] [R3]*

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Appellant has argued only that the Garney and Hamada references fail to cure the deficiencies of the rejection discussed above with respect to [R1]. (App. Br., page 8, top and bottom). As we have not found error in that rejection, we will not find error in the rejections of claims 6 and 7 respectively.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner did not err in rejecting claims 1 to 10.

DECISION

The rejections of claims 1 to 10 are affirmed.

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

tdl/ce

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