

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOEFON JANN, RAMANJANEYA SARMA
BURUGULA and PRATAP C. PATTNAIK

Appeal 2008-0473
Application 10/097,503
Technology Center 2100

Decided: July 24, 2008

Before LANCE LEONARD BARRY, JEAN R. HOMERE, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the
Examiner's rejection of claims 1-25. We have jurisdiction under 35 U.S.C.
§ 6(b). We AFFIRM.

THE INVENTION

The disclosed invention relates generally to minimizing system freeze time during low memory relocation in a shared memory computer system. More particularly, Appellants' invention relates to a Low Memory Table that keeps track of which memory pages are modified during a first copying phase prior to a system freeze, and during the system freeze only those modified pages are copied in a second copying phase (Spec. 1).

Independent claim 1 is illustrative:

1. A method of dynamically relocating low memory for an operating system instance in a computer system, said method comprising:

establishing a low memory table (LMT), said LMT comprising information allocated for each of a predefined increment of said low memory to be relocated;

setting said information to a first predetermined value;
and

copying contents of each of said increments to a new location in a first copy operation.

THE REFERENCES

The Examiner relies upon the following references as evidence in support of the rejection:

Wang US 6,671,786 B2 Dec. 30, 2003

Applicants' Admitted Prior Art: "Description of the Related Art" Spec. 1-4, Figs. 1, 2 and 4.

THE REJECTION

Claims 1-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over by Applicants Admitted Prior Art (APA) in view of Wang.

PRINCIPLES OF LAW

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).

Appellants have 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)). Therefore, we look to Appellants’ Briefs to show error in the proffered *prima facie* case.

ANALYSIS

Since Appellants’ arguments have treated claims 1-25 as a single group, which stand or fall together, we select independent claim 1 as the representative claim for this rejection. *See 37 C.F.R. § 41.37(c)(1)(vii)*.

Elements under § 103

For the reasons set forth below, we agree with the Examiner’s determination that APA teaches and/or suggests each of the three limitations recited in claim 1.

Claim Construction

“[T]he PTO gives claims their ‘broadest reasonable interpretation.’”
In re Bigio, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)).

Here, we broadly but reasonably interpret the claimed “low memory table,” to include a table or register that contains space or information allocated for each of a predefined increment of the low memory to be relocated.

Based on the aforementioned claim construction, it is our view that the claimed LMT broadly but reasonably reads on the low memory registers (LMR) described in APA. (See Ans. 4, ll. 16-18). According to APA, the low memory register includes information that points to a target region of low memory to be relocated (i.e., information allocated for each of a predefined increment of said memory to be located) (See Spec. 4, ll. 3-6). Therefore, we agree with the Examiner’s findings that APA teaches a method for dynamically relocating low memory for an operating system (See Spec. 2-3, ll. 17 et. seq.).

We further agree with the Examiner’s determination that APA teaches the initial value of the pointing information is set by the initial value that is contained in the low memory registers (see Spec. 4, ll. 5-6). On this basis, we agree with the Examiner’s determination that APA teaches the limitation of setting said information to a first predetermined value.

We further agree with the Examiner’s finding that APA teaches the claimed limitation of “[c]opying contents of each of said increments to a new location in a first copy operation.” (See Ans. 5, ll. 6-7). We note that

APA specifically teaches copying the contents of all the low memory page frames to the target region (Spec. 4, ll. 3-4).

Thus, based on the record before us, we find that APA alone teaches all of the limitations of claim 1. Having acknowledged that certain claimed elements are taught by the prior art, Appellants cannot now defeat an obviousness rejection by asserting that the cited references fail to teach or suggest these elements. *See Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Cir. 1988) (“A statement in a patent that something is in the prior art is binding on the applicant and patentee for determinations of anticipation and obviousness.”); *In re Nomiya*, 509 F.2d 566, 571 n.5 (CCPA 1975) (It is a “basic proposition that a statement by an applicant, whether in the application or in other papers submitted during prosecution, that certain matter is ‘prior art’ to him, is an admission that that matter is prior art for all purposes . . . ”). *See also* Lance Leonard Barry, *Anything You Say Can be Used against You*, 82 J. Pat. & Trademark Off. Soc'y 347 (2000).

Because we find that APA *alone* teaches and/or suggests all the limitations of representative claim 1, we are satisfied that the cited combination renders obvious Appellants’ claimed invention. It is proper to affirm a rejection based upon the teachings of a lesser number of references than those relied upon by the Examiner. In affirming a multiple reference rejection under 35 U.S.C. § 103, the Board may rely on one reference alone in an obviousness rationale without designating it as a new ground of rejection. *In re Bush*, 296 F.2d 491, 496 (CCPA 1961); *In re Boyer*, 363 F.2d 455, 458, n.2 (CCPA 1966).

Because we conclude that Appellants have not shown error in the Examiner's prima facie case, we sustain the Examiner's rejection of representative claim 1 (and also claims 2-25 which fall therewith) as being unpatentable over Applicants Admitted Prior Art (APA) in view of Wang. *See* 37 C.F.R. § 41.37(c)(1)(vii).

REPLY BRIEF

We note that the Reply Brief is properly used to respond to points of argument raised by the Examiner in the Answer and not as a means for presenting new arguments. *See Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (an issue not raised in an opening brief is waived). While we have fully considered Appellants' responses in the Reply Brief, we decline to address any new arguments not originally presented in the principal Brief. With respect to all claims before us on appeal, arguments which Appellants could have made but chose not to make have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii). *See also In re Watts*, 354 F.3d 1362, 1368 (Fed. Cir. 2004).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have not shown the Examiner erred in rejecting claims 1-25 under 35 U.S.C. § 103(a) for obviousness.

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DECISION

We affirm the decision of the Examiner rejecting claims 1-25.

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

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