

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JEAN-MARC BERTHAUD, JEAN-CLAUDE DISPENSA,
ERIC LEBRUN, and JEAN-BERNARD SCHMITT

Appeal 2008-0617
Application 10/156,338
Technology Center 2100

Decided: October 23, 2008

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

SIU, *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 1-12. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

THE INVENTION

The disclosed invention relates generally to communication systems in a server farm (Spec. 1). More particularly, Appellants' invention is directed to a method and system for monitoring the availability of server farm resources within a communication system (Spec. 2).

Independent claim 1 is illustrative:

1. Server farm apparatus, comprising:
 - a web server in a server farm; and
 - a service level agreement server in the server farm;

wherein the web server is connected to an Internet Protocol network outside the server farm by a communication path that includes a first half path, at least a portion of which is outside of the server farm, and a second half path, which is wholly within the server farm, and wherein the service level agreement server includes means for monitoring availability of the first half path and means for monitoring availability of the second half path.

THE REFERENCES

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

Allen	US 6,877,095 B1	Apr. 5, 2005
Veres	US 6,807,156 B1	Oct. 19, 2004
Anerousis	US 6,760,775 B1	Jul. 6, 2004

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THE REJECTIONS

1. Claims 1-5, 7, 8, and 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Allen and Veres.
2. Claims 6, 9, 10, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen, Veres and Anerousis.

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.

FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

Allen

1. Allen teaches a “Web farm” that includes a “family of Web servers” (col. 3, ll. 62-63).
2. Allen teaches that “a Web server creates and delivers a one-way encrypted token to a user on a client of that server” (col. 6, ll. 10-12) and that the “server generates a token and sends it to the user. Subsequently, the user sends the token that it received to the server” (col. 6, ll. 15-17).

Veres

3. Veres teaches “monitoring the performance of the IP network on a network level, where an Internet Protocol (IP) is defined to be the method or protocol by which data is sent from one computer to another on the Internet” (col. 1, ll. 16-19).
4. Veres teaches “a method for calculating server response delay” (col. 15, ll. 37-38) in which “a SYN packet is sent by the client towards the server” that includes a “timestamp of the SYN packet (that) is stored in the record” (col. 15, ll. 39-43).
5. Veres teaches that the “response time may be calculated by waiting to the server to respond with a SYNACK packet” (col. 15, ll. 43-45).

ANALYSIS

Independent claim 1

We consider the Examiner’s rejection of independent claim 1 as being unpatentable over Allen and Veres.

Appellants assert that “the combination of Allen in view of Veres does not disclose or suggest using a service level agreement server within the server farm” (App. Br. 17). The Examiner finds that “Veres discloses a service level agreement (see column 1, lines 20-25 (service level agreement monitoring))” (Ans. 12).

Veres discloses a “method or protocol by which data is sent from one computer to another on the Internet” (col. 1, ll. 18-19) and “Service Level Agreement (SLA) monitoring” (col. 1, ll. 22-23). Veres also discloses “when a server (e.g., Web server) gets congested . . . (a) method for calculating server response delay . . . (in which) . . . a SYN packet is sent” (col. 15, ll. 33-40). “The timestamp of the SYN packet is stored” and a “response time may be calculated” (col. 15, ll. 42-44). Because Veres discloses a server performing Service Level Agreement monitoring, we agree with the Examiner that Veres discloses a service level agreement server. Further, as set forth above, Veres discloses multiple computers, including “Web servers,” in which “data is sent from one computer to another on the Internet.” Allen discloses that a “family of Web servers that work together” constitutes a “Web farm” (Allen, col. 3, ll. 59-63). Because the multiple “Web Servers” of Veres includes a server that performs

“Service Level Agreement monitoring” and the family of web servers constitutes a “Web farm” as disclosed by Allen, we agree with the Examiner that the combination of Allen and Veres discloses a service level agreement server in a server farm.

Appellants further argue that “one of ordinary skill in the art at the time of the invention would not be motivated to modify Allen with the teachings provided in Veres” (App. Br. 15) because “Allen . . . has no interest in troubleshooting Internet connections or guaranteeing a specified level of system performance as it relates to downtime or uptime and as a result would not even think to look to teachings provided in Veres which relates to Service level agreement monitoring” (App. Br. 15-16).

Allen discloses a “Web farm” that includes “a family of Web servers that work together” (col. 3, ll. 59-63). As set forth above, Veres discloses multiple computers in a network including servers in which “[n]etwork level monitoring is performed by public and enterprise networks” that includes “monitoring the subscriber access performance (that is) characterized by Service Level Agreement (SLA) monitoring” (col. 1, ll. 19-23). Thus, Allen discloses known elements of a web farm and a family of web servers and computers in a network while Veres discloses known elements of Service Level Agreement monitoring in a network. We note that in *KSR*, the Supreme Court reaffirmed that “[w]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an

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arrangement, the combination is obvious.” *KSR*, 127 S. Ct. at 1740 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)). In the present case, performing Service Level Agreement monitoring in a network (Veres), in which the network includes a plurality of computers and servers such as a web farm (Allen), would have required no more than the mere arrangement of known elements to result in an expected and predictable result of monitoring performance in a web farm. Therefore, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to combine Allen and Veres.

Appellants also argue that “[t]here is no teaching or suggestion of monitoring the availability of the portion of the path leading from the server farm to the Internet or the availability of the path within the farm that connects the web servers” (App. Br. 17-18).

Allen discloses a web farm that includes “a family of Web servers” (col. 3, ll. 59-60) and that a “server generates a token and sends it to the user. Subsequently, the user sends the token that it received to the server. The server checks out the received token to see if the user has a valid session” (col. 6, ll. 15-17). Also, Allen discloses that “a Web server creates and delivers a one-way encrypted token to a user on a client of that server” (col. 6, ll. 10-12). Because Allen discloses a path in which a server in a server farm communicates with a client device, we find that the path of Allen includes a portion outside of the server farm and a portion of the path within the server farm because the path extends between the server (in a

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Web farm) and the client (outside of the Web farm). Also, because Veres discloses multiple computers, including servers, connected in a network (FF 3, 4) and SLA monitoring including “a SYN packet (that) is sent by the client towards the server” (col. 15, ll. 39-40), we find that the combination of Allen and Veres teaches or suggests monitoring (i.e., SLA monitoring) the availability of a path. Because the path of communication between the server and the client device in Allen or Veres includes a portion within the server farm and a portion outside of the server farm, we find that Allen and Veres discloses monitoring the availability of a portion of a path outside of the server farm and the availability of a portion of the path within the server farm.

For at least the aforementioned reasons, we conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of representative claim 1 as being unpatentable over Allen and Veres.

Independent claims 2 and 11

We consider the Examiner’s rejection of independent claims 2 and 11 as being unpatentable over Allen and Veres. Although Appellants present arguments for each of claim 2 and claim 11 in different paragraphs and under different headings, Appellants nevertheless provide the same arguments in support of claim 2 and claim 11. We therefore treat these

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claims as a single group which stand or fall together, and we select independent claim 2 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants assert that “the combination of Allen in view of Veres does not disclose or suggest using a service level agreement server within the server farm” (App. Br. 18) and that “one of ordinary skill in the art at the time of the invention would not be motivated to modify Allen with the teachings provided in Veres” (App. Br. 15). We disagree with Appellants for reasons set forth above.

Appellants further argue that “the combination of Allen in view of Veres does not disclose or suggest having a service level agreement server that monitors the response time of a first half of a path outside the server farm and the response time of a second half of a path which is within a server farm” (App. Br. 18).

As set forth above, we find that Allen and Veres discloses Service Level Agreement monitoring in a server farm. Veres discloses:

A method for calculating server response delay . . . When a new TCP connection is requested, a SYN packet is sent by the client towards the server. This will be identified at the monitoring point as a new microflow and so a new microflow record is allocated. The timestamp of the SYN packet is stored in the record. The response time may be calculated by waiting to the server to respond with a SYNACK packet. The result is stored in the microflow record and will be logged when the microflow record is terminated, i.e., when the TCP connection terminates or times out.
(col. 15, ll. 37-48).

Hence, Veres discloses calculating a response time over a path between a client device and a server (e.g., using a timestamp of the SYN packet). Because the path includes a portion within the server farm and a portion outside of the server farm (as described above), we find that the combination of Allen and Veres discloses monitoring the response time of a portion of a path outside of the server farm and the response time of a portion of the path within the server farm.

For at least the aforementioned reasons, we conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner’s rejection of representative claim 2 (and claim 11 that falls therewith) as being unpatentable over Allen and Veres.

Claims 3-5, 7, and 8

We consider the Examiner’s rejection of claims 3-5, 7, and 8 as being unpatentable over Allen and Veres. Since Appellants’ arguments have treated these claims as a single group which stand or fall together, we select independent claim 3 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants assert that “the combination of Allen in view of Veres does not disclose or suggest using a service level agreement server within the server farm” (App. Br. 20). We disagree with Appellants for reasons already discussed above.

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Accordingly, we conclude that Appellants have not met their burden of showing that the Examiner erred in rejecting independent claim 3. Therefore, we affirm the Examiner’s rejection of independent claim 3, and claims 4, 5, 7, and 8, which fall therewith.

Claims 6, 9, and 10

We consider the Examiner’s rejection of claims 6, 9, and 10 as being unpatentable over Allen, Veres, and Anerousis. Since Appellants’ arguments have treated these claims as a single group which stand or fall together, we select independent claim 6 as the representative claim for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Appellants contend that “Anerousis provides no teachings, hints or motivations that suggest the desirability of having a service level agreement server within a server farm as set forth in independent 3 of the present patent application” (App. Br. 21).

The Examiner relies on Allen and Veres to disclose “a service level agreement server within the server farm” (Ans. 13). Therefore, even assuming Appellants’ contention that Anerousis fails to discloses the service level agreement server within the server farm is correct, we are unconvinced by Appellants’ arguments. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

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For at least the aforementioned reasons, we conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner's rejection of representative claim 6 (and claims 9 and 10 that fall therewith) as being unpatentable over Allen, Veres, and Anerousis.

Independent claim 12

We consider the Examiner's rejection of independent claim 12 as being unpatentable over Allen, Veres, and Anerousis.

Appellants assert that "the combination of Allen in view of Veres and further in view of Anerousis does not disclose or suggest using a service level agreement server within the server farm" (App. Br. 22). We disagree with Appellants for reasons set forth above.

We conclude that Appellants have not sustained the requisite burden on appeal in providing arguments or evidence persuasive of error in the Examiner's rejection of representative claim 12 as being unpatentable over Allen, Veres, and Anerousis.

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 1-12 under 35 U.S.C. § 103(a) for obviousness.

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DECISION

We affirm the Examiner's decision rejecting claims 1-12.

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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