

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERND DOWEDEIT, ROLAND HAIBL,
JUERGEN SCHNEIDER, and WALTER SCHUEPPEN

Appeal 2008-0716
Application 10/194,112
Technology Center 2100

Decided: August 26, 2008

Before HOWARD B. BLANKENSHIP, JAY P. LUCAS, 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 1-22 and 24. Claim 23 has been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

The disclosed invention relates generally to controlling and monitoring programs in a computer network (Spec. 1).

Independent claim 1 is illustrative:

1. A procedure for controlling and monitoring programs in a computer network comprising a plurality of computers where the plurality of computers are interconnected using a communication system and each computer has its own operating system and the programs run either simultaneously on all or on specially selected ones of the plurality of computers, characterized by the following steps:
 - a) creating a user interface which simulates the computer network as being a single system;
 - b) defining application-specific functions for monitoring and controlling the programs;
 - c) initializing run-time functions for control and monitoring of the programs under step b);
 - d) saving data of the run-time functions on the computer or computers on which the program to be controlled is installed; and
 - e) activating the run-time functions on the computer or computers.

THE REFERENCES

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

Nelin

US 6,253,368 B1

Jun. 26, 2001

Edecker	US 2002/0188678 A1	Dec. 12, 2002 (filed Jun. 5, 2001)
Duursma	US 6,643,690 B2	Nov. 4, 2003 (filed Feb. 18, 1999)
Touboul	US 6,658,465 B1	Dec. 2, 2003 (filed Nov. 23, 1999)

THE REJECTIONS

1. Claims 1-3, 5-7, 10, 20-22, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Edecker in view of Nelin.¹
2. Claims 4, 8, 9, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Edecker and Nelin, in view of Touboul.
3. Claims 11-17 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Edecker, in view of Nelin, and Duursma.

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). To be nonobvious, an improvement must be

¹ Although the Examiner omits claims 20-22 from the heading of the rejection on page 3 of the Answer, the Examiner clearly rejects claims 20-22 as being unpatentable over Edecker in view of Nelin on page 8 of the Answer. We consider this omission regarding the rejection heading as an oversight by the Examiner. Therefore, we consider claims 20-22 as standing rejected as being unpatentable over Edecker in view of Nelin.

“more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740.

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’ Brief to show error in the proffered *prima facie* case.

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)).

To determine whether the cited references render the current claims to be obvious, we must first determine the scope of claim 1. At the outset we note that the element “the computer network” recited in claim 1(a) derives its antecedent basis from the preamble (i.e., “*a computer network* comprising a plurality of computers where the computers are interconnected using a communication system . . . :”) (claim 1 preamble, emphasis added).

When the limitations in the body of the claim “rely upon and derive antecedent basis from the preamble, then the preamble may act as a necessary component of the claimed invention.” *Eaton Corp. v. Rockwell Int'l Corp.*, 323 F.3d 1332, 1339 (Fed. Cir. 2003). “[A] claim preamble has the import that the claim as a whole suggests for it.” *Bell Communications*

Research, Inc. v. Vitalink Communications Corp., 55 F.3d 615, 620, (Fed. Cir. 1995). “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305 (Fed. Cir. 1999).

Thus, we determine that the scope of limitation (a) of claim 1 broadly but reasonably encompasses creating a user interface which simulates *a plurality of computers that are interconnected using a communication system* (i.e., the computer network introduced in the preamble), as being a single system.

We further note that the claimed term “simulates” is not defined in the Specification. Thus, according to the plain meaning of the term, we construe the term “simulates” as broadly creating a likeness, or model of a situation, system, or the like.

Independent Claims 1, 20, and 24

We consider the Examiner’s rejection of claims 1, 20, and 24 as being unpatentable over Edecker in view of Nelin.

Appellants contend that the cited references, most notably Edecker, fail to teach the limitation of creating a user interface, which simulates the computer network as being a single system, as recited in claim 1. (Br. 13). We agree at least for the reasons discussed below.

The Examiner asserts that Edecker teaches a user interface module which performs a visual/audio rendering of the current active virtual environment. The Examiner further asserts that once activated, the VR

Environment Simulation and Control Module loads and activates the virtual reality environment by a user operating the user interface. (See Ans. 9). Still further, the Examiner asserts that Figs. 11a – b show the creation of a user interface. (Id.)

In reviewing the record before us, we disagree with the Examiner’s determination that Edecker teaches a user interface which simulates the computer network as being a single system. To the contrary, we find that Edecker merely teaches implementing a virtual reality environment *using* a networked computer system (*see e.g.*, Edecker, ¶[0018]).

We find that *using* a computer network to perform simulation (i.e., by creating a virtual reality environment) is not the same as *simulating* a computer network as being a single system. Thus, Edecker’s virtual reality environment is not a simulation of the computer network as a single system, as required by the language of each independent claim (claims 1, 20, and 24). In addition, the Examiner has not demonstrated that Nelin cures the deficiencies of Edecker noted *supra*.

Because we conclude that Appellants have met their burden of showing error in the Examiner’s *prima facie* case of obviousness by a preponderance of the evidence, we reverse the Examiner’s rejection of independent claims 1, 20, and 24 as being unpatentable over Edecker in view of Nelin.

If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988). Therefore, we reverse the Examiner’s rejections of dependent claims 2-19 which depend from independent claim 1, and we also

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reverse the Examiner's rejection of claims 21 and 22, which depend from independent claim 20.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have shown the Examiner erred in rejecting claims 1-22 and 24 under 35 U.S.C. § 103(a) for obviousness.

DECISION

The decision of the Examiner rejecting claims 1-22 and 24 is reversed.

REVERSED

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