

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH W. ARMSTRONG

Appeal 2008-0940
Application 10/461,907
Technology Center 2100

Decided: October 27, 2008

Before JAMES D. THOMAS, ST. JOHN COURTENAY III, and
THU A. DANG, *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 1-17. We have jurisdiction under 35 U.S.C.
§ 6(b).

We affirm.

THE INVENTION

Appellant's invention relates to "a method for eliminating a computer from a cluster of two or more computers to guarantee data integrity and application recovery on another computer." (Spec. 1).

Independent claim 1 is illustrative:

1. A method for eliminating a computer from a cluster with at least two computers to guarantee data integrity and application recovery on another computer, which comprises:

registering a number of shutdown agents with a shutdown facility, the number of shutdown agents including redundant and independent shutdown methods; and

installing the shutdown facility and the shutdown agents on all computers in the cluster.

THE REFERENCE

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

Keung US 6,467,050 B1 Oct. 15, 2002

THE REJECTION

1. Claims 1-17 stand rejected under 35 U.S.C. §102(e) as being anticipated by Keung.

CONTENTIONS BY APPELLANT

1. Appellant contends that the Examiner erred in rejecting claims 1-17 under 35 U.S.C. § 102(e) as being anticipated by Keung because the

Keung reference does not disclose redundant shutdown methods. (App. Br. 4-5).

ISSUE

1. We consider the question of whether the Keung reference discloses redundant shutdown methods.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted).

FINDINGS OF FACTS

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

The Keung reference

1. Keung discloses a method for controlling a set of services in a cluster computer system where the set of services is monitored for a failure of a service within the set of services (col. 2, ll. 13-17).
2. Keung discloses a failure sequence is initiated in response to a failure of the service (col. 2, ll. 17-18).
3. Keung discloses a cluster coordinator daemon that monitors the services to provide shutdown and restarting of services in the event a service fails (col. 8, ll. 35-38).

4. Keung discloses that the process begins by monitoring services for failure (col. 8, ll. 38-39, Fig. 8, step 800).
5. Keung discloses that a determination is made as to whether a failure has been detected (col. 8, ll. 39-40, Fig. 8, step 802).
6. Keung discloses that services are allowed to shutdown in the proper order based on the shutdown sequence information if a failure has been detected (col. 8, ll. 40-46, Fig. 8, step 804).
7. Keung discloses that subsequent to step 804 a determination is then made as to whether the services were shutdown in the proper order (col. 8, ll. 45-48, Fig. 8, step 806).
8. Keung discloses that if the services were not shutdown in the proper order, all of registered services are killed or terminated (col. 8, ll. 48-50, Fig. 8, step 808).

GROUPING OF CLAIMS

Claims 1-17

Based on the arguments presented in Appellant's Brief, we decide the appeal of claims 1-17 on the basis of claim 1 alone. *See* 37 C.F.R. § 41.37(c)(1)(vii).

ANALYSIS

We decide the question of whether the Keung reference redundant shutdown methods.

Appellant asserts that “[i]n the case of the instant application, at least two different shutdown methods are available to shut down one device or one functionality. If the first shutdown method fails, the second shutdown

method can be used to carry out the task on which the first shutdown method failed.” (App. Br. 4). Appellant acknowledges that the shutdown methods disclosed by Keung “might . . . be seen as being independent.” (App. Br. 5, ¶1). However, Appellant contends that because the individual shutdown methods of Keung’s shutdown sequence are dedicated to different tasks, that Keung’s shutdown methods cannot be regarded as being redundant. (*Id.*).

Claim construction

During prosecution, “the 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, when we refer to Appellant’s disclosure for *context*, we find Appellant has given no special definition to the claim term “redundant” that differs from the meaning it would otherwise possess, as follows:¹

The shutdown facility provides a general framework for invoking *redundant*, independent shutdown methods for such a

¹ “‘Where an inventor chooses to be his own lexicographer and to give terms uncommon meanings, he must set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (quoting *Intellicall, Inc., v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88 (Fed. Cir. 1992)). Cf. *Phillips, Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005) (en banc) (“[T]he specification may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess. In such cases, the inventor’s lexicography governs.”).

purpose. The shutdown agents implement the shutdown methods. When a shutdown request is being processed, the shutdown facility has the possibility to iterate through the list of registered shutdown agents if needed and can, therefore, provide a higher probability of successful host elimination. (Spec. 4, ll. 16-23, emphasis added).

Therefore, we find that Appellant's Specification does not clearly redefine the term "redundant" such that one of ordinary skill in the art would deem it to be different from its common meaning. "In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art." *Brookhill-Wilk I, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003). "[T]he words of a claim 'are generally given their ordinary and customary meaning.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal citations omitted). The "ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." (*Id.* at 1313).

This reasoning is applicable here. Therefore, we broadly but reasonably construe the scope of the claim term "redundant" to read on any repetitive, extra, or excess feature. We find that this construction comports with the ordinary and customary meaning that the claim term "redundant" would have had to a person of ordinary skill in the art at the time of the invention. Given this broad but reasonable construction, we note that Keung discloses that a determination is made as to whether a failure has been detected (FF 5). Keung further discloses that services are allowed to

shutdown in the proper order based on the shutdown sequence information if a failure has been detected (FF 6). Keung also discloses that, subsequent to step 804, a determination is made as to whether the services were shutdown in the proper order (FF 7). Significantly, Keung discloses that if the services were not shutdown in the proper order, then all of registered services are *killed or terminated* (FF 8).

Given our aforementioned broad but reasonable construction for the claim term “redundant,” we find that Keung’s disclosure of killing or terminating registered services (*see* step 808, Figure 8) that were not previously shutdown (*see* step 804, Figure 8) is a redundant shutdown method, as claimed. Thus, contrary to Appellant’s contention, we find Keung discloses that if a first shutdown method fails (*see* step 804, Figure 8), then a second shutdown method (*see* step 808, Figure 8) is used to carry out the task on which the first shutdown method failed.

Therefore, we conclude that Appellant has not met his burden of coming forward with evidence or argument to rebut the Examiner’s *prima facie* case of anticipation. Accordingly, we sustain the Examiner’s rejection of representative claim 1 (and claims 2-17 that fall therewith) as being anticipated by Keung. *See* 37 C.F.R. § 41.37(c)(1)(vii).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not met his burden of showing that the Examiner erred in rejecting claims 1-17 under 35 U.S.C. § 102(e) for anticipation. Therefore, these claims are not patentable.

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DECISION

We affirm the Examiner's decision rejecting claims 1-17. Therefore, claims 1-17 are not patentable.

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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