UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RHONDA L. CHILDRESS, MARK ANTHONY LANEY,
REID DOUGLAS MINYEN, and NEIL RAYMOND PENNELL

Appeal 2008-1256
Application 10/418,565
Technology Center 2100

Decided: September 16, 2008

Before JAMES D. THOMAS, JOSEPH L. DIXON,
and STEPHEN C. SIU, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1 through 45. We have jurisdiction under 35 U.S.C. § 6(b).

As best representative of the disclosed and claimed invention, independent claim 1 is reproduced below:

1. A method for providing corrective actions in a system management system, said method comprising the steps of :

providing a customer requirements repository containing corrective action preferences for each of a plurality customers sharing a computing domain to execute a plurality of application programs on behalf of said customers;

responding to receipt of a fault event or out-of-limits condition for a shared resource of said computing domain by querying said repository to determine which application programs share the affected shared resource;

determining customers on behalf of which said application programs are being executed;

extracting from said repository each sharing customer's corrective action preferences associated with said fault event, out-of-limits condition or a class of such events and conditions; and

performing one or more corrective actions according to said extracted preferences.

The following references are relied on by the Examiner:

Groath	US 6,571,285 B1	May 27, 2003
	(filing date December 23, 1999)	
Castelli	US 2003/0023719 A1	Jan. 30, 2003
Richter	US 2003/0046396 A1	Mar. 6, 2003

Claims 1 through 3, 11 through 18, 26 through 33, and 41 through 45 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Richter. All

remaining claims on appeal stand rejected under 35 U.S.C. § 103. As evidence of obviousness as to claims 4 through 7, 19 through 22, and 34 through 37 in a second stated rejection, the Examiner relies upon Richter in view of Groath. Lastly, in a third stated rejection the Examiner relies upon Richter in view of Castelli as to claims 8 through 10, 23 through 25, and 38 through 40.[1]

Rather than repeat verbatim the positions of the Appellants and the Examiner, reference is made to the Brief and Reply Brief for Appellants' positions, and to the Answer for the Examiner's positions.

OPINION

For the reasons set forth by the Examiner in the Answer, as expanded upon here, we sustain the rejections of various claims on appeal under 35 U.S.C. §§ 102 and 103. The principal Brief on appeal argues independent claims, 1, 16, and 31 collectively based upon certain correspondingly recited features. No arguments are presented in the Brief as to the second and third stated rejections and no arguments are presented with respect to any dependent claims within the first stated rejection under 35 U.S.C. § 102.

We find unpersuasive Appellants' urgings in the Brief and Reply Brief that Richter's "over load protection" teachings are not enabled within the first paragraph 35 U.S.C. § 112, and that this disclosure in Richter does not meet the claimed terms of a fault event and out-of-limits condition. It is of particular note that the claims on appeal do not require both a fault event

[1] The outstanding rejection of certain claims under the second paragraph of 35 U.S.C. § 112 has been withdrawn by the Examiner as indicated at the bottom of page 2 of the Answer.

and an out-of-limits condition as alleged at the top of page 8 of the principal Brief on appeal, whereas these features are merely recited in the alternative.

Richter's over load protection among other teachings is anticipatory of these features as well as the broadly claimed concept in the preamble of the claims on appeal of taking corrective action based on sharing customer preferences.

As to the first general allegation that Richter is not enabling, we are satisfied among the arguments presented by the Examiner in the Answer in the statement of the rejection, the responsive arguments portion of the Answer, as well as Appellant's own historical representation of the Examiner's positions during earlier prosecution as set forth beginning at page 8 of the principal Brief on appeal, that Richter is enabling to the extent argued that it is not. Indeed, Appellants' own disclosure is a concept-type disclosure, the basis of which is merely in the flow chart in figure 2 and a relatively short description associated therewith. Appellants' disclosed invention in representative figure 2 is a concept that appears to be a logical extension of the prior art shown in figure 1 of the Specification and its corresponding teachings applying only to single customers in a non-shared computer infrastructure. Based upon the following discussion, the reader will clearly understand not only that the Richter reference is enabling, but that Richter also anticipates the argued features noted above not to be present, principally the out-of-limits condition and at least one noted teaching regarding responding to a fault event.

As to Richter, we make note that paragraph [0064] at page 6 of this publication at least sets the context of a distributed processing, plural customer environment, which is an extension of the Examiner's relied upon teachings in paragraph [0012] at pages 2 and 3 of this reference. From our perspective, pertinent figures include at least figures 2, 5, 6, 8, 10, the various parts of figures 11, and figure 19. Figure 19 builds upon the showing in figure 5. Figure 2 shows a plural user environment utilizing shared resources, the functional elements of which each queries reporting monitoring agent 245. The corresponding discussions of these figures and the written description portion of this publication buttress the showings in the noted figures. The deterministic delivery nature of the content delivery system of Richter is shown in flow chart form in figure 5, which includes the concept of evaluating policies to determine dispositions of requests in element 150, some of which are rejected, which are directly related to the responsive approach to an out-of-limits condition claimed on appeal. A better context of this is shown in figure 8 which illustrates that for these plural customers, there are differentiated services for the respective customers based upon defined business objectives, which include service level agreements (SLAs) corresponding to the same disclosed capabilities within Appellants' methodology in figure 2. The discussion of figure 8 begins at page 33. The overload protection module is shown as element 2010 figure 10 as well as figure 11A which is briefly mentioned in the latter lines of the abstract of Richter. A part of the concept of the overload protection according to figures 10 and discussed in paragraph [0368] at page 45 includes a storage processing engine that may be bottlenecked by

memory and disk IOPS (Input/output Operations Per Second), thus teaching the ability to determine fault events to the extent broadly recited in the claims on appeal.

Perhaps the most compelling, brief portion among the extensive discussion of the figures in Richter is the discussion in the first column at page 63 relative to example 11 and the determination of over capacity of demands upon the systems which directly corresponds to the claimed out-of-limits feature. The discussion in paragraphs [0512-0513] explains briefly in this example the rationale of thresholds or other notice of corrective action that may be taken by Richter's system in accordance with the claimed features based upon invoked policies when they are exceeded or fall below given thresholds. Again, the concept of out-of-limits conditions and the analysis with respect to them that are claimed are clearly taught in the reference as well as the invocation of respective corrective actions that are also only conceptionally claimed.

As to the alleged inadequate disclosure in Richter of the argued claimed features, we strongly disagree with the positions set forth in the Brief and Reply Brief to this end. In fact, compellingly, the disclosure in Richter, to the extent argued not to be adequate, is orders of magnitude higher and more complete and comprehensive than that set forth in Appellants' own concept-oriented disclosure for the same or similar concepts. Indeed, Appellants' arguments of inadequacy of Richter's disclosure for the argued claimed features is clearly, from an artisan's perspective, more applicable to their own disclosure than it is to Richter's.

To the extent the principal Brief at page 9 and the Reply Brief at page 13 relate to the disclosed root cause analysis, this feature is not recited in any independent claim on appeal. Moreover, we will not read into the claims any feature disclosed in the Specification that is not recited in the argued claims. Richter also appears to teach this broad concept anyway.

In view of the foregoing, the decision of the Examiner rejecting various claims on appeal under 35 U.S.C. §§ 102 and 103 is sustained since Appellants have not presented to us convincing lines of reasoning or evidence of the patentability of the claims and of any impropriety of the Examiner's positions with respect to them. Therefore, the decision of the Examiner is 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

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Robert H. Frantz
P.O. Box 23324
Oklahoma City, OK 73123