

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DENNIS RUSSELL BEILHARTZ and BALDEV S. SOOR

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Appeal 2008-1579  
Application 10/306,755  
Technology Center 3600

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Decided: November 13, 2008

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*Before JEAN R. HOMERE, JAY P. LUCAS, and THU A. DANG,  
Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF CASE

Appellants appeal the Examiner's final rejection of claims 1-18 under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

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#### A. INVENTION

According to Appellants, the invention relates to ascertaining server resources, and more specifically, to identifying network servers capable of hosting a database (Spec. 1, ll. 2-3).

#### B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A computer program product for use in a computer system operatively coupled to a computer readable memory, the computer program product including a computer-readable data storage medium tangibly embodying computer readable program instructions for implementing logic comprising:

establishing a wait period;

transmitting a broadcast message requesting identification responses from database compatible servers connected to a network to determine whether they are capable of hosting a database;

receiving said responses;

storing said received responses in said memory; and

after said wait period has elapsed but not before, reading said stored responses from said memory into a list.

#### C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

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Hsu                    US 6,182,075 B1                    Jan. 30, 2001

Claims 1-18 stand rejected under 35 U.S.C. § 102(a) over the teachings of Hsu.

We affirm.

## II. ISSUE

The issue is whether Appellants have shown that the Examiner erred in finding that claims 1-18 are anticipated under 35 U.S.C. § 102(a) by the teachings of Hsu. Particularly, the issue turns on whether Hsu discloses the claimed limitation of, after a wait period has elapsed but not before, reading stored responses from memory to a list (Claim 1).

## III. FINDINGS OF FACT

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

*Hsu*

- 1A. Hsu discloses a search discovery manager 12 that picks up the search discovery request, and composes a response to be returned to the client, which includes the database server system, and administration server communications information (col. 7, ll. 50-61; Fig. 3).
- 1B. The result of the search discovery request is a list of database server system names and associated communications information for each database server system found on the network (col. 7, ll. 50-61; Fig. 3).

- 2A. The protocol specific discovery initialization function
- Sqlccnbdiscover issues a send broadcast datagram call, a number of receive buffers are issued, and protocol specific discovery initialization function Sqlcctcpdiscover broadcasts a request (col. 9, ll. 3-14).
- 2B. Sqlccnbdiscover and Sqlcctcpdiscover issue a protocol specific receive initialization function sqlccdrecv to receive the reply and will reissue sqlccdrecv calls for a set period of time, wherein the time period will be used to dictate a time when discover would have received replies from all systems (col. 9, ll. 3-14).

## VI. PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

The *claims* measure the invention. *See SRI Int'l v. Matsushita Elec. Corp., of America*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (en banc). “[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)). “Moreover, limitations are not to be read into the claims from the specification.” *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

## V. ANALYSIS

Appellants do not provide separate arguments with respect to the rejection of claims 1-18. Therefore, we select independent claim 1 as being representative of the cited claims. 37 C.F.R. § 41.37(c)(1)(vii).

Appellants argue that Hsu does not “appear to teach or suggest waiting a predetermined period of time (to allow responses to accumulate) before reading stored responses into a list” (App. Br. 5). However, Appellants’ argument regarding the “to allow responses to accumulate” limitation is not commensurate in scope with the claimed invention since the claims do not recite such limitation. It cannot thus be read into the claims as the Appellants argued.

Accordingly, the remaining issue we address on appeal is whether Hsu discloses “after said wait period has elapsed but not before, reading said stored responses from said memory into a list” (Claim 1).

The Examiner finds that Hsu discloses the claimed elements on appeal as set forth beginning at page 3 of the Answer, and provides responsive arguments beginning at page 5 of the Answer. As set forth in the Answer, the Examiner finds that “although Hsu teaches that during the set period of time, the discovery calls are *reissued*, Hsu still meets the scope due to the open-ended nature of the claims,” since “Hsu still teaches establishing a wait period to receive responses” (Ans. 6-7). In particular, the Examiner finds that “Hsu teaches a discover-time out period that is user modifiable and is used to dictate a time when it is believed that all replies are received from all

systems:” and that “Hsu teaches receive buffers that are used to hold replies to discover calls” (Ans. 6).

We begin our analysis by giving the claims their broadest reasonable interpretation. *See In re Bigio* at 1324. Furthermore, our analysis will not read limitations into the claims from the specification. *See In re Van Geuns* at 1184. Appellants’ claims simply do not place any limitation on what “wait period” is to be, to represent, or to mean, other than that the responses are read after this wait period. Thus, we interpret such “wait period” to be any period of time that is not contemporaneous with the receipt of the response.

Hsu discloses composing a response to search discovery requests to be returned to the client (FF 1A), wherein the result of the search discovery request is provided on a list (FF 1B). Further, Hsu discloses issuing a number of receive buffers (FF 2A), and setting a period of time to dictate a time when replies are received from all systems (FF 2B).

We agree with the Examiner’s finding that such set time period of Hsu is a discover-time-out period that is used to dictate a time when it is believed that all replies are received from all systems, while the receive buffers are used to hold replies to discover calls. As the Examiner finds, although Hsu teaches that during the set period of time the discovery calls are reissued, Hsu still *also* discloses a time period to provide the list. That is, we agree that the time period of Hsu that allows receipt of replies from all systems while the list is being provided to be a time period to provide the list. In

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particular, we find that the time period it takes to create a list (since creating a list would require a period of time) while being stored in the buffers in Hsu to be a “wait period” as set forth in the claims, since the claims simply do not place any limitation on what “wait period” is to be, to represent, or to mean.

Accordingly, we conclude that Hsu discloses the claimed limitation of, after said wait period has elapsed but not before, reading said stored responses from said memory into a list (Claim 1). It follows that Appellants have not shown that the Examiner erred in rejecting claim 1 and claims 2-18 falling with claim 1 under 35 U.S.C. § 102(a).

#### CONCLUSIONS OF LAW

- (1) Appellants have not shown that the Examiner erred in finding that claims 1-18 are anticipated by the teachings of Hsu.
- (2) Claims 1-18 are not patentable.

#### DECISION

We affirm the Examiner's rejection of claims 1-18 under 35 U.S.C. § 102(a).

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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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