

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT E. WALSH and MICHAEL P. SHEA

Appeal 2008-1745
Application 10/319,057
Technology Center 2100

Decided: October 29, 2008

Before LANCE LEONARD BARRY, JEAN R. HOMERE, 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 1-6, 9, 10, 12-16, 18-20, 22-24, and 29. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

THE INVENTION

The disclosed invention relates generally to simulating Internet traffic. More particularly, Appellants' invention is directed to a simulator that generates Internet requests to appear as multiple users simultaneously initiating Internet requests from separate user environments (Spec. 3).

Independent claim 1 is illustrative:

1. A single computer system, comprising:
 - one or more processors; and
 - a memory coupled to the one or more processors, wherein the memory is configured to store program instructions executable by the one or more processors to implement a simulator, wherein the simulator comprises:
 - a simulation engine configured to generate concurrent user activity for a plurality of different simulated users including a first user and a second user, wherein the concurrent user activity is generated according to the first user operating in a first user environment and the second user operating in a second user environment different from the first user environment; and
 - a first browser configured to receive the user activity from the simulation engine and send Internet requests to one or more destinations according to the user activity so that the Internet requests from the first browser simulate a plurality of different concurrent users for the one or more destinations.

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THE REFERENCES

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

Foss	US 6,295,557 B1	Sep. 25, 2001
Bleier	US 6,832,184 B1	Dec. 14, 2004
Fraenkel	US 6,738,933 B1	(filed Mar. 2, 2000) May 18, 2004 (filed Oct. 19, 2001)

THE REJECTIONS

1. Claims 1-6, 9, 12-16, 19, 22-24, 29, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foss and Bleier.
2. Claims 10, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Foss, Bleier, and Fraenkel.

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*

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Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998)). Therefore, we look to Appellants' Briefs to show error in the proffered prima facie case.

ISSUE

Have Appellants shown that the Examiner has failed to establish that it would have been obvious to one of ordinary skill in the art to obtain Appellants' claimed invention in view of the combination of Foss and Bleier or Foss, Bleier, and Fraenkel?

FINDINGS OF FACT

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

1. Bleier discloses a "simulation method and system for testing computer networks" (col. 1, ll. 19-20) containing "mechanisms . . . to capture responses from the system under test, storing them in client specific variables that can be used on subsequent transmissions" (col. 11, l. 64 – col. 12, l. 1).

ANALYSIS

Independent claim 1 recites concurrent user activity generated according to a first user operating in a first user environment and a second user operating in a second user environment different from the first user environment. The Examiner finds that "the term 'user environment' . . .

included its definition as per ‘the simulator 101 may be configured to maintain different user profile data and different variables (e.g., access permissions) . . .’ (Ans. 13). Based on this interpretation, the “**Examiner interprets Bleier’s ‘client specific variables’ as ‘user environments’**” (Ans. 13). Appellants assert that “[t]he Examiner’s interpretation of Bleier is incorrect” (Reply Br. 4) and that “**nowhere does Bleier disclose the concept of users operating in his ‘client specific variables,’**” (Reply Br. 4).

Bleier discloses “mechanisms are provided . . . to capture responses from the system under test, storing them in client specific variables that can be used” (col. 11, ll. 64-67, FF 1). Hence, Bleier discloses that the system under test provides client specific variables that are stored. However, we disagree with the Examiner that the “client specific variables” received from the system under test in Bleier are equivalent to different users operating in different user environments. While the instant Specification discloses simulating “multiple users simultaneously initiating Internet requests” and that “different user profile data and different variables (e.g., access permissions) for each user” are maintained (¶[0036]), we find that the “different variables” or “different user profile data” of Bleier describe or identify each of the different users rather than different user environments. We therefore disagree with the Examiner that the Specification defines the “different user environments” as “different user profile data and different variables (e.g., access permissions) for each user.” We also agree with

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Appellants that Bleier fails to teach or suggest that any of the simulated users are “operating in” client specific variables (i.e., “different user environments”) as recited in claim 1.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting independent claim 1.

Therefore, we reverse the Examiner’s obviousness rejection of independent claim 1.

Because the independent claims 12 and 22 each recite equivalent limitations to those discussed above regarding independent claim 1, we also reverse the Examiner’s obviousness rejection of these claims for the same reasons previously discussed regarding claim 1. Also, because we have reversed the Examiner’s rejection of each of these independent claims on appeal, we also reverse the Examiner’s rejection of associated dependent claims 2-6, 9, 10, 12-16, 18-20, 22-24, 29, and 32.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have shown the Examiner erred in rejecting claims 1-6, 9, 10, 12-16, 18-20, 22-24, 29, and 32 under 35 U.S.C. § 103(a) for obviousness.

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DECISION

We reverse the Examiner's decision rejecting claims 1-6, 9, 10, 12-16, 18-20, 22-24, 29, and 32.

REVERSED

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