

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROSHI TSUKAHARA

Appeal No. 1997-0240
Application No. 08/163,761

ON BRIEF

Before MARTIN, BARRETT, and RUGGIERO, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 17, all of the claims pending in the present application.

The claimed invention relates to a client server system in which the operating status of each client machine device is monitored. More particularly, Appellant indicates at pages 6 through 8 of the specification that, on detection of a work

load concentration state or an abnormal state in a particular client machine device, functions of such client machine device are transferred to another client machine device for execution.

Claim 1 is illustrative of the invention and reads as follows:

1. A client server system for use with a plurality of control devices comprising:

server means for providing a server function;

a plurality of client machine devices, each having a common memory, a data collection task for collecting data from control devices, a data generation task for processing data collected by said data collecting task and providing said processed data as an output to said server as a common file, and a data base data processing task for providing at least one of data to said common memory and a processing request to said server means; wherein each said client machine device comprises:

means for providing a database data generation task, said data generation task comprising a plurality of first functional tasks, each first functional task corresponding to a different generation function;

means for providing a data base data processing task, said data processing task comprising a plurality of second functional tasks, each second functional task corresponding to a different processing function;

detecting means for detecting at least one of a work load concentration state and an abnormal state in other ones of said client machine devices;

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We have carefully considered the subject matter on appeal, the rejection advanced by the Examiner and the evidence of obviousness relied upon by the Examiner as support for the rejection. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellant's arguments set forth in the Brief along with the Examiner's rationale in support of the rejection and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1 through 17. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1,

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17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to

modify the prior art or to combine prior art references to arrive

at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole

or knowledge generally available to one having ordinary skill in

the art. Uniroyal Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825

(1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.,

776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hospital Systems, Inc. v.

Montefiore Hospital, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.

Cir. 1984). These showings by the Examiner are an essential part

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of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

With respect to independent claims 1, 5, 6, 10, and 15, the Examiner, as the basis for the obviousness rejection, proposes to modify the disclosure of the admitted prior art which describes a client server communication system but which lacks any teaching of redirecting the functions of a detected abnormally operating or overloaded client machine to another client machine. To address this deficiency, the Examiner turns to Parad which includes a general teaching of a resource management system in which scheduled events are adjusted in response to changes in status and resource requirements. In the Examiner's line of reasoning (Answer, page 5), the skilled artisan would have found it obvious to apply the dynamic rescheduling scheme of Parad to the admitted prior art to avoid problems resulting from the failure to consider the dependent relationships of system conditions and constraints.

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Upon careful review of the applied prior art in light of the arguments of record, we are in agreement with Appellant's stated position that the proposed combination of the admitted prior art and Parad does not make obvious the claimed subject matter. In our view, the Examiner has combined the general teachings of a resource management system in Parad and a client server communication system in the admitted prior art in some vague manner without specifically describing how the teachings would be combined. This does not persuade us that one of ordinary skill in the art having the references before her or him, and using her or his own knowledge of the art, would have been put in possession of the claimed subject matter.

For example, the Examiner relies on a passage at column 9, lines 19-34 of Parad for disclosing the feature of redirecting originally scheduled functions of an abnormally operating or overloaded client machine to another client machine. However, this cited portion of Parad describes only in general terms the provision of alternative action choices to an operator according to an action list prioritized by rules according to a merit criteria. The Examiner has not

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provided any indication as to how this and the other cited portions in the Answer might be interpreted to meet the requirements of the claims. In any case, regardless of the merits of such an interpretation of the teachings of Parad, no convincing reasoning has been supplied by the Examiner as to how or why the skilled artisan would apply such teachings to the admitted prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992). We are left to speculate why the skilled artisan would modify the client server communication system of the admitted prior art with the resource allocation teachings of Parad. The only reason we can discern is improper hindsight reconstruction of Appellant's claimed invention.

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In summary, since the Examiner has not established a prima facie case of obviousness, the 35 U.S.C. § 103 rejection of independent claims 1, 5, 6, 10, and 15 and claims 2 through 4, 7 through 9, 11 through 14, 16, and 17 dependent thereon, cannot be sustained. Therefore, the decision of the Examiner rejecting claims 1 through 17 is reversed.

REVERSED

JOHN C. MARTIN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
LEE E. BARRETT)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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DECISION: REVERSED
Send Reference(s): Yes No
or Translation (s)
Panel Change: Yes No
Index Sheet-2901 Rejection(s):
Prepared: February 5, 2001

Draft Final

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OB/HD GAU

PALM / ACTS 2 / BOOK
DISK (FOIA) / REPORT