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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte VIJAY MASURKAR

Appeal 2010-007032
Application 10/875,329
Technology Center 2100

Before BRUCE R. WINSOR, BARBARA A. BENOIT, and
JAMES B. ARPIN, *Administrative Patent Judges*.

BENOIT, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-10, 12-22, 24-34, and 36-39, which constitute all the claims pending in the application. Claims 11, 23, and 35 have been canceled. Br. 4. We have jurisdiction under 35 U.S.C. § 6(b).¹ We affirm.

¹ Due to failure to timely notify the Office of a corresponding foreign-filed application, the application went abandoned while pending a decision from the Board. A petition to revive the application was granted on May 15, 2012.

STATEMENT OF THE CASE

Appellant's invention relates to remotely diagnosing grid-based computing systems. *See generally* Abstract. Claim 1 is illustrative and reads as follows, with key disputed limitations emphasized:

1. A method for diagnosing a grid-based computing system, the method comprising:

establishing an event framework defining an arrangement of event information;

receiving a diagnostic event record from a resource within the grid-based computing system, the diagnostic event record containing:

i) event data concerning an event that has occurred within the resource in the grid; and

ii) diagnostic telemetry information concerning operation of the resource up to the occurrence of the event;

applying the diagnostic event record to the event framework to identify at least one resource causing the occurrence of the event in the grid-based computing system; and

presenting, via a graphical user interface, specific identities of resources impacted by the event.

The Examiner relies on the following as evidence of unpatentability:

Faigon	US 6,006,016	Dec. 21, 1999
Kipersztok	US 6,574,537 B2	June 3, 2003
Syrjala	US 2004/0078349 A1	Apr. 22, 2004
Westberg	US 2004/0123184 A1	June 24, 2004 (filed Dec. 19, 2002)
Hansen	US 7,117,239 B1	Oct. 3, 2006 (filed Nov. 8, 2000)
Bigagli	US 7,340,654 B2	Mar. 4, 2008 (filed June 17, 2004)

The Rejections

1. The Examiner rejected claims 1-4, 6, 7, 13-16, 18, 19, 22, 25-28, 30, 31, 34, and 37-39 under 35 U.S.C. § 103(a) as unpatentable over Faigon and Bigagli. Ans. 3-11.²

2. The Examiner rejected claims 5, 17, and 29 under 35 U.S.C. § 103(a) as unpatentable over Faigon, Bigagli, and Syrjala. Ans. 11-12.

3. The Examiner rejected claims 8, 20, and 32 under 35 U.S.C. § 103(a) as unpatentable over Faigon, Bigagli, and Kipersztok. Ans. 13-14.

4. The Examiner rejected claims 9, 21, and 33 under 35 U.S.C. § 103(a) as unpatentable over Faigon, Bigagli, Kipersztok, and Westberg.³ Ans. 14-16.

5. The Examiner rejected claim 10 under 35 U.S.C. § 103(a) as unpatentable over Faigon, Bigagli, and Hansen. Ans. 16-17.

6. The Examiner rejected claims 12, 24, and 36 under 35 U.S.C. § 103(a) as unpatentable over Faigon, Bigagli, Syrjala, Kipersztok, Westberg, and Hansen. Ans. 17-18.

² Throughout this opinion, we refer to the Appeal Brief filed September 21, 2009 (Br.) and the Examiner's Answer mailed December 22, 2009 (Ans.).

³ Claim 9 depends from claim 8; claim 21 depends from claim 20; and claim 33 depends from claim 32. The Examiner, however, erroneously rejects claims 9, 21, and 33 under § 103 over Faigon, Bigagli, and *Westberg* (Ans. 14) when claims 8, 20, and 32 have been rejected under § 103 over Faigon, Bigagli, and *Kipersztok* (Ans. 13). Although Appellant does not argue this error, we nonetheless deem it harmless because the rejection of claim 9 incorporates the rejection of claim 8 (Ans. 14), and claims 21 and 33 are rejected for the same reasons set forth in connection of the rejection of claim 9 (Ans. 15-16). Based on the record before us, we presume the Examiner intended to reject claims 9, 21, and 32 as unpatentable over Faigon, Bigagli, Kipersztok, and Westberg and present the correct claim listing here for clarity.

CONTENTIONS

The Examiner finds that Faigon teaches all of the limitations of illustrative claim 1, except that the network is grid-based. Ans. 3-5. For this limitation, the Examiner relies upon Bigagli in concluding that the claim would have been obvious to an ordinarily skilled artisan. Ans. 5.

Faigon teaches techniques for correlating faults in a networking system and uses a database of fault rules for determining the occurrence of faults defined by the fault rules. Faigon, Abstract. The Examiner equates Faigon's meta traps, which are information about faults received by a network management station, with the recited diagnostic event record. Ans. 4 (citing, e.g., Faigon, col. 7, ll. 1-49).

Appellant, while acknowledging Faigon's meta traps describe faults, argues that Faigon does not teach or suggest passing actual parameters or thresholds set in place to trigger faults, and so Faigon does not teach or suggest diagnostic telemetry information, recited in claim 1. Br. 14.

ISSUE

Do Faigon and Bigagli collectively teach or suggest the diagnostic telemetry information recited in claim 1?

ANALYSIS

As Appellant points out (Br. 14), claim 1 requires the recited diagnostic event record to contain both i) event data concerning an event that has occurred within the resource in the grid and ii) diagnostic telemetry information concerning operation of the resource up to the occurrence of the event. Appellant does not dispute that Faigon's disclosed meta traps teach

or suggest the recited diagnostic event record that contains event data. *See* Br. 14; *see also* Ans. 19. Instead, in challenging the rejection, Appellant argues that Faigon does not teach or suggest the recited diagnostic telemetry information because the Specification defines diagnostic telemetry information as information pertaining to thresholds that enable alarms to be triggered when crossed (Spec. 8:15-17) and is different from an event or an alarm (Spec. 7:15). Br. 14.

The cited portion of the Specification referring to thresholds, however, describes a component used to configure “telemetry parameters . . . such as thresholds that in turn enable alarms when the thresholds are crossed.” Spec. 8:15-17. We do not agree that this disclosure in Appellant’s Specification of an example of how “telemetry *parameters*” may be configured requires the recited “diagnostic telemetry *information*” to include parameters or thresholds, as Appellant argues. *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002) (Claim terms are properly construed to include limitations not otherwise inherent in the term when the Specification “clearly set[s] forth a definition of the disputed claim term.”). Appellant’s argument that Faigon does not teach or suggest the recited diagnostic telemetry information because Faigon’s meta traps do not teach or suggest passing actual parameters or thresholds set in place to trigger faults, then, is unavailing because Appellant’s argument is not commensurate with the claim scope.

Even if we were to accept Appellant’s incorrect premise that diagnostic telemetry information requires passing parameters or thresholds set in place to trigger faults, Faigon teaches a counter field indicating the number of correlated traps to generate the meta trap (Faigon, col. 13, ll. 24-

31, 46-47), which the Examiner equates to the threshold for generating the meta trap (Ans. 20-21). Thus, even under Appellant's incorrect construction of diagnostic telemetry information, Faigon teaches thresholds for generating the meta trap, which at least suggest thresholds set in place to trigger faults.

Nor are we persuaded that Faigon does not teach or suggest diagnostic telemetry information that is different from an event or an alarm. As the Examiner explains in response to Appellant's arguments:

Faigon teaches the method of generating meta traps upon the satisfaction of a certain number of conditions (Faigon, col. 7, lines 5-7). These conditions may be the occurrence of a certain number of events within a specified time period (Faigon, col. 7, lines 7-9). The generated meta traps are then sent to a second device such as a network management station (Faigon, col. 7, lines 11-13). . . .[A meta] trap object contains several fields related to the detected problem. It lists where the problem occurred, severity of the problem, *probable cause*, *possible solutions*, a counter field indicating the number of correlated traps to generate the meta trap, etc[.] (Faigon, col. 13, lines 24-54).

Ans. 19 (emphasis added); *see also* Ans 4 (citing Faigon, col. 7, ll. 1-49, col. 13, ll. 29-54). Based on this functionality, Faigon teaches generating a meta trap, having probable cause and possible solution information, after the occurrence of a certain number of events. Thus, in contrast to Appellant's arguments (Br. 14), Faigon teaches diagnostic telemetry information that is separate from an event or an alarm, as the Examiner finds (Ans. 4, 19).

Accordingly, we are not persuaded of error in the Examiner's reliance on Faigon to teach or suggest the diagnostic telemetry information recited in claim 1. We therefore sustain the rejection of claim 1 and claims 2-4, 6, 7,

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13-16, 18, 19, 22, 25-28, 30, 31, 34, and 37-39, which were not separately argued with particularity.

THE REMAINING OBVIOUSNESS REJECTIONS

For each of the remaining rejections, Appellant refers to the previous arguments regarding claim 1. *See* Br. 15-16. The issues before us, then, are the same as those in connection with claim 1, discussed above. Based on the previous explanation, we need not address whether Syrjala, Kipersztok, Westberg, or Hansen cures any purported deficiency of Faigon and Bigagli. *Id.* Appellant has not persuaded us of error in the rejections of claims 5, 8-10, 12, 17, 20, 21, 24, 29, 32, 33, and 36.

CONCLUSION

The Examiner did not err in rejecting claims 1-10, 12-22, 24-34, and 36-39 under § 103.

ORDER

The Examiner's decision rejecting claims 1-10, 12-22, 24-34, and 36-39 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)(1)(iv).

AFFIRMED

babc