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IBM (RPS-BI.F) c/o BIGGERS & OHANIAN, LLP P.O. BOX 1469 AUSTIN, TX 78767-1469			MEHRMANESH, ELMIRA	
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL G. BRINKMAN, TIMOTHY J. SCHLUDE, and  
GREGORY D. SELLMAN

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Appeal 2010-007275<sup>1</sup>  
Application 11/469,635  
Technology Center 2100

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Before JEAN R. HOMERE, JOHNNY A. KUMAR, and JOHN G. NEW,  
*Administrative Patent Judges.*

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

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<sup>1</sup> The real party in interest is International Business Machines, Corp. (App. Br. 1.)

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-14, 17, and 18. Claims 15 and 16 have been canceled. (App. Br. 2). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Appellants' Invention*

Appellants invented a method and system for allowing an administrative agent, upon detecting a parity error that occurred during a transaction on a PCI bus, to identify which agent on the bus the generated the error. (Abstract.)

### *Illustrative Claim*

Independent claim 1 further illustrates the invention as follows:

1. A method for detecting an agent generating a parity error on a PCI-compatible bus, the method comprising:

detecting, by an administrative agent on the bus, a parity error that occurred during a transaction on a PCI-compatible bus that connects a plurality of agents for data communications;

retrieving, by the administrative agent, a value for a grant signal associated with each agent on the bus for the transaction;

retrieving, by the administrative agent, values for an address signal and a command signal for the transaction; and

identifying, by the administrative agent, the agent generating the parity error in dependence upon the values for the grant signals, the address signal, and the command signal.

*Prior Art Relied Upon*

The Examiner relied upon the following prior art as evidence of unpatentability:

Goodrum                      US 6,032,271                      Feb. 29, 2000

*Rejection on Appeal*

The Examiner rejected claims 1-14, 17, and 18 under 35 U.S.C. § 102(b) as being anticipated by Goodrum.

ANALYSIS

We consider Appellants' arguments *seriatim* as they are presented in the principal Brief, pages 4-10, and the Reply Brief, pages 2-7.

Dispositive Issue : Have Appellants shown that the Examiner erred in finding that Goodrum describes *an administrative agent that, upon detecting a parity bit error occurred during a transaction on a PCI bus, identifies an agent that generated the error in dependence upon a plurality signal values*, as recited claim 1?

Appellants argue that Goodrum does not describe the disputed limitations emphasized above. (App. Br. 6-9, Reply Br. 2-7.) In particular, Appellants argue that even though Goodrum discloses using a parity bit as part of history data captured on a PCI bus that the bus monitor reviewed in identifying a hang condition, Goodrum's disclosure, neither describes identifying the agent that generated the error nor identifies a parity error. (App. Br. 7-8). Further, Appellants argue that because the Examiner erroneously finds that Goodrum's identification of a hang condition

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describes the claimed parity error, Goodrum does not anticipate the cited claim. (Reply Br. 5-6.)

In response, the Examiner finds that Goodrum's disclosure of a PCI bus watcher that, upon detecting a hang condition on the bus, reviews captured history data to isolate the slot where the error originates describes the disputed limitations, as claimed. (Ans. 10-11.)

On the record before us, we agree with the Examiner's finding of anticipation. Goodrum discloses a PCI bus watcher that reviews history data captured for each transaction for which a hang condition was detected to thereby isolate slots causing the hang condition. (Col. 86, ll. 56-64.) The reviewed data include PCI address, PCI command signals, PCI master number, and the address parity bit. (Col. 87, ll. 1-7.) We find that because the disclosed bus watcher identifies slots that generated the hang condition, Goodrum describes a bus agent that identifies which of the other agents on the PCI bus caused an error. Further, while Appellants argued that the disclosed hang condition does not describe the claimed parity error; Appellants have not provided any evidence to substantiate such allegations. Appellants' arguments are not a substitute for evidence. We note, nonetheless, that even if the disclosed hang condition did not describe the parity error, Appellants cannot solely rely upon such distinction to patentably distinguish the claimed invention over the prior art of record. This is due to the fact that such argument is premised upon the type or nature of the error, as opposed to its functionality. In other words, because the claimed parity error serves no apparent function in the claim, we conclude

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that the parity error is directed to nonfunctional descriptive material. In a precedential Opinion, an expanded Board panel held that nonfunctional descriptive material (sequence data) did not distinguish the claimed computer-based system from a prior art system that was the same except for its sequence data. *See Ex parte Nehls*, 88 USPQ2d 1883, 1887-88 (BPAI 2008) (precedential).<sup>2</sup> It follows that Appellants have not shown error in the Examiner's rejection of claim 1 as being anticipated by Goodrum.

Because Appellants did not argue 2-14, 17, and 18, those claims fall together with claim 1 as set forth above. *See* 37 C.F.R. § 1.37(c)(1)(vii).

#### DECISION

We affirm the Examiner's decision to reject claims 1-14, 17, and 18 as being anticipated by Goodrum under 35 U.S.C. § 102(b).

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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<sup>2</sup> *See also Ex parte Mathias*, 84 USPQ2d 1276, 1279 (BPAI 2005) (informative), *aff'd* 191 Fed. Appx. 959 (Fed. Cir. 2006) (stating if a claimed phrase cannot alter how the process steps are to be performed to achieve the utility of the invention or merely states an intended use or purpose for the data, it is not entitled to patentable weight.)

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