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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LUC VAN BRABANT

Appeal 2010-008244
Application 10/748,008
Technology Center 2400

Before BRADLEY R. GARRIS, KALYAN K. DESHPANDE, and ERIC B. CHEN, *Administrative Patent Judges.*

CHEN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 6 and 22-26. Claims 7, 11-15, and 27-33 have either been allowed or contain allowable subject matter. Claims 1-5, 8-10, and 16-21 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

STATEMENT OF THE CASE

Appellant's invention relates to on-demand and on-access anti-virus scan requests that are distributed over multiple virus checkers for on-demand anti-virus scanning concurrent with on-access anti-virus scanning. The on-demand requests are grouped into chunks of multiple requests, and the on-demand and on-access requests are combined in a queue. (Abstract.)

Claim 6 is exemplary, with disputed limitations in italics:

> 6. A method of operating a plurality of virus checkers for on-demand anti-virus scanning concurrent with on-access anti-virus scanning, the method comprising:
>
> combining on-demand anti-virus scan requests and on-access anti-virus scan requests in a virus scan request queue; and
>
> distributing the on-demand anti-virus scan requests and the on-access anti-virus scan requests from the virus scan request queue to the virus checkers;
>
> which includes *grouping the on-demand anti-virus scan requests into chunks, each of the chunks including multiple ones of the on-demand anti-virus scan requests, and placing the chunks onto the virus scan request queue*.

Claim 6 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Smithson (U.S. Patent No. 6,802,012 B1; Oct. 5, 2004).

Claims 22 and 23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by McAfee (MCAFEE SECURITY, NETWORK ASSOCIATES, GROUPSHIELD AND THE MICROSOFT VIRUS SCANNING API (2002)).

The rejection of claims 11-15, 27, and 28 under 35 US.C. § 102(e) as being anticipated by McAfee has been withdrawn by the Examiner.[1] (Ans. 3.)

Claims 24-26 stand rejected under 35 U.S.C. § 103(a) as being obvious over Smithson and McAfee.[2]

The rejection of claim 7 under 35 US.C. § 103(a) as being obvious over Smithson and McAfee has been withdrawn by the Examiner. (Ans. 3.)

The rejection of claims 30 and 33 under 35 U.S.C § 112, second paragraph, has been withdrawn by the Examiner. (Ans. 3.)

ANALYSIS

§ 102 Rejection – Smithson

We are persuaded by Appellant's arguments (App. Br. 15-18; *see also* Reply Br. 1-2) that Smithson does not describe the claim limitation "grouping the on-demand anti-virus scan requests into chunks, each of the chunks including multiple ones of the on-demand anti-virus scan requests, and placing the chunks onto the virus scan request queue," as recited in independent claim 6.

The Examiner found that Figure 3 of Smithson, which illustrates pending scan requests, corresponds to the claimed "grouping the on-demand

[1] Dependent claims 30 and 33, which depend from claims 12 and 27, stand rejected under 35 U.S.C. § 103(a) as being obvious over McAfee and Edwards (U.S. Patent No. 7,188,367 B1; Mar. 6, 2007). Accordingly, the rejection of claims 30 and 33 has also been withdrawn by the Examiner.

[2] Both Appellant and the Examiner have inadvertently grouped claims 25 and 26, which depend from independent claim 24, with the rejection of claims 22 and 23 under 35 U.S.C. § 102(e) as being anticipated by McAfee. (App. Br. 12; Ans. 5-7.)

anti-virus scan requests into chunks, each of the chunks including multiple ones of the on-demand anti-virus scan requests, and placing the chunks onto the virus scan request queue." (Ans. 5, 10.) We do not agree.

Smithson relates to "scanning computer files for unwanted properties, such as, for example, the presence of computer viruses." (Col. 1, ll. 8-12.) Figure 3 of Smithson illustrates a pending store of scan requests (col. 4, ll. 1-3), such that a highest priority level (i.e., Priority "1") is given to a chief executive officer of a company, although it is not the oldest pending scan request, followed by a scan request associated with an administrator (i.e., Priority "3") (col. 5, ll. 7-13). Figure 3 of Smithson further illustrates two scan requests by users having equal priority levels (i.e., Priority "6"), such that the oldest scan request is processed first. (Col. 5, ll. 13-17.) Smithson further explains that a "scan controller 30 . . . operates to select the next pending scan request to be processed from the pending scan list 32 and [to] pass this information to the scan engine 34" such that the "scan controller 30 selects the oldest high priority scan stored within the pending scan list." (Col. 5, ll. 46-50.)

Although Smithson prioritizes pending scans into groups (e.g., each "User" in Figure 3 has a Priority "6"), Smithson does not provide an express teaching that the pending scans are placed into the queue as a group. Rather, because Smithson explains that a "scan controller 30 selects the oldest high priority scan stored within the pending scan list," Smithson teaches placing pending scans into the queue individually.

Therefore, we do not agree with the Examiner that Smithson describes the limitation "grouping the on-demand anti-virus scan requests into chunks,

each of the chunks including multiple ones of the on-demand anti-virus scan requests, and placing the chunks onto the virus scan request queue."

Accordingly, we do not sustain the rejection of independent claim 6 under 35 U.S.C. § 102(e).

§ 102 Rejection – McAfee

We are also persuaded by Appellant's argument (App. Br. 21-22; *see also* Reply Br. 2) that McAfee does not describe the claim limitation "said at least one of the processors is programmed for grouping the on-demand anti-virus scan requests into chunks, each of the chunks including multiple ones of the on demand anti-virus scan requests, and placing the chunks onto the virus scan request queue," as recited in independent claim 22.

The Examiner found that the feature of receiving either a low priority or a high priority of McAfee corresponds to the claimed "said at least one of the processors is programmed for grouping the on-demand anti-virus scan requests into chunks, each of the chunks including multiple ones of the on demand anti-virus scan requests, and placing the chunks onto the virus scan request queue." (Ans. 6, 11.) We do not agree.

McAfee relates to "an overview of the Microsoft Exchange virus scanning API [application programming interface] and how it is used by McAfee GroupShield [groupware content security]." (P. 2, col. 1.) McAfee explains that "[i]n virus scanning API 2.0, a single queue processes all of the message body and attachment data" and "[i]tems that are submitted to this queue as 'on-demand' . . . are submitted as high-priority items." (P. 3, col. 2.) McAfee further explains a "proactive scanning" feature such that items placed in a common information storage queue receive a low priority

when placed in the queue and are "dynamically upgraded to high priority if aclient attempts to access the item." (P. 4, col. 2.)

Although McAfee prioritizes scanning into "low-priority" and "high-priority," McAfee does not expressly teach that scanned items are placed in the queue as groups or chunks. To the contrary, the "dynamically upgrade[] to high priority" feature of McAfee suggests that items are upgraded into "high-priority" individually.

Therefore, we do not agree with the Examiner that McAfee describes the limitation "said at least one of the processors is programmed for grouping the on-demand anti-virus scan requests into chunks, each of the chunks including multiple ones of the on demand anti-virus scan requests, and placing the chunks onto the virus scan request queue."

Accordingly, we do not sustain the rejection of independent claim 22 under 35 U.S.C. § 102(e). Claim 23 depends from independent claim 22. Therefore, we do not sustain the rejection of claim 23 under 35 U.S.C. § 102(e) for the same reasons discussed with respect to independent claim 22.

§ 103 Rejection – Smithson and McAfee

Independent claim 24 recites structural and functional limitations similar to the method limitations discussed with respect to independent claim 6, and claims 25 and 26 depend from claim 24. McAfee was cited by the Examiner for teaching additional features of claim 24. (Ans. 8-9.) However, the Examiner's application of McAfee does not cure the above noted deficiencies of Smithson.

DECISION

The Examiner's decision to reject claims 6 and 22-26 is reversed.

REVERSED

ELD