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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* EDWARD SHAW-LEE SUEN and  
SUNIL PRABHAKAR DIXIT

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Appeal 2010-009124  
Application 10/186,328  
Technology Center 2400

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Before ALLEN R. MacDONALD, ROBERT E. NAPPI, and SCOTT R.  
BOALICK, *Administrative Patent Judges*.

NAPPI, Administrative Patent Judge

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1, 3 through 7, and 10 through 12.

At the outset we note that the Briefs in this application are unusual in that the Appeal Brief and Reply Brief each include a claim appendix with different claims.<sup>1</sup> The Appeal Brief's claim appendix contains the claims on appeal, claims 1, 3, through 7 and 10 through 12, which represent the claims as amended by the January 6, 2010 amendment after final. The Reply Brief's claims appendix includes a version of claims 1, 3, through 7, 10 through 12 from a different point in prosecution and also includes claims 19-23 which were expressly canceled by the January 6, 2010 amendment. The Examiner has twice indicated that the January 6, 2010 amendment is entered. See Answer page 2, and in the June 10, 2010 communication.<sup>2</sup> Appellants have made no comment on the record about why there are two different claim appendices and we are dismayed by this lack of candor. Nonetheless, it is clear that the claims in the Appeal Brief's claims appendix are a copy of the claims on appeal. We construe Appellants submission of a different set of claims in the Reply Brief's claims appendix as an improper amendment after Appeal and as such these claims are not before us.

We affirm.

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<sup>1</sup> Throughout this opinion we refer to Appellants' Appeal Brief January 6, 2010, and Reply Brief dated June 1, 2010.

<sup>2</sup> Throughout this opinion we refer to the Examiner's Answer dated March 31, 2010.

## INVENTION

The invention is directed to a technique to dynamically select sources for user to direct quires for the users to the proper data sources. See paragraphs 0107-011 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

1. A computer program product comprising:
  - a first set of instructions, executable on a computer system, configured to receive user information for each user of a plurality of users at a start of a current session of each user;
  - a second set of instructions, executable on the computer system, configured to dynamically determine a plurality of data sources designated for each user based on the user information, wherein the plurality of data sources are data warehouse systems, and the plurality of data sources comprises a common database that is accessible by all of the plurality of users, and at least one user-specific database that is configured to be accessed by only designated users;
  - a third set of instructions, executable on the computer system, configured to set a data source variable for each user, wherein the data source variable comprises information configured to identify the data sources designated for the user, and the data source variable is a session-specific variable that is utilized by the user only for the current session;
  - a fourth set of instructions, executable on the computer system, configured to direct queries for each user to the data sources designated for the user based on the identity of the data sources set in the data source variable; and computer readable storage media, wherein said computer program product is encoded in said computer readable storage media.

## REJECTION AT ISSUE

The Examiner has rejected claims 1, 3 through 7 and 10 through 12 under 35 U.S.C. § 103(a) as unpatentable over Rubert (U.S. 6,366,915 B1) and Gilfillan (U.S. 2002/0165856 A1).<sup>3</sup> Answer 4-10.

## ISSUE

Appellants argue on pages 4 through 7 of the Appeal Brief that the Examiner's rejection of independent claim 1 under 35 U.S.C. § 103(a) is in error. These arguments present us with the issues: did the Examiner err in finding that the combination of Rubert and Gilfillan teaches a system which allows for user selection of data sources?

## ANALYSIS

We have reviewed Appellants' arguments in the Briefs, the Examiner's rejection and the Examiner's response to the Appellants' arguments. We disagree with Appellants' conclusion that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a). Appellants argue "Claim 1 requires a fourth set of instructions configured to provide a user-specific data source section means to each user so as to select one or more user-specific data sources after the start of the current session." Brief 4. Further, Appellants argue that claim 1 recites sixth instruction configured to directing queries for each user to the data sources. Brief 5-6. Appellants'

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<sup>3</sup> We note that the Examiner's stated rejections includes claims (e.g. rejection of claims 13 and 15 under 35 U.S.C. § 101 and 35 U.S.C. § 103(a)) which have been canceled by the January 6, 2010, amendment. However, as the claims have been canceled, the rejections are not before us.

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arguments on pages 2 through 5 of the Reply Brief, similarly center on Rubert not teaching a user selection of a user-specific data source and other limitations in the fifth and sixth set of instructions. These arguments are not commensurate in scope with claim 1 as presented on appeal.

Representative claim 1 as amended by the January 6, 2010 amendment does recite a claimed fourth set of instructions, but does not recite a “user-specific data source section means” as argued, nor does claim 1 recite either a fifth or sixth set of instructions as argued.

We note that the Examiner in the statement of the rejection and response to the arguments similarly addresses limitations which are not in the claims and we have not considered these findings as they are not relevant to this appeal. Accordingly, we sustain the Examiner’s rejection of independent claim 1 and claims 3 through 7 and 10 through 12.

#### ORDER

The decision of the Examiner to reject claims 1, 3 through 7 and 10 through 12 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

ELD