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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEVE J. McKINNON and TA-MING CHEN

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Appeal 2010-009189  
Application 10/034,431  
Technology Center 2400

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Before ROBERT E. NAPPI, JUSTIN BUSCH, and  
GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

ROBERT E. NAPPI, Administrative Patent Judge

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1 through 38.

We affirm.

### INVENTION

The invention is directed a method of distributing information concerning the presence information of a user and providing service logic associated with the presence information. See paragraphs 0005-0007 of Appellants' Specification. Claim 1 is representative of the invention and reproduced below:

1. A method comprising:
  - a) receiving state information bearing on presence of a user, wherein receiving occurs at at least one presence detection system;
  - b) creating service logic based on the state information, the service logic created at the at least one presence detection system and configured to instruct an associated presence service to control communications associated with the user based on the presence of the user; and
  - c) providing the service logic from the at least one presence detection system to the associated presence service to distribute generation of the service logic.

### REJECTIONS AT ISSUE

The Examiner has rejected claims 1 through 8, 11 through 22, 25 through 34, 37 and 38 under 35 U.S.C. § 102(e) as unpatentable over Boyer (U.S. 2002/0143876 A1; Oct. 3, 2002). Answer 3-5<sup>1</sup>.

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<sup>1</sup> Throughout this opinion we refer to the Examiner's Answer mailed on August 23, 2007.

The Examiner has rejected claims 9, 10, 23, 24, 35, and 36 under 35 U.S.C. § 103(a) as unpatentable over Boyer and McDowell (U.S. 2002/0035605 A1; Mar. 21, 2002). Answer 6-7.

## ISSUES

### *Rejection under 35 U.S.C. § 102(e)*

Appellants argue on pages 8-9 of the Appeal Brief and 4-5 of the Reply Brief that the Examiner's rejection under 35 U.S.C. § 102(e) is in error.<sup>2</sup> These arguments present us with the issue: did the Examiner error in finding that Boyer teaches "service logic created at the presence detection system," as recited in representative claim 1?

### *Rejection under 35 U.S.C. § 103(a)*

Appellants argue on pages 11 and 12 of the Appeal Brief that the rejection under 35 U.S.C. § 103(a) is in error as there is no motivation to combine the cited references. These arguments present us with the issue: did the Examiner error in finding that the skilled artisan would be motivated to combine Boyer and McDowell?

## ANALYSIS

### *Rejection under 35 U.S.C. § 102(e)*

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 finding that Boyer teaches service logic created at the presence detection system as recited in representative claim 1. The Examiner has provided two rationales to find that Boyer teaches service logic created at the presence detection system; we concur with the Examiner's second rationale.

The Examiner's first rationale relies upon a finding that "the creation and execution of service logic in a system - to control a certain process in that system - is an inherency, native to any client-server system." Answer 8-9. Appellants argue that the Examiner has not presented adequate evidence to support the finding of inherency. Reply Brief 4.<sup>3</sup> We concur with Appellants on this point

The Examiner's second rationale relies upon a finding that the SPFS, which Appellants admit creates service logic, meets the claimed presence detection system. Answer 9. We concur. Appellants admitted on page 8 of the Appeal Brief "Boyer teaches that the service logic is created in the SPFS." The Examiner also finds that the "User Agent 203," which is part of the SPFS, performs the presence detection. Answer 9-10. We concur with the Examiner's finding that the user agent performs presence detection. Boyer teaches that the user agent monitors, via messages, data indicative of

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<sup>2</sup> Throughout this opinion we refer to Appellants' Appeal Brief dated May 16, 2007 and Reply Brief dated October 22, 2007.

<sup>3</sup> We note that Appellants also argue that the Answer, which includes this finding by the Examiner, should not be considered by the Board as it was not necessitated by the Boards' order returning the undocketed appeal. Reply Brief 3-4. This argument has not been considered as it is directed to a petitionable issue and not an appealable issue. Nonetheless, the point is moot, as Appellants substantive arguments directed to the finding of inherency are persuasive.

user presence, keystrokes, etc. or telephone off/on hook, or inactivity for a period of time. Boyer, Para [0032]. Further, the Examiner has found that the SPFS distributes service logic to applications ConnectIcon View, and TeamPortal View, which meet the claimed presence service as “they are associated with the user presence, and provide [a] service to the human client . . . .” Answer 10. We concur with the Examiner. Appellants’ arguments on page 5 of the Reply Brief, that “[a] person of ordinary skill . . . would not reasonably interpret the presence clients of Boyer to be equivalent to the claimed associated presence service” does not cite to sufficient evidence to persuade us of error in the Examiner’s finding. (Emphasis in original.) Accordingly, we sustain the Examiner’s rejection of representative claim 1, claims 2 through 8, claims 11 through 22, claims 25 through 34, claims 37 and 38.

*Rejection under 35 U.S.C. § 103(a)*

We have reviewed Appellants’ arguments in the Briefs, and we disagree with Appellants’ conclusion that the Examiner erred in finding that the skilled artisan would be motivated to combine Boyer and McDowell. The Examiner has provided a reasoned rationale, citing portions of both references as evidence to support the rationale, on pages 10-11 of the Answer. We have reviewed this rationale and concur with the Examiner’s conclusion of obviousness. Accordingly, we sustain the Examiner’s rejection of claims 9, 10, 23, 23, 35, and 36 under 35 U.S.C. § 103(a).

Accordingly, we sustain the Examiner’s rejection under 35 U.S.C. § 102(e) and 35 U.S.C. § 103(a).

Appeal 2010-009189  
Application 10/034,431

**ORDER**

The decision of the Examiner to reject claims 1 through 38 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**

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