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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PHUC KY DO and JUSTIN M. PIERCE

Appeal 2010-009469¹
Application 11/457,378
Technology Center 2400

Before JEAN R. HOMERE, ERIC B. CHEN, and MICHAEL J. STRAUSS,
Administrative Patent Judges.

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL

¹ 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 1-20. (App. Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' Invention

Appellants invented a method and system for regulating a user's access to a file system. In particular, upon intercepting the user's request to access a file, a file system firewall (230) disposed between the file system (220) and the operating system (250) utilizes a rule key formed from an application based attribute (e.g., application ID, user ID, request type) according to an access rule in a set of access rules (240) to permit or deny the request. (Figs. 1 & 2, Spec. [0006], [0007].)

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. A data processing system configured for file system access, the data processing system comprising:
 - a file system;
 - an operating system;
 - a set of access rules, each of the access rules having an associated rule key; and,
 - a file system firewall disposed between the file system and the operating system, the file system firewall comprising program code enabled to permit or deny a file system request according to an access rule in the set of access rules associated with a rule key formed from an application based attribute in the file system request.

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Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of unpatentability:

Nagampalli US 2006/0161966 A1 Jul. 20, 2006

Rejection on Appeal

The Examiner rejects claims 1-20 under 35 U.S.C. § 102(e) as being anticipated by Nagampalli.

ANALYSIS

We consider Appellants' arguments *seriatim* as they are presented in the Appeal Brief, pages 5-19 and the Reply Brief, pages 2-12.

Dispositive Issue: Have Appellants shown the Examiner erred in finding that Nagampalli describes *a file system firewall programmed to permit or deny a file system request according to an access rule, in a set of access rules, associated with a rule key formed from an application based attribute in the request*, as recited claim 1?

Appellants argue that Nagampalli does not describe the disputed limitations emphasized above. In particular, Appellants argue that while Nagampalli discloses a file system firewall that allows or denies access to a requested file according to an access control criteria, Nagampalli does not describe that the control criteria is associated with a rule key formed from an application based attribute, such as application ID. (App. Br. 11-12.) According to Appellants, Nagampalli's disclosure of applying the criteria to the requested file is not tantamount to a rule key being formed from an application based attribute. (*Id.* at 12-13.) Similarly, Appellants argue that a

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file extension is not an application attribute that describes the nature of the application that created the file. (Reply Br. 4-5.)

In response, the Examiner finds that Nagampalli's disclosure of a firewall system that utilizes an access control criteria to determine whether to grant or deny access request to a file identified by its extension describes the disputed limitations. (Ans. 11-12.)

On the record before us, we agree with the Examiner's finding of anticipation. Nagampalli discloses a firewall system that, upon intercepting a remote file access request from a client computer, determines whether to grant or deny the requested access based on an access control criteria, which may be used to implement a security policy that is expressed in security rules. (Nagampalli, [0007].) For example, the access control criteria may indicate that a request to open certain files (e.g. executable files, MP3 files) should not be allowed. (Nagampalli [0013]). Further, Nagampalli discloses that upon intercepting the file access request, the firewall identifies rules related to the filename, file extension type, and associated IP address. (Nagampalli, [0017].) The rules may also specify which users can access which types of files. The access control criteria can be based on a filename/file extension, username, *file attributes*, access type. (Nagampalli, [0020]). We find that because the access control criteria can be based on file attributes including filename, file extension, file type, as well as a username indicated in a file request to thereby specify which users should be granted access to which types of files, Nagampalli's access control criteria describes an access rule associated with a rule key formed from an application

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attribute in the file request. Therefore, we are not persuaded by Appellants' arguments that Nagampalli does not describe the disputed limitations.

Further, even if the Nagampalli only taught an access control criteria that regulates a requested access to a file, wherein the access control criteria is not formed from an application based attribute, Appellants cannot rely solely upon such distinction to patentably distinguish the claims over the prior art of record. In particular, we find that because Appellants seek to distinguish the rule key on the basis of its content (i.e. whether it includes application attribute) as opposed to its function (to determine whether to grant or deny the requested access,) the argued distinction is directed to non-functional descriptive material, which is not entitled to patentable weight. 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).²

We are therefore satisfied that the record before us supports by a preponderance of the evidence that Appellants have not shown error in the Examiner's rejection of claim 1 as being anticipated by Nagampalli.

² *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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Regarding claims 2-6, Appellants argue that Nagampalli does not describe that the rule key is formed from an application ID, a user ID, request type. (App. Br. 13-16, Reply Br. 5-8.) These arguments are not persuasive. As discussed above, Nagampalli discloses that the access control criteria can be based on a filename, a file extension, user name, file type, etc. It follows that Appellants have not shown error in the Examiner's rejection of claims 2-6.

Regarding the rejection of claims 7-20, Appellants reiterate substantially the same arguments submitted for patentability of claims 1-6 above. (App. Br. 13-19, Reply Br. 8-12.) As discussed above, these arguments are not persuasive. *See* 37 C.F.R. § 1.37(c)(1)(vii). Consequently, for the same reasons, Appellants have failed to show error in the Examiner's rejections of claims 7-20.

DECISION

We affirm the Examiner's rejections of claims 1-20 as set forth above.

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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