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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SANDRA L. KOGAN, ERIC M. WILCOX, and
CHARLES R. HILL

Appeal 2011-000156
Application 11/612,154
Technology Center 2100

Before CARL W. WHITEHEAD, JR., ERIC S. FRAHM, and
ANDREW J. DILLON, *Administrative Patent Judges*.

DILLON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-14. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellants describe the present invention as follows:

In one embodiment of the invention, a method for real-time monitor integration of activity thread snippets in an activity-

centric collaborative computing environment can be provided. The method can include collecting real-time metrics for an activity object in an activity thread, changing characteristics of a control element within an enterprise dashboard view according to the collected real-time metrics, and inserting into the control element a portion of the activity thread.

Abstract.

Claim 1 is illustrative:

1. A method for real-time monitor integration of activity thread snippets in an activity-centric collaborative computing environment, the method comprising:

collecting real-time metrics for an activity object in an activity thread;

changing characteristics of a control element within an enterprise dashboard view according to the collected real-time metrics; and,

inserting into the control element a portion of the activity thread.

The Examiner relies on the following references as evidence of unpatentability:

Wynn	US 2004/0261013 A1	Dec. 23, 2004
Bjoernsen	US 2004/0174392 A1	Sep. 09, 2004
Barksdale	US 2002/0154176 A1	Oct. 24, 2002

REJECTIONS

The Examiner rejected claims 1, 4, 6-10, and 13 under 35 U.S.C. § 103 as unpatentable over Bjoernsen and Wynn. Ans. 3-6.¹

¹ Throughout this opinion, we refer to the Appeal Brief filed April 5, 2010 (“App. Br.”) and the Examiner’s Answer mailed June 24, 2010 (“Ans.”).

The Examiner rejected claims 2, 3, 5, 11, 12, and 14 under § 103 as unpatentable over Bjoernsen, Wynn, and Barksdale. Ans. 6-8.

ANALYSIS

All claims stand or fall with independent claim 1. App. Br., p. 8-9. The only issue before us is whether the Examiner has adequately addressed the “object” and “thread” of claim 1.² Appellants argue:

Appellants [amendment] attacked Examiner’s prima facie case of obviousness on the basis that Examiner misconstrued critical claim terms “activity thread” and “activity object” by comparing those terms to cited portions of Bjoernen. The law requires Examiner to perform a claim construction of critical claim terms before comparing the critical claim terms to portions of the cited art. Examiner failed to do so in contravention of the law and the directives of the Examination Guidelines of M.P.E.P. 2141 and, as a result, established a defective claim construction by implication resulting in the necessity of the instant appeal.

App. Br., p. 8. And Appellants likewise argue:

Examiner continues to fail to establish a claim construction of the critical claim terms “activity object” and “activity thread”. In Examiner’s remarks of the Final Office Action, Examiner again fails to expressly construe “activity object” and “activity thread” and instead, by comparing the same to paragraph [0093] of Bjoernsen, establishes an implicit claim construction of “activity object” is an “instant messaging

² We note that some subject matter of claim 1 is immaterial to the issue of patentability, particularly insofar as limiting only the invention’s informational content and/or intended use. The immaterial subject matter includes the emphasized language of “*activity thread*,” “*activity-centric collaborative computing*,” “*control element*,” and “*enterprise dashboard view*.”

session” and an “activity thread” is a “conversation thread” that not only fails under M.P.E.P. 2111, but also directly conflicts with Examiner’s implicit claim construction set forth on page 2 of the Final Office Action in comparing the first limitation of claim 1 to paragraphs [0076] and [0077] of Bjoernsen.

Id.

Appellants incorrectly contend that an examiner must expressly construe all claim limitations raised by an applicant. Contrary to that contention, which Appellants incorrectly posit to be supported by MPEP §§ 2111 and 2141, the Examiner’s burden is to provide sufficient information to address a rejection. As explained by the Federal Circuit:

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (citation omitted). The above burden may be met by clearly conveying how the claimed elements are read on the prior art’s features, such that an applicant can respond with arguments as to why the claim scope does not encompass those features. *Cf., id.* (“The examiner clearly conveyed his understanding that Jung’s well-charge-level controller was broad enough to encompass Kalnitsky’s ‘controller 340,’ and the specific column and line cites to the prior art reference would have put any reasonable applicant on notice of the examiner’s rejection.”). It is simply not, on the other hand, the Examiner’s

burden “[t]o avoid future dispute” by providing a “claim construction plainly in the form of ‘Activity Thread means ...’ and ‘Activity Object means ...’,” as requested by Appellants. App. Br., p. 8.

In the Final Office action, the Examiner clearly read the claimed “object” and “thread” on Bjoernsen’s instant messages as follows:

Bjoernsen et al. teaches activity object in an activity associated with particular users and activity thread snippet of the activity objects (fig. 14; par [0093]; e.g., a user selects a contact, Elvira Morgan, as a collaboration participant for an instant messaging session wherein the conversation threads are displayed in an instant messaging window).

Final Rej., p. 7. Given the above statement and their express understanding that the claimed “object” can be an instant message (Spec., ¶ 22), Appellants should have understood that: the claimed “object” is read on an instant message of Bjoernsen’s collaboration session and the claimed “thread” is read on a collection of such messages, particularly as displayed by Bjoernsen’s instant message window.³ In the Answer, the Examiner has again explained this reading of the claimed “object” and “thread” on Bjoernsen, stating:

³ We acknowledge that the Examiner conveyed a more expansive interpretation of “object,” particularly stating that the claimed “object” may be read on shared documents of a collaboration session. However, that interpretation was reasonable in light of Appellants’ statement that “activity objects can include ... documents.” Spec. ¶ 22. Moreover, the interpretation’s inclusion of documents did not excuse Appellants from addressing the merits of also reading the claimed “object” and “thread” on instant messages of Bjoernsen’s collaboration session, as was clearly conveyed.

In accordance with the *Microsoft Computer Dictionary* (5th Edition, 2002) and knowledge known to one of ordinary skills in the art, the definition of a thread is, in electronic mail and Internet newsgroups, a series of messages and replies related to a specific topic. Bjoernsen teaches collaboration services that includes chat collaboration over an intranet with colleagues, virtual meetings in a web browser window and instant messaging or collaboration session with a co-worker, for example, in the financial department to share tasks/activities to clarify legal issues regarding a sales order or to route a document that is edited during a session to various participants of the meeting (figs. 12-14; par [0050], [0076], [0086], [0089]-[0094]). Bjoernsen further provides information collected from a session to various users such as by a collaboration report 222 at an appropriate point during or after the session Therefore, Bjoernsen's thread regarding such activities is consistent with the definition of a thread and, moreover, appellant's definition that an activity object can include tasks, messages, chats, documents, instant messages and postings in par [0024; sic (should be ¶ 22)] of the published instant application.

Ans., pp. 8-9 (emphasis added). As Appellants have not filed a Reply Brief, we presume they now understand the rejection as presented above.⁴

For the foregoing reasons, we sustain the obviousness rejection of claim 1 over Bjoernsen and Wynn. As Appellants do not present separate arguments for remaining claims 2-14, we also sustain the obviousness rejections of: claims 1, 4, 6-10, and 13 over Bjoernsen and Wynn and of claims 2, 3, 5, 11, 12, and 14 over Bjoernsen, Wynn, and Barksdale.

⁴ The prosecution record shows that the Appellants and Examiner did not conduct an interview. In our view, an interview would have been the ideal method of avoiding the appealed issue. See MPEP § 713.09 (“Normally, one interview after final rejection is permitted.... Such an interview may be granted if the examiner is convinced that disposal or clarification for appeal may be accomplished with only nominal further consideration.”).

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ORDER

The Examiner's decision rejecting claims 1-14 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

peb