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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMIE GAVIN ROOTS and STEPHEN JAMES TODD

Appeal 2011-006736
Application 11/301,674
Technology Center 3600

Before: MURRIEL E. CRAWFORD, MICHAEL W. KIM, and NINA L. MEDLOCK, *Administrative Patent Judges.*

KIM, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal from the final rejection of claims 1, 16, 19, and 21-37¹. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates to loading resources in software applications, and more particularly, to detecting stale cached resources (Spec., para. [0001]).

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A computer-implemented method for a broker to assure that a publication received from a publisher is transmitted to at least one subscriber, the method comprising:
 - receiving, at a computer, a publication from a publisher;
 - and
 - retaining the publication in a storage device at least until the publication is delivered successfully to a subscriber in response to determining that there are no registered subscribers for the received publication.

Claims 19 and 37 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims 1, 16, 19, and 21-37 are rejected under 35 U.S.C. § 102(b) as being anticipated by Mark Perry, et al., *MQSeries Publish/Subscribe Applications*, IBM Redbooks, 1-226 (Sep. 2001) (hereinafter “Perry”).

We AFFIRM.

¹ Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed August 27, 2010) and Reply Brief (“Reply Br.,” filed January 14, 2011), and the Examiner’s Answer (“Ans.,” mailed November 17, 2010).

ISSUES

Did the Examiner err in asserting that independent claims 19 and 37 recite non-statutory subject matter?

Did the Examiner err in asserting that Perry discloses “retaining the publication in a storage device at least until the publication is delivered successfully to a subscriber in response to determining that there are no registered subscribers for the received publication,” as recited in independent claim 1²?

Did the Examiner err in asserting that Perry discloses “removing the retained publication from the storage device and transmitting the retained publication to the subscriber in response to determining that the retained publication satisfies the subscription request,” as recited in dependent claim 21³?

FINDINGS OF FACT

Perry

FF1. Perry discloses that “[b]y default, a broker discards a publication when it has been sent to all interested subscribers” (p. 6).

FF2. However, Perry also discloses that

a publisher can specify that it wants the broker to keep a copy of a publication, which is then called a *retained publication*. The copy can be sent by the broker to subsequent subscribers who register an

² As Appellants argue them together, we choose independent claim 1 as representative of claims 1, 16, 19, 22-34, and 36. *See* 37 C.F.R. § 41.37(c)(1)(vii).

³ As Appellants argue them together, we choose dependent claim 21 as representative of claims 21, 35, and 37. *See* 37 C.F.R. § 41.37(c)(1)(vii).

interest in the topic. This means that new subscribers don't have to wait for information to be published again before they receive it

(p. 6).

FF2. Perry discloses that

[f]or example, a subscriber registering a subscription to a stock price would receive the current price immediately, without waiting for the stock price to change (and hence be republished). The broker retains only one publication for each topic and subscription point, so the old publication is deleted when a new one arrives

(p. 6).

ANALYSIS

Non-Statutory Subject Matter

We are not persuaded the Examiner erred in asserting that independent claims 19 and 37 recite non-statutory subject matter (Appeal Br. 4-6; Reply Br. 3). After carefully considering Appellants' arguments, we agree with and adopt the Examiner's findings and rationales, as set forth on pages 12-15 of the Examiner's Answer. Paragraph [0021] of the Specification discloses that "a computer-usable or computer-readable medium" encompasses transitory signals, which are non-statutory subject matter.

Independent Claim 1

We are not persuaded the Examiner erred in asserting that Perry discloses "retaining the publication in a storage device at least until the publication is delivered successfully to a subscriber in response to

determining that there are no registered subscribers for the received publication,” as recited in independent claim 1 (App. Br. 8-12; Reply Br. 2-4). In Perry, a publication is discarded when it has been sent to all interested subscribers (FF1). It thus logically follows that if there are no interested subscribers, the publication is discarded. For a retained publication, however, even if there are no interested subscribers, the publication is retained and “sent by the broker to subsequent subscribers who register an interest in the topic” (FF2). Thus, all claim aspects are satisfied.

Appellants’ core argument is that “[t]he fact that Perry teaches that a publication can be retained does not require that the broker determined that there are no registered subscribers” (App. Br. 12). Initially, we note that the “determining” step is not positively recited. Moreover, when the retained publication portion of Perry is read in conjunction with the default discard publication procedure of Perry, it shows that the retained publication option in Perry overrides the default discard publication procedure of Perry. Thus, in the scenario where there are no registered subscribers, a determination of the absence of such subscribers is made, but then the retained publication option in Perry overrides the default discard publication procedure of Perry, and retains the publication.

Dependent Claim 21

We are not persuaded the Examiner erred in asserting that Perry discloses “removing the retained publication from the storage device and transmitting the retained publication to the subscriber in response to determining that the retained publication satisfies the subscription request,” as recited in dependent claim 21 (App. Br. 13-15; Reply Br. 6-7).

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Appellants' main error is asserting that "in response to determining that the retained publication satisfies the subscription request" modifies both "removing the retained publication from the storage device" and "transmitting the retained publication to the subscriber." However, under a broadest reasonable construction, the "in response to" may be construed as modifying only the "transmitting" step. Under that construction, Perry clearly discloses removing the old retained publication when a new one is delivered (FF3), and transmitting the retained publication to a new subscriber (FF2).

DECISION

The decision of the Examiner to reject claims 1, 16, 19, and 21-37 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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