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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN WALL, JOHN PAUL LOESER,
KHOA TRAN, and MARIUS DAN STROE

Appeal 2014-004169
Application 12/010,414¹
Technology Center 2100

Before CAROLYN D. THOMAS, JASON V. MORGAN, and
DANIEL J. GALLIGAN, *Administrative Patent Judges*.

GALLIGAN, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

STATEMENT OF THE CASE

This is a decision on rehearing in Appeal No. 2014-004169. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The Appeal Brief identifies SYMCOR, Inc. as the real party in interest. App. Br. 2.

ANALYSIS

On rehearing, Appellants argue (1) that our Decision contains an undesignated new ground of rejection (Req. Reh’g 2–7) and (2) that our Decision “misapprehended or overlooked the failure of the combination of Luniewski, Bourbonnais, and Bhatia to disclose the features of” the independent claims (Req. Reh’g 7–10).

For the reasons that follow, we disagree with Appellants’ contentions and deny rehearing.

Alleged New Grounds

Appellants contend our Decision “relie[d] on different reasoning and new fact finding,” changed “the thrust of the rejection of claim 1,” and “deprived the Appellant of both notice and an opportunity to respond.” Req. Reh’g 3. Appellants argue our Decision “quot[ed] from portions of Bourbonnais not relied upon or even cited by the Examiner” and made new fact finding that is contrary to the Examiner’s reasoning in the rejection. Req. Reh’g 5–6. We disagree.

First, as we noted in our Decision, the Examiner relied upon the commit protocol of Bourbonnais in rejecting claim 1. Dec. 4 (quoting Bourbonnais, col. 8, ll. 4–7). Appellants acknowledge the Examiner relied on this teaching of Bourbonnais. *See* Req. Reh’g 4 (“In formulating the rejection, the Examiner cited Bourbonnais, and in particular, Fig. 13; col. 16, lines 8–21; and col. 8, lines 4–7 of Bourbonnais as disclosing the aforementioned feature of claim 1.”). Our Decision then cited the very next paragraph of Bourbonnais, which describes “a two-phase commit in accordance with certain implementations of the invention.” Dec. 4 (citing Bourbonnais, col. 8, ll. 8–33). Thus, consistent with the Examiner’s

findings, we relied upon the teachings of Bourbonnais with respect to the commit procedure.

Second, we disagree that our Decision made a new fact finding that is contrary to the Examiner's reasoning. Rather, our Decision explained why Appellants' arguments were unpersuasive of error. In particular, as we pointed out in the Decision, Appellants argued that "it is simply impossible to determine from Bourbonnais's log whether there are any additional transactions that need to be completed, and thus impossible to determine whether all records are up-to-date." Reply Br. 3; *see* Dec. 5. Thus, the focus of Appellants' arguments was on the logs in Bourbonnais. Consistent with this, we interpreted the disputed limitation and explained that "[t]he teachings of Bourbonnais demonstrate the use of commit log entries to indicate records that need to be updated, which falls within the scope of the claimed 'indicator.'" Dec. 5.

Our explanation why Appellants' assertion of error was incorrect was not a new ground of rejection.

Reconsideration of the Rejection

Appellants contend our Decision "overlooked" the language of claim 1 reciting "as a change in said database is propagated to each copy of said database in said plurality of federated database systems." Req. Reh'g 7-8. We disagree. In the final rejection, the Examiner relied on paragraph 34 of Luniewski, in combination with Bourbonnais and Bhatia, to teach this particular subject matter recited in claim 1. Final Act. 4. On appeal, Appellants did not present substantive arguments persuasive of Examiner error regarding the aforementioned disputed limitation. Rather, this claim language was merely included in a block quote of a longer claim limitation,

but Appellants did not specifically address why the Examiner’s reliance on the cited portion of Luniewski was in error as to this claimed subject matter. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”); *cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an Appellant, looking for nonobvious distinctions over the prior art.”).

Appellants further contend:

[T]he commit log of the coordinator, at best, only provides an indicator indicating whether all records in a given logical partition have been updated to reflect changes to records in said database that are stored in said given logical partition in the small window immediately after the commit and before messages have been sent to the subordinate nodes indicating they should commit. Outside that small window, the posited indicator of the entry in the commit log of the coordinator simply does not provide the required indication as resort to the commit logs of the subordinate nodes would be required.

Conspicuously, however, that small window does not encompass the period where “a change in said database is propagated to each copy of said database in said plurality of federated database systems” as required by claim 1.

Req. Reh’g. 9.

On appeal, Appellants did not argue that the claimed “indicator” must be present for a minimum period of time, and the claim recites no such requirement. Rather, claim 1 recites “as a change in said database is propagated to each copy of said database in said plurality of federated

database systems.” The commit procedure of Bourbonnais describes data indicating the status of data updates at different nodes as updates are propagated to those nodes. For example, Bourbonnais discloses:

Subordinate nodes B 620 and C 630 record subordinate Prepare to Commit log entries, prepare to commit, and respond to coordinator node A 610. Then, coordinator node A 610 commits changes made by transaction 600, records a coordinator Commit log entry, and notifies subordinate nodes B 620 and C 630 that it has committed. Subordinate nodes B 620 and C 630 commit.

Bourbonnais, col. 8, ll. 23–29. Therefore, Bourbonnais discloses the coordinator node contains indicators for itself and subordinate nodes indicating whether records in those nodes are updated during propagation of data.

CONCLUSION

Nothing in Appellants’ request has persuaded us that we have overlooked or misapprehended any matters or that we made a new ground of rejection so as to warrant the relief requested. Accordingly, we deny the request.

DECISION

Appellants’ Rehearing Request is denied.

REHEARING DENIED