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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER I. DALTON

Appeal 2014-007713¹
Application 10/165,840
Technology Center 3600

Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and
MICHAEL W. KIM, *Administrative Patent Judges*.

KIM, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of claims 1–7, 10–17, 22–25, 27, and 28. We have jurisdiction to review the case under 35 U.S.C. §§ 134 and 6.

The invention relates generally to demonstrating the integrity of a compartment of a compartmented operating system using a trusted device and computing platform. Spec. 1, ll. 6–9.

¹ The Appellant identifies Hewlett-Packard Development Co., L.P., as the real party in interest. Appeal Br. 3.

Claim 1 is illustrative:

1. A method for demonstrating integrity of an operating system compartment in a computing platform having a trusted device, comprising the steps of:

(a) providing a host operating system of the computing platform;

(b) determining a host operating system status of the host operating system using the trusted device;

(c) providing a compartment of the host operating system; and

(d) determining, by a processor, whether resources assigned to the compartment have been interfered with by resources from outside the compartment, the resources comprising at least a computer process assigned to the compartment; and

(e) defining a compartment status based on the determining in step (d).

Claims 1–7, 10–17, 22–25, 27, and 28 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement.

Claims 1–7, 10–17, 22–25, 27, and 28 are rejected under 35 U.S.C. § 112, second paragraph, as incomplete for omitting essential elements.

Claims 1–7, 10–17, 22–25, 27, and 28 are rejected under 35 U.S.C. § 102(e) as anticipated by Proudler (US 7,877,799 B2, iss. Jan. 25, 2011).

We AFFIRM-IN-PART.

ANALYSIS

Enablement Rejection

We are persuaded by Appellant’s argument that “from the descriptions of the functions of the trusted device 213 and other elements in

the specification, one skilled in the art would know how to make and use the invention.” Appeal Br. 8.

The Examiner asserts Appellant’s “specification merely provides a broad overview of the process and fails to disclose any specific details that enable the claimed invention.” Answer 2–3; *see also* Answer 10, Final Act. 3–4.

The Examiner’s burden in an enablement rejection is that:

[T]he explanation of the rejection should focus on those factors, reasons, and evidence that lead the examiner to conclude e.g., that the specification fails to teach how to make and use the claimed invention without undue experimentation, or that the scope of any enablement provided to one skilled in the art is not commensurate with the scope of protection sought by the claims.

MANUAL OF PATENT EXAMINING PROCEDURE § 2164.04. Although the rejection need not discuss every factor of the *Wands* factors (*see Id., citing* MPEP § 2164.01), the rejection should fully explain the reasons undue experimentation would be required.

Here, however, the Examiner has not addressed the issue of undue experimentation at all, and has, thus, failed to establish sufficiently an initial determination of a lack of enablement. For this reason, we do not sustain the rejection under § 112, first paragraph.

Unclaimed Essential Matter Rejection

We are persuaded by Appellant’s arguments that the claims are not incomplete. Appeal Br. 8–10.

The Examiner asserts the claims omit “essential elements,” but does not indicate what elements are omitted. Answer 3–4. The Examiner then

asserts, however, that there is inadequate support in Appellant's Specification for the providing of a host operating system, and determining of host operating system status. *Id.* Thus, the Examiner's conclusion appears to be that both the claims and the Specification omit "essential elements." On this basis, we are persuaded that the Examiner has failed to establish adequately that the claims recite language that "omit[] matter disclosed to be essential to the invention as described in the specification or in other statements of record." MPEP § 2172.01. A predicate to determining that a claim omits an "essential element" is that the "essential element" is disclosed in the Specification as being essential. If an element is not described in the Specification at all, however, the element cannot be described as essential, and the Examiner does not identify any "other statements of record" that could perhaps remedy this gap. Therefore, we do not sustain the rejection under 35 U.S.C. § 112, second paragraph.

Anticipation Rejection of Claims 1–5, 10–17, 22–25, 27, and 28

Appellant argues independent claims 1 and 10 together, so we select claim 1 as representative. Appeal Br. 12–13. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded by Appellant's argument that Proudler does not check if resources "assigned to the compartment have been interfered with" by resources external to the compartment. Appeal Br. 11–12; *see also* Reply Br. 6–7.

The claim language does not recite the manner in which the determination of whether resources "have been interfered with" is made. In construing the claimed *determining* language, we look to the Specification

cited by Appellant (Appeal Br. 4), which states “[c]ompartment status verification suitably includes providing access to information about the compartment” Spec. 12, ll. 25–29. We, thus, construe “determining, by a processor, whether resources assigned to the compartment have been interfered with by resources from outside the compartment” to be met by providing access to information about the compartment.

Proudler discloses an event logging process 804 that “will receive process evidence from service processes running within compartments according to the requirements placed on those service processes.” Proudler col. 19, ll. 58–63. Proudler also discloses a “service management process **803** now has the service results and the service evidence. It can also obtain in accordance with normal operation of the trusted component **24** integrity data for the trusted computing platform at the time of service execution.” *Id.*, col. 20, ll. 17–21. Proudler, thus, provides access to information about the compartment, which meets our construction of the claim language about determining whether resources have been interfered with.

For this reason, we sustain the rejection of claims 1 and 10 under 35 U.S.C. § 102. We also sustain the rejection against claims 2–5, 11–17, 22–25, 27, and 28, which were not argued separately. Appeal Br. 13.

Anticipation Rejection of Claims 6 and 7

Dependent claim 6 recites:

[W]herein the step (d) comprises anyone or more of:
confirming that the compartment has access only to an expected section of file space;
confirming that the allocated section of file space is in an expected condition;

confirming that only an expected process or processes are allocated to the compartment; and

confirming that only an expected communication interface or communication interfaces are allocated to the compartment.

We are persuaded by Appellant’s argument that the cited sections of Proudler does not disclose the recited “expected section of file space,” and, thus, does not disclose confirming either that the compartment has access only to the expected section of file space, and that the file space is in an expected state. Appeal Br. 13–14. We construe “file space” to be different from memory, because the Specification describes “data files stored in the section of file space allocated to the compartment.” Spec. 11, ll. 23–26. File space is, thus, the location from which files are read into and out of memory, and is separate from memory.

The Examiner cites to Proudler, column 12, lines 8–21, column 18, lines 18–34, column 19, line 58 to column 20, line 11, and column 20 lines 17–29. Answer 7. Proudler, at the cited sections, however, addresses only process space and memory resources, but no storage separate from memory, such as a filesystem or disk-drive-like storage resource connected to the memory.

For this reason, we do not sustain the rejection of claim 6, nor of claim 7 that depends from claim 6.

DECISION

We REVERSE the rejections under 35 U.S.C. § 112, first and second paragraphs.

We AFFIRM the rejection of claims 1–5, 10–17, 22–25, 27, and 28 under 35 U.S.C. § 102(e).

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We REVERSE the rejection of claims 6 and 7 under 35 U.S.C.
§ 102(e).

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-IN-PART