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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* RICHARD ANTHONY LAWRENCE

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Appeal 2014-009323<sup>1</sup>  
Application 11/495,618  
Technology Center 3600

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Before HUBERT C. LORIN, BIBHU R. MOHANTY, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>2</sup> appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 2, 5–12, 14, and 16–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM but denominate the affirmed rejection as a NEW GROUND OF REJECTION.

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<sup>1</sup> Our decision references Appellant's Appeal Brief ("App. Br.," filed May 16, 2014), Reply Brief ("Reply Br.," filed Nov. 2, 2014), the Examiner's Answer ("Ans.," mailed July 3, 2014), and the Final Office Action ("Final Act.," mailed Jan. 13, 2014).

<sup>2</sup> Appellant identifies the real party in interest as Hewlett-Packard Development Company, LP (App. Br. 2).

### CLAIMED INVENTION

The claimed invention relates to a memory tag that stores a service history of the component (Spec. 1). Claims 1 and 11 are the independent claims (App. Br. 16–19). Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of maintaining a data record for an object, the method comprising:

associating a memory tag with an object, the memory tag being arranged to store data relating to the object;

encrypting data such that only a read/write device having an appropriate encryption key has access to the encrypted data and can write additional data to the memory tag;

writing the encrypted data to the memory tag with the read/write device by receiving from the read/write device data to be stored on the memory tag at an encryption engine on the memory tag and encrypting the data using the encryption engine;

in which the writing of data is done subsequent to associating the memory tag with the object and at subsequent times thereafter;

in which the encrypted data comprises an XML tag and a historical record of the object;

in which the section of data partitioned by the XML tag is retrieved by an XML parser; and

in which the encrypted data on the memory tag is protected from being subsequently amended or deleted.

App. Br. 16, Claims Appendix.

### THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Muehl et al.

US 2004/0024501 A1

Feb. 5, 2004

(“Muehl”)  
Nishio

US 2005/0273616 A1

Dec. 8, 2005

The following rejection is before us for review:

Claims 1, 2, 5–12, 14, and 16–21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Muehl and Nishio.

## ANALYSIS

### *Independent claim 1*

Regarding independent claim 1, the Examiner finds the “memory tag” in Muehl in paragraph 8, “encrypting data” in Muehl in paragraph 70, the “XML tag” in Muehl in paragraphs 9 and 12, the “encryption key” in Nishio in Figure 10, and the “encryption engine” in Nishio in paragraph 44 (Final Act. 2–4; *see also* Ans. 3–10). In particular, the Examiner finds the “encrypting data” limitation of claim 1 in Muehl which discloses “securing certain information” using a “closed format” to “prevent unauthorized users from reading and writing maintenance records” (Muehl, para. 70). According to the Examiner, “[g]iven the broadest reasonable interpretation, ‘encrypting data’ could be interpreted as securing data, protecting data, restricting data etc. which Muehl discloses” (Final Act. 8) (citing Spec. 5).

Appellant contends that the Examiner’s rejection should be withdrawn because one of ordinary skill would not reasonably interpret *encrypting data* as storing records in a closed format as described by Muehl (App. Br. 9–14; Reply Br. 4–9). According to Appellant, “the term ‘closed standard’ as being defined by the Examiner in light of the Muehl reference does not teach encryption but instead merely defines the type of proprietary software used to save data: software that can eventually be reverse engineered.” (*id.* at 11).

We find the Examiner's position inconsistent because the Examiner interprets "encrypting data" as storing data in Muehl's closed format, and "writing the encrypted data to the memory tag...comprising an XML tag" in Muehl's open standard (Final Act. 3 (citing Muehl, "XML Tag"). The Examiner, however, has not provided any rationale for combining these distinct embodiments.

Nevertheless, the Examiner finds that Nishio teaches a device for reading/writing data on a memory in the form of encrypted XML data [0041]-[0042] using encryption keys (Figure 10). Nishio further teaches writing the encrypted data to the memory by receiving from the read/write device data to be stored on the memory at an encryption engine on the memory and encrypting the data using the encryption engine ([0044]).

Final Act. 3. And we find that the XML-encryption processor 9 of Nishio (*see, e.g.*, paragraphs 42 and 44) performs the "encrypting data" limitation of claim 1. Thus, it would have been obvious to modify the memory tag disclosed in Muehl, which can store data in the XML format (*see*, paragraph 39 of Muehl) to include the XML-encryption processor 9 for the reason indicated by the Examiner, namely "in order to make the maintenance and history records more secure" (Final Act. 4) as suggested by Muehl in paragraph 70 ("prevent unauthorized users from reading and writing maintenance records").

Accordingly, we sustain the rejection of rejection of independent claim 1 as obvious over Muehl and Nishio, albeit denominated as a new ground of rejection given that our reasoning differs from that of the Examiner.

*Claims 2, 5–12, 14, and 16–21*

Appellant relies on arguments presented with respect to claim 1 in contesting the rejection of independent claim 11 (*see* App. Br. 11; *see also*, Reply Br. 9–10). Therefore, we sustain the rejection of claim 11 for the same reasons as claim 1. We also sustain the rejection of dependent claims 2, 5–10, 12, 14, and 16–21, which are not separately argued except based on their dependence on each respective independent claim (*see* App. Br. at 9–14).

DECISION

The Examiner’s decision to reject claims 1, 2, 5–12, 14, and 16–21 is affirmed but the affirmed rejection is denominated as a new grounds of rejection.

NEW GROUND

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.” 37 C.F.R. § 41.50(b) also provides that the Appellant(s), WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner . . . .
- (2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record . . . .

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED; 37 C.F.R. § 41.50(b)