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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* CHRISTOPH GERDES, STEFFEN RUSITSCHKA,  
and ALAN SOUTHALL

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Appeal 2015-000503  
Application 12/312,509  
Technology Center 2400

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Before ROBERT E. NAPPI, MICHAEL J. STRAUSS, and  
JOHN D. HAMANN, *Administrative Patent Judges*.

STRAUSS, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 26–50. Claims 1–25 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## THE INVENTION

The claims are directed to load distribution in a peer-to-peer-overlay network. Spec., Title. Claim 26, reproduced below, is representative of the claimed subject matter:

26. A method for even load distribution in a peer-to-peer overlay network including a plurality of peers, each having an associated keyword range, the method comprising:

separately and individually setting a resource threshold limit of each of the plurality of peers, the resource threshold limit being a limit on a number of data resources containing data that can be stored at the respective peer; and

storing a data resource having a keyword within a keyword range of a first peer, at the first peer, only when a number of data resources stored at the first peer has not reached the resource threshold limit of the first peer,

wherein when the data resource is not stored in the first peer, the first peer causes the data resource to be stored in a second peer, the second peer being a finger peer to the first peer in the peer-to-peer-overlay network.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Kroening	US 2004/0210627 A1	Oct. 21, 2004
Tang	US 2005/0108203 A1	May 19, 2005
Grubbs	US 2006/0041587 A1	Feb. 23, 2006
Klausberger	US 7,480,441 B2	Jan. 20, 2009

## REJECTIONS

The Examiner rejected claims 26–50 under 35 U.S.C. §103(a) as being unpatentable over Kroening, Tang, and Grubbs. Final Act. 4–14.

## ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments the Examiner has erred. We disagree with Appellants’ conclusions. We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 2–13; Ans. 2–12) and (2) the reasons set forth by the Examiner in the Examiner’s Answer (Ans. 12–16) in response to Appellants’ Appeal Brief and concur with the conclusions reached by the Examiner. We highlight the following for emphasis.

Appellants contend Kroening addresses the distribution of processing resources, not data among peers of a peer-to-peer network as recited by claim 26. App. Br. 12. Appellants argue Kroening’s local manager 22 allows a user to filter or restrict files downloaded to a grid computer for a given period of time but does not limit a number of files that can be stored on the grid computer based on an upper threshold value. *Id.* The Examiner responds by finding Kroening discloses node limits regarding memory and storage allocation with nodes accepting a job only if there are sufficient resources available. Ans. 12.

While Kroening does not explicitly state that these maximum limits include a limit on the number of files capable of being stored, [the E]xaminer maintains that it would have been known that file systems inherently have a maximum limit on the number of files capable of being stored in the file system and

also relies upon Grubbs to explain limiting the number of files that can be stored for a particular user in a peer-to-peer environment, i.e. setting a resource threshold limit (see fig. 3 #312: file number max; [0017], [0020], [0028], [0030]).

Ans. 12–13. The Examiner concludes the combination of Kroening and Grubbs teaches or suggests storing a data resource in a peer only when the number of data resources stored there has not yet reached a resource threshold limit. Ans. 13. Appellants reply, arguing Grubbs typically does not deny a user’s request to store a resource when storage limits are exceeded but, instead, issues a warning and provides a space grace period. Reply Br. 6. Appellants argue “[a]s such, Grubbs does not disclose that a data resource is stored in a peer (file system) only when the number of data resources stored there has not yet reached a resource threshold limit, but clearly provides that a user can exceed a maximum file threshold under various circumstances.” *Id.*

Appellants’ contention is not persuasive of Examiner error. Although Grubbs may accommodate exceeding storage limits on a temporary basis it nonetheless also discloses setting a maximum limit of the number of files capable of being stored (e.g., permanently) as found by the Examiner. *See* Ans. 13. Therefore, we agree with the Examiner in finding the combination of Kroening and Grubbs teaches or suggests storing a data resource at a peer only when a number of data resources stored at the peer has not reached a resource threshold limit of the peer as required by claim 26.

Appellants further contend neither Kroening nor Tang discloses distributing data among peers in a peer-to-peer system. App. Br. 12–13. Appellants argue, rather than a peer-to-peer overlay network, Kroening discloses a grid computing system requiring a central server. Addressing

Tang, Appellants contend the reference discloses a peer-to-peer *searching* system rather than one used to *store* data. App. Br. 12. The Examiner responds by finding “[w]hile Tang focuses on searching the peer nodes to find the requested data, Tang’s system requires data to already have been stored in the peer nodes in order to be able to find the requested data, i.e. data is distributed among peer nodes.” Ans. 13–14. Appellants reply, arguing “it is not sufficient to say that because data has already been stored in the nodes of Tang, that Tang discloses a method for how the data is stored and that this method corresponds to the claimed method.” Reply Br. 7.

Appellants’ contention is unpersuasive. In connection with the recitation of a peer-to-peer network, Appellants fail to explain why performing the disputed *steps* in a peer-to-peer overlay network as recited by claim 26 is distinguishable over Kroening’s *method* of distributing resources in a grid computing system and why Kroening’s method *in combination with* both Tang’s and Grubbs’s disclosures of peer-to-peer architectures would not render the disputed steps obvious. *See, e.g.,* Tang, Title (“Sample-Directed Searching in a Peer-To-Peer System”) and Grubbs ¶ 20 (“Data processing systems useful according to various embodiments of the present invention may include . . . peer-to-peer architectures . . . as will occur to those of skill in the art.”). In the absence of identifying any distinguishing features between steps performed in Kroening’s grid computing system and actions required by the disputed steps of claim 26, Appellants’ contention alleging deficiencies of the prior art fails to address the Examiner’s findings and is an attack on the references individually when the rejection is based on the combination of Kroening, Tang, and Grubbs. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). That is, the Examiner relies on

Kroening, not Tang, for disclosing storing a data resource. Final Act. 5; Ans. 13. Furthermore, Appellants' argument that Kroening and Tang distribute processing resources but not data among peers (App. Br. 12–13) fails to address the Examiner's findings in connection with the combination of Kroening and Grubbs. Kroening discloses the distribution of processing resources and Grubbs discloses basing a distribution on setting a threshold limiting the number of files (i.e., data resources containing data) that can be stored for a particular user in a peer-to-peer environment. See Final Act. 5–6; Ans. 13–14. We are also unpersuaded by Appellants' argument Tang's teaching of searching peer nodes is insufficient to teach storing data in a system. App. Br. 12–13. Instead, we agree with the Examiner in finding, "Tang's system requires data to already have been stored in the peer nodes in order to be able to find the requested data, i.e. data is distributed among peer nodes." Ans. 13–14.

Appellants' contention the prior art is deficient for failing to teach load balancing (App. Br. 13) is unpersuasive for the reasons set forth by the Examiner (Ans. 14), i.e., the argued load balancing is, at most, an unclaimed intended result of the recited steps (claim 26) and/or intended use of the recited structure (claim 50). See *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability).

Appellants further contend the rejection is improper because "the forwarding of a search to a 'neighboring peer' in Tang does not correspond to finding a finger peer to store the data resource, as the terms 'neighboring peer' [as taught by Tang] and 'finger peer' [as recited by claim 26] are not interchangeable." App. Br. 14. The Examiner responds by finding

Appellants' Specification lacks a formal definition of the disputed finger peer, merely disclosing a step of "selecting a finger peer in the peer-to-peer overlay network whose peer identification has the smallest spacing from the keyword of the data resource to be stored." Ans. 14–15 (quoting Spec. ¶ 17). Based on that disclosure, "[the E]xaminer interprets a finger peer as a peer that stores data that is the closest in keyword similarity to the data that needs to be stored. Tang's neighboring peer is exactly this because Tang teaches storing data in a peer-to-peer network by storing similar items close together." Ans. 15. Appellants reply, arguing the Examiner's interpretation is incorrect. Reply Br. 8. According to Appellants, claim 26 requires

finger peers must first be determined, and then from among the candidate finger peers is selected a finger peer that has a smallest keyword spacing. However, this initial determining of candidate fingers peers has nothing to do with keyword similarity. Only after the candidate finger peers are determined, is a finger peer with keyword similarity then selected.

*Id.* In lieu of the Examiner's interpretation, Appellants direct attention to "a non-limiting example" of determining candidate finger peers according to the equation  $Peer_{Finger-Peer} = Peer - ID + 2^K$  disclosed at paragraph 48 of the Specification. Reply Br. 9.

Appellants' contention the Examiner's interpretation is improper is not supported by sufficient evidence to be persuasive of error. It is well settled that mere attorney arguments and conclusory statements, which are unsupported by factual evidence, are entitled to little probative value.

*In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). Attorney argument is not evidence. *In re Pearson*, 494 F.2d 1399, 1405 (CCPA 1974). Nor can such argument take the place of evidence lacking in the record. *Meitzner v. Mindick*,

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549 F.2d 775, 782 (CCPA 1977). Furthermore, even if we were to accept Appellants' argument the Examiner's interpretation is incorrect, we are still left without an appropriate definition distinguishing a finger peer over any other type of peer. In particular, Appellants' proffered "non-limiting example" of how to determine candidate finger peers fails to provide a meaningful definition of what qualifies as and, accordingly, the combination teaches the disputed finger peer.

For the reasons discussed *supra*, we are unpersuaded of reversible Examiner error. Accordingly, we sustain the rejection of independent claim 26 under 35 U.S.C. §103(a) over Kroening, Tang, and Grubbs and, for the same reasons, the rejection of independent claim 50 and dependent claims 27–49 which were not argued separately with particularity.

#### DECISION

We affirm the Examiner's decision to reject claims 26–50.

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