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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS A. DEININGER, MICHAEL S. HORN, MICHAEL HOGAN, and JOHN J. MAUTZ[1]

Appeal 2015-003750
Application 11/758,846
Technology Center 2100

Before HUNG H. BUI, NABEEL U. KHAN, and AMBER L. HAGY, *Administrative Patent Judges*.

HAGY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify Siemens Energy & Automation, Inc., as the real party in interest. (App. Br. 3.)

Introduction

According to Appellants, "[t]he present invention relates to an extension architecture for systems and more particularly, to a device, method, and system for providing an event based framework for extending a system." (Spec. ¶ 1.)

Exemplary Claim

Claim 1, reproduced below with the disputed limitations italicized, is exemplary of the claimed subject matter:

1. A system comprising:

an event manager, at a computing device, adapted to direct events received from a human machine interface to a plurality of event handlers;

a plurality of external event handlers adapted to receive and process events associated with implementing a protocol translation for at least one application program interface associated with a respective component, the protocol translation supporting an extension of application behavior of the at least one application program interface, wherein each of the plurality of external event handlers is subscribed to receive a respective event or category of event from the event manager and *each of the plurality of external event handlers is adapted to perform a protocol translation* associated with the respective event or category of event to which that external event handler is subscribed; and

at least one internal event handler adapted to receive events related to an extension of the human interface supporting the protocol translation and process the events to facilitate the extension of the human machine interface.

REFERENCES

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

Forney et al.	US 2002/0067370 A1	June 6, 2002
Aupperlee et al.	US 2005/0267882 A1	Dec. 1, 2005
Dorgelo et al.	US 2007/0078555 A1	Apr. 5, 2007

REJECTIONS

(1) Claims 1, 2, 4–8, 15, 16, and 19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dorgelo. (Final Act. 2–13, 23–28.)

(2) Claims 3, 10, 12, 13, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dorgelo and Forney. (Final Act. 14–18.)

(3) Claims 9, 11, 14, 18, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dorgelo and Aupperlee. (Final Act. 18–22.)

ISSUE

The following issue is dispositive of Appellants' arguments raised on appeal:

Whether the Examiner erred in finding Dorgelo discloses all of the limitations of claim 1, including "a plurality of external event handlers adapted to receive and process events associated with implementing a protocol translation" and "each of the plurality of external event handlers is adapted to perform a protocol translation."

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments the Examiner has erred. We disagree with Appellants' conclusions and 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. 3–28) and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief. (Ans. 2–26.) We concur with the conclusions reached by the Examiner, and we highlight the following for emphasis.[2]

A. *Claims 1, 2, 4–8, 15, 16, and 19: 35 U.S.C. § 102(e)*

Appellants argue the Examiner erred in finding Dorgelo discloses the limitations of independent claim 1, including what Appellants characterize as the "protocol translation feature." (App. Br. 7.) In particular, Appellants argue the Examiner's findings are premised on equating Dorgelo's teaching of "abstract[ing] the difference[s]" with "translation" (App. Br. 7 (citing Final Act. 4–5; Dorgelo ¶ 32)), and assert their claimed invention requires "translation, i.e., changing of information," which is "more than a simple collection of data in its original form and displaying the same at a later time, which is what *Dorgelo* [discloses]." (App. Br. 10.) Appellants further argue "there is simply no translation or change of data described in *Dorgelo*, as concluded by the Examiner." (App. Br. 9.)

[2] Only those arguments made by Appellants have been considered in this decision. Arguments Appellants did not make in the briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner responds by disagreeing with Appellants' characterization, noting "the disclosure in paragraphs [0023 and 0032 - 0033] in Dorgelo does not merely disclose obtaining or removing real time or historical data from a data source," as Appellants argue, but discloses a *translation* of data from a "protocol dependent" format to a "protocol independent" unified data format:

> Dorgelo discloses utilizing the unified data access (UDA) to abstract out the differences between different interfaces conforming to different specifics. Dorgelo[] allows the HMI 402 i.e., a web page utilizing a web protocol[,] to access either historical data or real time data utilizing protocol independent UDA API. For example, the protocol dependent HMI utilizes a "protocol-independent" unified data access (UDA) API to communicate with "protocol dependent" OPC-HDA API or OPCDA API. The HMI will talk to the UDA in a protocol-independent format and the UDA will *translate or transform the protocol-independent format into specific protocol-dependent format i.e., OPC-HAD AP/ (historical) or OPC-DA AP/ (Real-time) (emphasis added).*

(Ans. 23.)

We agree the Examiner's findings are supported by Dorgelo, which describes a "unified data access system" that receives data "that is retrieved from disparate data sources." (Dorgelo ¶ 24.) Dorgelo's "unified data access component" retrieves this disparate data "by employing *different data access protocols* for each data type," and then provides, as an output, "unified data." (Dorgelo ¶ 24 (emphasis added).) As the Examiner further finds, and we agree:

> [T]he abstracting out or factoring out or removing the protocol differences into an abstraction layer or common format allows the HMI to talk to the UDA and the UDA to either OPC-HDA or OPC-DA. However, the UDA still needs to *translate or transform the independent protocol into a specific protocol that*

> *can be understood by each different APIs* namely OPC-HDA or OPC-DA. That way it is possible for the UDA to abstract[] or factor out difference in protocols.

(Ans. 24 (emphasis added).) Appellants' argument that Dorgelo fails to disclose "protocol translation" is, thus, unpersuasive.

Appellants' additional arguments are premised on reading "protocol translation" as limited to "translat[ing] commands that have no inherent meaning into commands that can later be understood." (App. Br. 9 (emphasis omitted) (citing Spec. ¶ 23).) Appellants do not, however, cite to any definition or usage appearing in the Specification that constrains the construction of the term "protocol translation" as Appellants argue. It is well settled that the terms of a claim must be given the broadest reasonable interpretation, consistent with Appellants' Specification, as they would be interpreted by one of ordinary skill in this art. *In re Morris*, 127 F.3d 1048, 1054–55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321–22 (Fed. Cir. 1989). Although the Specification at paragraph 23 discusses a process for implementing a protocol translation, the term "protocol translation" does not necessarily require the process as described by the Specification, nor do Appellants persuasively argue the particular process described in the Specification must be read into the claim. *Cf. E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003) (limitations not explicit or inherent in the language of a claim cannot be imported from the Specification); *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (noting that, although the claims are interpreted in light of the Specification, limitations from the Specification are not read into the claims).

For the foregoing reasons, we are not persuaded of error in the Examiner's 35 U.S.C. § 102(e) rejection of claim 1 over Dorgelo, and we,

therefore, sustain that rejection, along with the rejection of claims 2, 4–8, 15, 16, and 19, which are not separately argued. (*See* App. Br. 7, 10.)

B. *Claims 3, 10, 12, 13, and 17: 35 U.S.C. § 103(a) (Dorgelo and Forney)*

With regard to claims 3, 10, 12, 13, and 17, which are rejected under 35 U.S.C. § 103(a) over the combination of Dorgelo and Forney (Final Act. 14–18), Appellants argue the Examiner's findings are in error because the Examiner "ignored" the limitation "each of the plurality of external event handlers is adapted to perform a protocol translation associated with the respective event or category of event to which that external event handler is subscribed . . . ." (App. Br. 10 (emphasis omitted).) This limitation is recited in independent claim 1 and commensurately recited in independent claims 8 and 15, from which claims 3, 10, 12, 13, and 17 variously depend.

We disagree the Examiner has "ignored" this limitation. (*See* Final Act. 5 (mapping this limitation of claim 1 to Dorgelo at, e.g., ¶¶ 32, 33); *see also* Final Act. 10–12 (mapping similar respective limitations of claims 8 and 15).) Appellants clarify in the Reply that the premise of their argument is the contention, as presented for claim 1, that "the references fail to teach protocol translation all together [sic]." (Reply Br. 7.) As noted above, we do not find this argument to be persuasive. Appellants do not present arguments specific to the dependent claims.

For the foregoing reasons, we are not persuaded of error in the Examiner's 35 U.S.C. § 103 (a) rejection of dependent claims 3, 10, 12, 13, and 17 over the combination of Dorgelo and Forney, and we, therefore, sustain that rejection.

C. *Claims 9, 11, 14, 18, and 20: 35 U.S.C. § 103(a) (Dorgelo and Aupperlee)*

Appellants have not presented separate, substantive, persuasive arguments with respect to dependent claims 9, 11, 14, 18, and 20, which stand rejected under 35 U.S.C. § 103(a) over the combination of Dorgelo and Aupperlee. Appellants' arguments with respect to these claims merely assert these claims are allowable for the reasons argued with regard to independent claims 1, 8, and 15, and that "*Aupperlee* does not overcome the deficiencies of *Dorgelo* . . . ." (*See* App. Br. 11.) As noted above in connection with claim 1, we are not persuaded the Examiner's findings regarding Dorgelo are deficient. In addition, without independent arguments, Appellants' contentions fail to constitute a separate issue of patentability. *See In re Lovin*, 652 F.3d 1349, 1356 (Fed. Cir. 2011) ("We conclude that the Board has reasonably interpreted Rule 41.37 to require applicants to articulate more substantive arguments if they wish for individual claims to be treated separately."); *see* 37 C.F.R. § 41.37(c)(1)(iv).

We are not persuaded the Examiner erred in rejecting claims 9, 11, 14, 18, and 20, and we, therefore, sustain the Examiner's 35 U.S.C. § 103(a) rejection of these claims.

DECISION[3]

For the above reasons, the Examiner's rejections of claims 1–20 are 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)(1)(iv).

AFFIRMED

[3] In the event of further prosecution of this application (including any review for allowance), we suggest the Examiner review claims 1–20 for compliance with 35 U.S.C. § 101 in light of the Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), and the U.S. Patent and Trademark Office guidance on § 101 found in *2014 Interim Guidance on Patent Subject Matter Eligibility*, 79 Fed. Reg. 74,618 (Dec. 16, 2014), *July 2015 Update on Subject Matter Eligibility*, 80 Fed. Reg. 45,429 (July 30, 2015), and *May 2016 Subject Matter Eligibility Update*, 81 Fed. Reg. 27,381 (May 6, 2016), which supplement the Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*, Memorandum to the Examining Corps (June 25, 2014). We further refer, *e.g.*, to the Federal Circuit's decision in *Accenture Global Svcs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345–46 (Fed. Cir. 2013), in which the Federal Circuit affirmed summary judgment of invalidity of, *inter alia*, system claims that contained only generalized software components arranged to implement an abstract idea on a computer.