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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KING SHING KELVIN LUI and LEHO NIGUL

Appeal 2015-006450
Application 13/212,993
Technology Center 2100

Before CAROLYN D. THOMAS, JEFFREY S. SMITH, and TERRENCE W. McMILLIN, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner twice rejecting claims 1–20, all the claims pending in the application. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to system "serviceability," and more particularly to "automated service solution delivery" (Spec. ¶ 1).

Claim 1 is illustrative:

> 1. A method, comprising:
>
> hosting, at a software update server, a plurality of software update uniform resource locators (URLs) that each reference software support information related to one of a plurality of initial logical components of a deployed software package, where the plurality of initial logical components represent problem reporting domains of the deployed software package;
>
> detecting a request, initiated by a selection at a computing device of one of the software update URLs, for the software support information referenced by the selected software update URL for the one of the plurality of initial logical components of the software package; and
>
> downloading the software support information referenced by the selected software update URL for the one of the plurality of initial logical components.

Appellants appeal the following rejections:

R1. Claims 1, 2, 7–9, 13–15, and 20 stand rejected as being unpatentable over Cheng et al. (US 2006/0282834 A1, Dec. 14, 2006), Mizrahi et al. (US 2010/0235918 A1, Sept. 16, 2010), Levy (US 2007/0192352 A1, Aug. 16, 2007), Omoigui (US 2010/0070448 A1, Mar. 18, 2010), Tamir et al. (US 2002/0063735 A1, May 30, 2002), and Moshir et al. (US 2005/0257214 A1, Nov. 17, 2005).

R2. Claims 3–6, 10–12, and 16–19 stand rejected as being unpatentable over Cheng, Mizrahi, Levy, Omoigui, Tamir, Moshir, Speeter et al. (US 2006/0161895 A1, July 20, 2006), and Patterson (US 2002/0052941 A1, May 2, 2002).

Claim Groupings

Based on Appellants' arguments in the Appeal Brief, we will decide the appeal on the basis of claim 1, as set forth below. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

Rejection under § 103 over Cheng, Mizrahi, Levy, Omoigui, Tamir, and Moshir

Issue 1: Did the Examiner err in finding that the combination of Cheng, Mizrahi, Levy, Omoigui, Tamir, and Moshir teaches or suggests "initial logical components of a deployed software package, where the plurality of initial logical components represent problem reporting domains of the deployed software package," as recited in claim 1?

Appellants contend the claimed "initial logical components that represent problem reporting domains are defined as logical relationships/partitioning related to product support objectives which is different and distinct from actual software component partitioning" (App. Br. 29). In response, the Examiner finds, under the broadest reasonable interpretation of the claim, the claimed "problem reporting" is directed to "a recording of issue related to a maintained or managed software, or vendor application or versioned product under use" (Ans. 17; *see* Ans. 20); the claimed "logical components" are directed towards "maintained SW components having symbolic representations, release ID and version linkage information" (Ans. 18; *see* Ans. 20); and the claimed "domains" and "software update uniform resource locators (URLs)" are directed to locations "for downloading one selected update version based on this

managed component and their version dependency," and the site referencing the location (*Id.*).

As an initial matter, we find that Appellants' Specification notes "'logical' components represent one or more portions of one or more software components, such as portions *associated with a problem reporting domain*" and define "*logical relations between functional aspects of software based upon product support objectives*" (Spec. ¶ 14, emphases added). However, Appellants fail to explicitly define the term "problem reporting domain." Therefore, we agree with the Examiner that the broadest reasonable interpretation of the claimed *problem reporting domains* include any location where problem information related to software function or software support can be found.

Appellants further contend that Cheng's "actual binary files of software updates that may be downloaded and installed" and have no relevance to the claimed logical components (*see* App. Br. 39–40).

We agree with the Examiner's finding that Cheng's disclosure that "each component or versioned product being maintained at the server side also contains information (e.g. a URL) about a corresponding *bug fix*, a record about an issue or a failure in using the software" teaches "a repository of problem reports and software version dependency for supporting a download identification" (Ans. 18).

For example, Cheng discloses an:

> update database 709 maintains information identifying a large number of software products, information about the software updates that are available from the diverse software product vendors for these software products, information for identifying software products installed on a client computer 101, and for

> uniquely distinguishing the versions and names of installed software products.

(Cheng ¶ 51). Cheng further describes:

> For each identified software vendor, the service provider downloads the software updates to the updates database 709. A file format of the software update is determined, and an installation process specified according to the file format of the software update. Finally, the *service provider creates an entry in the update database 709 including the URL or network location of the software vendor's computer system 103 storing the software update, the file format of the software update, and a specification of the installation process*.
>
> … However provided to the update database 709, *registering an update consists of specifying the properties of the software update and the software products and their versions to which the software update is applicable…* Also, a *URL to a brief description and a full description of the software update, the problems it fixes* and features it might add, is preferably included, or the information may be directly stored.

(Cheng ¶¶ 108, 110, emphases added).

In other words, Cheng teaches URLs referencing software update descriptions for software products that are affected by updated versions due to fixes.

Appellants do not provide persuasive evidence/argument that Cheng's URLs referencing software update descriptions does not teach or suggest the URLs referencing software support information related to problem reporting. Thus, we agree with the Examiner's finding that Cheng's URLs referencing software update descriptions teach or suggest the aforementioned argued limitations, as recited in claim 1.

Appellants further contend that Cheng's "problem 'description' is not equivalent to the claimed 'problem reporting domain'" (App. Br. 30).

However, we find that Appellants' argument against Cheng separately from Mizrahi, Levy, Omoigui, Tamir, and Moshir does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Appellants generally contend Mizrahi's "disclosure of configuring a URL to record reports on 'phishing'" and "HTTP domains and phishing reports . . . do not equate to Appellant's claimed problem reporting domains" (App. Br. 34); Levy's "cited disclosure also does not appear to have any relevance to and is not equivalent to Appellant's claimed problem reporting domains, or to Appellant's claimed logical components" (*id.* at 35); Moshir's "disclosure of mere URL formatting options to access a software update . . . is different from and does not disclose Appellant's claimed initial logical components" (*Id.*); Omoigui's disclosure of "ways of forming marketing knowledge URLs, and creating domain agents that utilize the knowledge source" is "not equivalent to and does not disclose. . . Appellant's claimed initial logical components" (*id.* at 35–36); and Tamir's "tracking URLs" is "different from and does not disclose . . . Appellant's claimed initial logical components" (*id.* at 36).

Appellants further contend there is no evidence that elements of the various references may be combined to arrive at the claimed subject matter, and concludes the Examiner's reasoning for the combination would not result in the "disclosure to do anything other than deny access privileges… record phishing behaviors . . . facilitate as-needed editing or modification as

by a domain manager . . . use URLs of the user generated metadata for content" or "track user accesses to URL" (App. Br. 37).

Here, we find that Appellants make general allegations that the Mizrahi, Levy, Omoigui, Tamir, and Moshir references do not teach the *language* for *claim 1* and generally state that there is no reason to combine elements from the various references (*see* App. Br. 35–37). However, Appellants are reminded that a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguish them from the references does not constitute a persuasive response. Here, Appellants merely argue that the Mizrahi, Levy, Omoigui, Tamir, and Moshir references do not teach the claimed "initial logical components represent problem reporting domains" without providing any meaningful analysis that explains why the Examiner erred (*id.*). "A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim." (37 C.F.R. § 41.37(c)(1)(iv) (2013)). Therefore, Appellants' arguments are unpersuasive.

Here, the Examiner finds that Mizrahi teaches an URL representing an internet domain and related to reports on phishing issues and software use for dubious sites, Levy teaches URLs corresponding to domain specific metadata, Moshir teaches URLs associated with software fingerprinting and represent fully qualified domains, Omoigui teaches domains represented by URLs, and Tamir teaches URL representing domains; and that it would have been obvious to implement these uses of URL representations of and association with domains in Cheng's maintenance of software components using database management and URLs (*see* Ans. 3–4). Appellants'

arguments fail to specifically rebut these cumulative findings of *reporting domains* proffered by the Examiner. Further, Appellants fail to explain *why* the secondary references' domains do not teach the claimed *reporting domains*, or *why* the combination of references would not result in the claimed invention (*see* App. Br. 35–37).

For at least these reasons, we are unpersuaded the Examiner erred. Accordingly, the Examiner's § 103 rejection of independent claim 1, as well as commensurate claims 8 and 14, not separately argued (*see* App. Br. 27), is sustained.

Issue 2: Did the Examiner err in finding that the combination of Cheng, Mizrahi, Levy, Omoigui, Tamir, and Moshir teaches or suggests "the plurality of initial logical components logically span a subset of physical structural components that form the software package," as recited in claim 2?

Appellants contend the "rejection of record merely alleges structural components," and does not show "the plurality of initial logical components logically span a subset of physical structural components that form the software package," as recited in claim 2 (App. Br. 44).

The Examiner finds, and we agree, that Cheng's logical structures populated on computer storage and represented as records, such as URL entries, teach the logical components that are read on or span physical structural components (*see* Ans. 5, 33).

For example, Cheng teaches URLs referencing software update descriptions, the URLs being part of entries in an update database that also

include information about which versions are affected and fixes provided by the updates (*see* Cheng ¶¶ 51, 108, 110).

Appellants fail to provide persuasive evidence/arguments that Cheng's update database does not teach physical structural components spanned logically by logical components. Thus, we agree with the Examiner's finding that Cheng's entries in the update database teaches or suggests "the plurality of initial logical components logically span a subset of physical structural components that form the software package," as recited in claim 2.

For at least these reasons, we are unpersuaded the Examiner erred. Accordingly, the Examiner's § 103 rejection of dependent claim 2, as well as commensurate claims 9 and 15, not separately argued (*see* App. Br. 44), is sustained.

Issue 3: Did the Examiner err in finding that the combination of Cheng, Mizrahi, Levy, Omoigui, Tamir, and Moshir teaches or suggests the limitations, as recited in claim 7?

Here, Appellants have provided no separate arguments towards patentability for claim 7 (*see* App. Br. 46–48). Instead, Appellants essentially rely on the same arguments made for claim 1, which, as noted *supra*, we find unpersuasive (App. Br. 46; *see* App. Br. 47–48). Therefore, the Examiner's § 103 rejection of dependent claim 7, and commensurate claims 13 and 20, also not separately argued (*see* App. Br. 48), is sustained.

Rejection under § 103 over Cheng, Mizrahi, Levy, Omoigui, Tamir, Moshir, Speeter, and Patterson

Issue 4: Did the Examiner err in finding that Cheng, Mizrahi, Levy, Omoigui, Tamir, Moshir, Speeter, and Patterson teach or suggest the limitations, as recited in claim 3?

Appellants contend Cheng's "locations of a sound driver in a registry and identifying a software product are different from and do not appear to have any particular relevance to the claimed subject matter that culminates in repartitioning the initial plurality of problem reporting domains into a new plurality of problem reporting domains" (App. Br. 50).

Once again, we find Appellants' argument against Cheng separately from Mizrahi, Levy, Omoigui, Tamir, Moshir, Speeter, and Patterson does not persuasively rebut the combination made by the Examiner.

Appellants generally contend Levy's introduction of error codes into XML tags "is different from, not relevant to, and does not disclose the claimed 'repartitioning'" (App. Br. 53); Patterson's "alleged disclosure of real-time monitoring of a virtual server farm and of providing monitoring information for applications is not equivalent to and does not disclose Appellant's claimed 'repartitioning'" (App. Br. 54); Omoigui's "cited disclosure does not appear to have any relevance to and does not disclose Appellant's claimed 'repartitioning'" (App. Br. 55); Speeter "is different from and does not appear to be relevant to Appellant's claimed subject matter" and provides "overly-generalized build information and staffing information (employees), and is also different from and does not appear [to] have any relevance to Appellant's claimed subject matter" (App. Br. 55–56);

and Mizrahi does "not show any evidentiary disclosure of the claimed 'repartitioning'" (App. Br. 56–57).

However, once again, we find that Appellants make general allegations that the Mizrahi, Levy, Omoigui, Tamir, Moshir, Speeter, and Patterson references do not teach the *language* for *claim 3* (*see* App. Br. 52–57), without explaining *why*, i.e., providing some meaningful analysis that explains why the Examiner erred. Appellants are reminded that a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguish them from the references does not constitute a persuasive response. Therefore, Appellants' arguments are unpersuasive.

For at least these reasons, we are unpersuaded the Examiner erred. Accordingly, the Examiner's § 103 rejection of dependent claim 3, as well as commensurate claims 10 and 16, not separately argued (*see* App. Br. 57), is sustained.

Appellants fail to provide separate arguments towards patentability for claims 4–6, 11, 12, and 17–19 (*see* App. Br. 59–63, citing the argument regarding claim 1 ("logical components represent problem reporting domains")). Therefore, the Examiner's § 103 rejection of dependent claims 4–6, 11, 12, 17–19, are sustained for similar reasons as noted *supra*.

DECISION

We affirm the Examiner's § 103 rejections R1–R2.

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