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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAMAKRISHNAN KRISHNA MAHADEVAN and PARGAONKAR VISHWANATH

Appeal 2015-006477
Application 13/551,735
Technology Center 2400

Before JOSEPH L. DIXON, NORMAN H. BEAMER, and JOHN D. HAMANN, *Administrative Patent Judges*.

BEAMER, *Administrative Patent Judge*.

DECISION ON APPEAL

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

We affirm.

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[1] Appellants identify Hewlett-Packard Development Company, LP as the real party in interest. (App. Br. 3.)

THE INVENTION

Appellants' disclosed and claimed invention is directed to a discovery engine to perform a discovery process on a network of multiple configuration items and to populate a data structure with information about each discovered configuration item in the network. (Abstract.) Claim 1, reproduced below, is illustrative of the subject matter on appeal:

> 1. A system, comprising:
>
> a discovery engine to perform a discovery process on a network of multiple configuration items and to populate a data structure with information about each discovered configuration item in the network; and
>
> wherein the information includes a configuration parameter for each configuration item and a metric to be monitored for the configuration item.

REJECTION

The Examiner rejected claims 1–20 under 35 U.S.C. § 102(b) as being anticipated by Bearden et al. (US 2003/0086425 A1, pub. May 8, 2003). (Final Act. 3–6.)

ISSUES ON APPEAL

Appellants' arguments in the Briefs present the following issues:[2]

[2] Rather than reiterate the arguments of Appellants and the findings of the Examiner, we refer to the Appeal Brief (filed Dec. 1, 2014); the Reply Brief (filed June 19, 2015); the Final Office Action (mailed Aug. 14, 2014); and the Examiner's Answer (mailed Apr. 24, 2015) for the respective details.

Issue One: Whether the Examiner erred in finding Bearden discloses the independent claim 1 limitations "to populate a data structure with information about each discovered configuration item in the network; and wherein the information includes a configuration parameter for each configuration item and a metric to be monitored for the configuration item," and the similar limitations recited in independent claims 11 and 17. (App. Br. 7, 9.)

Issue Two: Whether the Examiner erred in finding Bearden discloses the additional limitations of claims 3, 8, 10, 12, and 18. (App. Br. 8–9.)

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments that the Examiner errs. We disagree with Appellants' arguments, and we adopt as our own (1) the pertinent findings and reasons set forth by the Examiner in the Action from which this appeal is taken (Final Act. 3–6) and (2) the corresponding findings and reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (Ans. 3–5). We concur with the applicable conclusions reached by the Examiner and emphasize the following.

Issue One

Appellants argue the Examiner errs because:

> Bearden does not at all teach or even suggest the use of a data structure that is populated with information about configuration items, in which the information includes a configuration parameter and a metric to be monitored for that configuration item. Bearden does not explain how it is known which metrics are to be monitored. Bearden certainly does not explain that the

> metrics to be monitored are stored in a data structure and associated with a corresponding metric.

(App. Br. 7.)

This argument is unpersuasive. As the Examiner finds, Bearden discloses the use of a data structure in the form of discovery information stored in a data store, which information includes configuration parameters such as network utilization, traffic levels and transmission rate, and also includes metrics to be monitored, such as network performance, buffer size, and CPU load. (Final Act. 3; Ans. 3–4; Bearden Abstract, Figs. 4–6, ¶¶ 105–116, 207–209, 222–224.)

Reasonably and broadly construed, the claimed subject matter is disclosed in Bearden. The Specification explains, "[a]ny software and/or hardware item in a network that is configurable in some way may be considered to be a configuration item." (Spec. ¶ 12.) An example of a data structure is a database, which may be stored in any non-transitory computer-readable storage device. (Spec. ¶¶ 14–15.) The stored configuration parameters "include a list of the specific parameters that are configurable for the particular configuration item," including clock speed and type of storage device. (Spec. ¶ 16.) The metrics "include any type of value or parameter that may be measured, computed, or calculated for a given configuration item," such as processor utilization and the amount of available storage. (Spec. ¶ 17.)

In reply, Appellants, asserting the Examiner made new arguments in the Answer, in turn argue that the "device discovery" module of Bearden is not the claimed "discovery engine," and that the data structure of Bearden does not store "**information about a metric <u>to be</u> monitored for each**

configuration item." (Reply Br. 3.) We are not persuaded the Examiner raised new arguments in the Answer, and therefore consider Appellants' argument in the Reply Brief waived. *See* 37 C.F.R. § 41.41(b)(2)(2014); *In re Hyatt*, 211 F.3d 1367, 1373 (Fed. Cir. 2000) (noting that an argument not first raised in the brief to the Board is waived on appeal). In any event, we are not persuaded by these new arguments, under a broad but reasonable interpretation of the claim language at issue.

Issue Two

Dependent claims 3, 12, and 18 require "for each metric for a given configuration item, the information in the data structure is to identify an analysis engine for which the metric is to be used." Claim 8 requires "a collection engine to access the data structure to determine for which metrics to collect performance data for each configuration item." Claim 10 requires "the data structure identifies which of a plurality of analysis engines are applicable to a particular metric, and each analysis engine is to access the data structure to determine the metrics that are applicable to that analysis engine for each configuration item."

Appellants' arguments that the Examiner errs in finding Bearden discloses the subject matter of these claims are conclusory and therefore are unpersuasive. (App. Br. 8–9.) *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997). We are not persuaded the Examiners' findings with respect to these claims are in error. (Final Act. 4–5; Ans. 4–5.)

CONCLUSIONS

For the reasons stated above, we sustain the anticipation rejections of claims 1, 3, 8, 10–12, 17, and 18. We also sustain the anticipation rejections of claims 2, 4–7, 9, 13–16, 19, and 20, which rejections are not argued separately with particularity. (App. Br. 8–9.)

DECISION

We affirm the Examiner's rejection of claims 1–20.

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