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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
13/537,764 06/29/2012 Gili NACHUM IL920120024US1_8150-0289 9921

52021 7590 11/30/2016
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EXAMINER

PATEL, HIREN P

ART UNIT PAPER NUMBER

2196

NOTIFICATION DATE DELIVERY MODE

11/30/2016

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GILI NACHUM, VLADIMIR GAMALEY, and
GIL PERZY

Appeal 2016-001936
Application 13/537,764
Technology Center 2100

Before ERIC S. FRAHM, LINZY T. McCARTNEY, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

MCCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 1–6, 8, 9, and 19–24. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

The present patent application concerns “managing the execution of a computer software application in general.” Spec. ¶ 2. Claim 1 illustrates the claimed subject matter:

1. A system for managing the execution of a computer software application, the system comprising:

a hardware processor including:

an execution manager configured to duplicate a primary instance of a computer software application during its execution in a primary execution context, thereby creating a plurality of duplicate instances of the computer software application in a corresponding plurality of duplicate execution contexts; and

a selector configured to effect a selection of a different candidate subset of a plurality of predefined elements for each of the duplicate instances, wherein one of the plurality of duplicate instances is configured to self-terminate upon the one instance determining that any other of the plurality of duplicate instances successfully completes a predefined task.

REJECTIONS

Claims 1–6, 8, 9, and 19–24 stand provisionally rejected on the ground of non-statutory obviousness-type double patenting as unpatentable over claims 10–15, 17, and 18 of co-pending Application No. 13/910,464.¹

Claims 1–4, 6, 8, 19–22, and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Iorio (US 2013/0111501 A1; May 2, 2013),

¹ Appellants have not appealed this rejection. App. Br. 3 n.1 (“The claims are subject to a *provisional* obviousness-type double patenting rejection based upon related Patent Application No. 13/910,464. This rejection is not the subject of the present appeal.”). We therefore summarily affirm this rejection.

Kornerup et al. (US 2007 /0044073 A1; Feb. 22, 2007), and Ben-Shachar et al. (US 6,208,996 B1; March 27, 2001).

Claims 5, 9, and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Iorio, Kornerup, Ben-Shachar, and Bowman et al. (US 2008/0163210 A1; July 3, 2008).

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellants' arguments, and we disagree with Appellants that the Examiner erred. To the extent consistent with the analysis below, we adopt the Examiner's findings, reasoning, and conclusions set forth in the Final Rejection, Advisory Action, and Answer. Appellants have waived arguments Appellants failed to timely raise or properly develop. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2); *In re Lovin*, 652 F.3d 1349 (Fed. Cir. 2011).

Appellants argue the Examiner's combination of Iorio, Kornerup, and Ben-Shachar "would impermissibly change [the] principle of operation of Iorio." App. Br. 9. Appellants assert "Iorio is directed to intentionally opening up multiple instances of a computer program," but "the teachings within Ben-Shachar relied upon by the Examiner are to 'substantially alleviate[] any problems associated with running multiple instances of the same application at the same time.'" *Id.* According to Appellants, "if one skilled in the art were to modify Iorio in view Kornerup and Ben-Shachar, the resultant combination would involve terminating all of the instances of the computer program save one, which is contrary to the principle of operation of Iorio." *Id.* Appellants contend the Examiner erroneously concluded otherwise because the Examiner improperly "focuse[d] solely on

an isolated teaching without considering what Ben-Shachar, as a whole would have suggested to one skilled in the art.” Reply Br. 3.

We find Appellants’ arguments unpersuasive. The Examiner found—and Appellants do not persuasively dispute—that although Iorio discloses creating multiple processes, Iorio also discloses terminating all but one of the processes when certain conditions are satisfied. *See* Final Act. 15; Ans. 5–6; Iorio ¶¶ 24, 30, 37–41; Fig. 5. Accordingly, even if Appellants were correct that the Examiner’s combination of the cited art “would involve terminating all of the instances of the computer program save one,” App. Br. 9, this result is consistent with Iorio’s principle of operation, not contrary to it.

Appellants also contend Kornerup fails to teach or suggest “one of the plurality of duplicate instances is configured to self-terminate upon the one instance determining that any other of the plurality of duplicate instances successfully completes a predefined task” as recited in claim 1. *See* App. Br. 10–11. Appellants assert the Examiner relied on Kornerup alone for this limitation and argue the program described in the cited portions of Kornerup “is not configured to terminate itself or determine the completion of tasks of others of the plurality of duplicate instances.” App. Br. 10–11; Reply Br. 7.

We find Appellants’ arguments unpersuasive. The Examiner found Ben-Shachar teaches application instances configured to self-terminate and Iorio and Kornerup *together* suggest application instances that terminate upon determining that another application instance has successfully completed a predetermined task. *See* Final Act. 13–17; Ans. 8. Contrary to Appellants’ arguments, the Examiner concluded a *combination* of these teachings would have made the claimed subject matter obvious to one of

ordinary skill in the art. *See* Final Act. 13–17; Ans. 8. Appellants’ attacks against Kornerup individually have not persuaded us the Examiner erred. “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

DECISION

For the above reasons, we affirm the Examiner’s (1) provisional rejection of claims 1–6, 8, 9, and 19–24 on the ground of non-statutory obviousness-type double patenting and (2) obviousness rejections of claims 1–6, 8, 9, and 19–24 under 35 U.S.C. § 103.

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