UNITED STATES PATENT AND TRADEMARK OFFICE

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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 ANA C. BIAZETTI, THOMAS LUMPP, and
JUERGEN SCHNEIDER

_____

Appeal 2017-001056
Application 12/347,108
Technology Center 2100

_____

Before JEAN R. HOMERE, JEFFREY S. SMITH, and
JEFFREY A. STEPHENS, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

INTRODUCTION

Appellants[1] request rehearing under 37 C.F.R. § 41.52 of our Decision
of October 2, 2017, wherein we affirmed the Examiner's decision rejecting
claims 1–12. We have reconsidered our original Decision, in light of
Appellants' comments in the Request, and have found no errors therein.
We, therefore, decline to change the Decision.

_____

[1] International Business Machines Corporation is identified as the real party
in interest. App. Br. 2.

DISCUSSION

Appellants contend:

> [H]aving correctly determined that a class is a form of template, the Board overlooks the more important argument emphasized by Appellants at pages 6 through 9 of the Appeal Brief and again at pages 3 and 4 of the Reply Brief that O'Brien merely teaches a availability management service (AMS) that "maintains a database that tracks system resources and dependencies and coordinates availability 'roles' for assignment to different ones of the resources".

Req. Reh'g 4. Appellants argue O'Brien does not teach that its "maintained database is stored as a 'managed object class,'" and, therefore, "it is not possible for O'Brien to account for the claimed 'storing the best practices template with mapped components and dependencies as a high availability policy for the selected application.'" *Id.* at 5. In sum, Appellants argue, "the Board has not specifically addressed the argument of Appellants at pages 6 through 9 of the Appeal Brief that no storage of a template has occurred with mapped components and dependencies as a high availability policy for a selected application as claimed." *Id.*

Appellants' arguments do not persuade us that any argument presented in Appellants' Appeal Brief or Reply Brief was misapprehended or overlooked. Appellants' Appeal Brief quotes from and describes teachings in O'Brien, and then states:

> [I]t is difficult to see where in O'Brien, a mapping exists to specific teachings of O'Brien to the claimed "storing the best practices template with mapped components and dependencies as a high availability policy for the selected application". At best, a mapping exists of storing a database with mapped components and dependences as an availability policy for a computing system.

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App. Br. 6–8. Appellants also state that "[t]he system database is hardly a "template" with mapped components and dependencies that is stored as a high availability policy for an application." *Id.* at 9. These arguments constitute little more than a recitation of the claim language with certain terms emphasized. Our Decision explains why the "template" aspect of the claim is met by the Examiner's findings as to O'Brien's "managed object class," and why O'Brien's "managed object instance" may be considered the claimed "selected application." Decision 3. Our Decision specifically cites the Examiner's explanation presented at pages 18–19 of the Answer, but the Examiner's findings had not changed from the Final Action. *See* Final Act. 3–4. The Appeal Brief lacks any further explanation of why the Examiner's findings as to claim limitations taught by O'Brien were alleged to be insufficient or incorrect.

The Request for Rehearing argues that "at page 4 of the Reply Brief" Appellants raised the same important issue argued at pages 6–9 of the Appeal Brief, and that the Board did not consider these arguments even though "pages 3 and 4 of the Reply Brief merely block quote the arguments already present in the Appeal Brief at pages 6 through 9." Req. Reh'g 5.

As noted in our Decision, new arguments were presented at *page 5* of Appellants' Reply Brief without a showing of good cause. Decision 4. These arguments included that O'Brien's managed object class is not related to best practices and that the managed object class is not stored as a high availability policy. *Id.* Contrary to Appellants' argument in the Request for Rehearing, the arguments from the Appeal Brief quoted at pages 3–4 of the Reply Brief were considered and addressed in our Decision, as discussed above. In the Request for Rehearing, Appellants do not contend that the new

arguments presented at page 5 of the Reply Brief were presented in the

Appeal Brief. We considered these arguments to be new because, although

the claim terms at issue were recited in the skeletal argument presented in

the Appeal Brief, the emphasis on entirely different terms within these

limitations in the Reply Brief presented new issues not reasonably raised by

Appellants' arguments in the Appeal Brief and, therefore, not addressed by

the Examiner.

Similarly, Appellants' contention in the Request for Rehearing that

O'Brien is deficient because it does not teach that its maintained database is

stored as a managed object class is an argument that could have been

presented in the Appeal Brief, but was not. Req. Reh'g 5. We note,

however, that the Examiner does not find O'Brien's model (stored in a

database) to be the template with parameterized entries. Ans. 19

("Therefore, it is not the database that is the template; rather, the template

aspects that the Examiner relies upon stem from the managed object class.").

The Examiner explains the relationship between O'Brien's managed object

classes and the database:

> Without the template aspects of the managed object classes, their managed objects' resource states, behaviors, and dependencies could not be modeled in the availability manager (O'Brien: col. 14, lines 13-17 and O'Brien: col. 24, lines 28-34).
>
> Subsequently, the managed object class templates are used to create managed object instances, and the particular managed object instance is therefore 'mapped' in a model in the availability manager according to a hierarchy (e.g. O'Brien: Fig. 7).

Ans. 19. Thus, the objects in O'Brien's model are formed from templates

(classes), and general attributes of the class are populated with specific

entries particular to that instance, which are used to provide high availability of services related to the resources represented by those objects. *See* O'Brien Abstract, col. 13, ll. 7–26, col. 17, ll. 23–31.

For the foregoing reasons, we decline to modify our Decision.

CONCLUSION

Based on the foregoing, we have granted Appellants' Request for Rehearing to the extent we have considered the arguments made in the Request and reviewed our Decision, but we deny Appellants' Request for Rehearing in that we decline to make any change in the Decision.

ORDER

The Request for Rehearing is denied.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

REHEARING DENIED