UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/101,518	04/11/2008	Matthew J. Bangel	END920060313US1	8386

45092 7590 03/01/2018

HOFFMAN WARNICK LLC
540 Broadway
4th Floor
ALBANY, NY 12207

EXAMINER
HU, JENSEN

ART UNIT	PAPER NUMBER
2169	

NOTIFICATION DATE	DELIVERY MODE
03/01/2018	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHEW J. BANGEL, JAMES A. MARTIN JR. and DOUGLAS G. MURRAY

Appeal 2017-006258
Application 12/101,518
Technology Center 2100

Before CARL W. WHITEHEAD JR., JEFFREY S. SMITH and CATHERINE SHIANG, *Administrative Patent Judges*.

WHITEHEAD JR., *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants[1] are appealing the Final Rejection of claims 1–22 under 35 U.S.C. § 134(a). Appeal Brief 2. We have jurisdiction under 35 U.S.C. § 6(b) (2012).

We affirm.

---

[1] International Business Machines Corporation is the real party in interest. Appeal Brief 1.

Introduction

The invention is directed to managing database agents by producing a predetermined number of replica databases for running agents wherein agents are program snippets employed to perform specific tasks on a database. Specification paragraphs 2–5.

Illustrative Claim

1. A system for managing database agents, comprising:

at least one computer device, having:

a database replicator for producing a number of replica databases based on an original database, all of the original database and the replica databases being configured to have agents run on replicated data thereof;

an agent scheduling document that includes:

an identifier for an agent to be scheduled;

a primary database upon which the agent is to be run, the primary database being at least one of the original database or one of the replica databases; and

a prerequisite that must be satisfied before the agent is run; and

a scheduling server including a parser for parsing the agent scheduling document, the parser for the agent scheduling document:

determining, based on the prerequisite, whether the agent specified by the identifier is ready to be run and determining whether the primary database of the agent scheduling document is operational, and:

in a case that a determination is made that the agent is ready to be run, forwarding the agent for running on the primary database,

> wherein the scheduling server allows the agent to run on the replicated data on one of the replica databases while another agent is simultaneously performing a task on a different one of the replica databases.

Rejections on Appeal

Claims 1–5, 7–12, 14–18 and 20–22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bangel (US Patent Application Publication 2003/0212715 A1; published November 13, 2003), Highleyman (US Patent Application Publication 2003/0172106 A1; published September 11, 2003) and Derk (US Patent Application Publication 2006/0129615 A1; published June 15, 2006). Answer 2–11.

Claims 6, 13 and 19 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bangel, Highleyman and Eichstaedt (US Patent Application Publication 2008/0098014 A1; published April 24, 2008). Answer 11.

ANALYSIS

Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed August 4, 2016), the Reply Brief (filed January 30, 2017), the Final Action (mailed March 17, 2016) and the Answer (mailed November 28, 2016) for the respective details.

Appellants contend that Derk fails to overcome Bangel's deficiency of failing to disclose "determining whether the primary database of the agent scheduling document is operational" and Highleyman fails to overcome Bangel's deficiency of failing to disclose "wherein the scheduling server allows the agent to run on the replicated data on one of the replica databases

while another agent is simultaneously performing a task on a different one of the replica databases." Appeal Brief 8.

We observe that the conditional limitation recited in claim 1 only requires forwarding the agent to run on the primary database when it is determined that the primary database is operational. If the primary database is not operational, the agent is not sent to the primary database and scheduling server is consequently not engaged. However, because claim 1 is a system claim, in order to establish a prima facie case of obviousness, it is still required that the prior art discloses structure to perform the tasks should the condition occur. *See Ex parte Schulhauser*, No. 2013-007847, 2016 WL 6277792, at *7 (PTAB Apr. 28, 2016) (precedential) (holding "[t]he broadest reasonable interpretation of a system claim having structure that performs a function, which only needs to occur if a condition precedent is met, still requires structure for performing the function should the condition occur."). We agree with the Examiner's findings that the Bangel/Derk combination discloses the structure needed to perform the conditional tasks should the condition be met. *See* Final Action 2-4.

Appellants argue that there is not a parser or similar feature in Derk performing "allegedly related tasks." Appeal Brief 9. Appellants further argue "Derk states that the backup server performs all of the tasks (Derk, Para. 19), thus teaching away from Appellants' claimed invention." Appeal Brief 9. We do not find Appellants' arguments persuasive because Appellants fail to explain why Derk teaches away from the invention. "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction

divergent from the path that was taken by the applicant." *In re Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006) (citations and internal quotation marks omitted).

The Examiner finds Bangel determines whether the identified agent is ready to run and relies upon Derk's paragraph 18 and Figure 4 (described in paragraph 18) to support the finding that Derk determines if the agent scheduling document is operational. Final Action 4–5. Appellants do not argue the validity of the Examiner's findings instead choosing to direct arguments at paragraph 19 of Derk. Appeal Brief 9. We find the Examiner established a prima facie case of obviousness. If the Examiner's burden to establish a prima facie case of unpatentability is met, the burden then shifts to the Appellants to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Here, Appellants do not provide persuasive evidence or argument to overcome the Examiner's prima facie case, in particular, the Examiner's findings regarding paragraph 18 and Figure 4 of Derk. Accordingly, we sustain the Examiner's obviousness rejection of independent claim 1, as well as, claims 2–22 not argued separately. *See* Appeal Brief 8, 10.

DECISION

The Examiner's obviousness rejections of claims 1–22 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). *See* 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED