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.
14/160,313	01/21/2014	Daniel C. BIRKESTRAND	ROC920130170US1	8302

46797 7590 07/16/2018

Patterson & Sheridan, LLP
24 Greenway Plaza, Suite 1600
Houston, TX 77046

EXAMINER
RAZA, MUHAMMAD A

ART UNIT	PAPER NUMBER
2449	

NOTIFICATION DATE	DELIVERY MODE
07/16/2018	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):

Pair_eOfficeAction@pattersonsheridan.com
IBM@PATTERSONSHERIDAN.COM
rociplaw@us.ibm.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DANIEL C. BIRKESTRAND,
STEPHANIE L. JENSEN, and PAUL F. OLSEN[1]

Appeal 2018-000937
Application 14/160,313[2]
Technology Center 2400

Before ALLEN R. MacDONALD, JEREMY J. CURCURI, and NABEEL U. KHAN, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

---

[1] Appellants indicate the real party in interest is International Business Machines Corporation, Armonk, New York. App. Br. 3.

[2] This application was filed January 21, 2014. Related Appeal 2018-000931 (U.S. Patent Application No. 14/169,249) is the child application of this Application on appeal. App. Br. 4. This appeal and its related appeal are directed to the same underlying invention and issues. These appeals are decided concurrently.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Application 14/169,249 was filed January 31, 2014 as a continuation of Application 14/160,313 filed January 21, 2014. 35 U.S.C. § 112 (AIA) is applicable to any patent application filed on or after September 16, 2012.

Representative Claim

Representative claim 1 under appeal reads as follows (emphasis, formatting, and bracketed material added):

> 1. A control arrangement for managing computing resources from a pool of a plurality of networked computing systems for use by one or more consumers, the control arrangement comprising:
>
> at least one hardware management controller coupled with the plurality of computing systems and comprising a processor; and
>
> a memory containing a program, which when executed by the processor, performs an operation, comprising:
>
> [A.] determining, using the processor, that resource usage of a consumer exceeds an initial amount of computing resources allocated to the consumer from one or more first computing systems from the pool, the initial amount of computing resources associated with a first cost scheme of a predetermined plurality of cost schemes;
>
> [B.] after an elapse of a predetermined period of time, and upon determining that the resource usage of the consumer continues to exceed the initial amount of allocated computing resources by an excess amount of resource usage:

[i.] selecting, based on a predetermined billing policy and the excess amount of resource usage, a second cost scheme of the plurality of cost schemes to be applied to the excess amount of resource usage;

[ii.] ***identifying***, using the processor, one or more second ***computing systems*** from the pool having capacity ***available under the second cost scheme*** to host at least a portion of the excess amount of resource usage, and

[iii.] allocating an additional amount of computing resources from at least one selected second computing system to meet the excess amount of resource usage;

[C.] transferring at least the excess amount of resource usage from the one or more first computing systems to the at least one selected second computing system, wherein transferring at least the excess amount of resource usage comprises ***transmitting instructions from the at least one hardware management controller to*** one of

[i.] (1) the one or more first computing systems and the at least one selected second computing system, and

[ii.] (2) one or more hypervisors associated with the one or more first computing systems and the at least one selected second computing system; and

[D.] determining, based on an associated cost of the additional amount of computing resources, whether to deallocate the additional amount of computing resources to the pool, ***wherein the associated cost is determined based on the second cost scheme applied to the excess amount of resource usage***.

References

Lappas et al.	US 2009/0182605 A1	Jul. 16, 2009
Maclinovsky et al.	US 2011/0078705 A1	Mar. 31, 2011
Jackson	US 2012/0179824 A1	Jul. 12, 2012
Kirchhofer	US 2013/0014107 A1	Jan. 10, 2013

Rejections

A.

1. The Examiner rejected claims 1–20 under 35 U.S.C. § 112(a), as failing to comply with the written description requirement. Final Act. 4–6.

We select claim 1 as representative.[3] Appellants argue separate patentability for claim 6, but do not argue such for claims 2–5 and 7–20. Except for our ultimate decision, we do not discuss this § 112(a) rejection of claims 2–5 and 7–20 further herein.

2. The Examiner rejected claims 1–20 under 35 U.S.C. § 112(a), as failing to comply with the written description requirement. Final Act. 6–10.

Appellants appeal and argue this second rejection under 35 U.S.C. § 112(a). App. Br. 17–18. However, because we do not find in the Answer that the Examiner has addressed Appellants' arguments, and we are unable to determine a basis for this second rejection that does not overlap with the first rejection under 35 U.S.C. § 112(a), we summarily reverse this second rejection under 35 U.S.C. § 112(a).

[3] *See* 37 C.F.R. § 41.37(c)(1)(iv).

C.

The Examiner rejected claims 1–20 under 35 U.S.C. § 112(b), as being indefinite. Final Act. 10–11.

We select claim 1 as representative. Appellants do not argue separate patentability for claims 2–20. Except for our ultimate decision, we do not discuss the § 112(b) rejection of claims 2–20 further herein.

D.

The Examiner rejected claims 1–20 under 35 U.S.C. § 101 "because the claimed invention is directed to a judicial exception (i.e., a law of nature, a natural phenomenon, or an abstract idea) without significantly more." Final Act. 11–12. That is, because the claimed invention is directed to patent ineligible subject matter.

We select claim 1 as representative. Appellants do not argue separate patentability for claims 2–20. Except for our ultimate decision, we do not discuss the § 101 rejection of claims 2–20 further herein.

E.

The Examiner rejected claims 1–16 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kirchhofer, Lappas, and Jackson.

We select claim 1 as representative. Appellants argue separate patentability for claims 4–6 and 11–13. However, our decision as to the § 103 rejection of claim 1 is determinative for all claims under this § 103 rejection. Therefore, except for our ultimate decision, we do not discuss the § 103 rejection of claims 2–16 further herein.

F.

The Examiner rejected claims 17–20 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Kirchhofer, Lappas, Jackson, and Maclinovsky.

Appellants argue separate patentability for claims 17 and 19. However, our decision as to the § 103 rejection of claim 1 is determinative for all claims under this § 103 rejection. Therefore, except for our ultimate decision, we do not discuss the § 103 rejection of claims 17–20 further herein.

Issues on Appeal

Did the Examiner err in rejecting representative independent claim 1 and dependent claim 6 under 35 U.S.C. § 112(a) as failing to comply with the written description requirement?

Did the Examiner err in rejecting representative independent claim 1 under 35 U.S.C. § 112(b) as being indefinite?

Did the Examiner err in rejecting representative independent claim 1 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter?

Did the Examiner err in rejecting representative independent claim 1 under 35 U.S.C. § 103 as being obvious?

ANALYSIS

The Examiner rejects the claims herein on the same basis as the rejection of the claims in related divisional Application 14/169,249 on appeal as 2018-000931. The arguments Appellants present in this Appeal

are the same arguments presented in Appeal 2018-000931. We reach the same results herein for the reasons we set forth in our decision directed to Appeal 2018-000931. We incorporate that decision here in full.

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1–20 as being unpatentable under 35 U.S.C. § 112(a), as failing to comply with the written description requirement.

(2) Appellants have established that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 112(b), as being indefinite.

(3) Appellants have established that the Examiner erred in rejecting claims 1–20 under 35 U.S.C. § 101, as being directed to non-statutory subject matter.

(4) Appellants have established that the Examiner erred in rejecting claims 1–20 as being unpatentable under 35 U.S.C. § 103(a).

(5) Claims 1–20 are not patentable.

DECISION

The Examiner's rejection of claims 1–20 as being unpatentable under 35 U.S.C. § 112(a) is **affirmed**.

The Examiner's rejection of claims 1–20 as being unpatentable under 35 U.S.C. § 112(b) is **reversed**.

The Examiner's rejection of claims 1–201 under 35 U.S.C. § 101, as being directed to non-statutory subject matter, is **reversed**.

The Examiner's rejection of claims 1–20 as being unpatentable under 35 U.S.C. § 103(a) is **reversed**.

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is **affirmed**. *See* 37 C.F.R. § 41.50(a)(1).

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