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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SOLOMAN J. BARGHOUTHI, DANA L. PRICE, STEPHEN KENNA, and CHARLES LEVAY

Appeal 2018-004706
Application 14/708,448
Technology Center 2100

Before JAMES R. HUGHES, BETH Z. SHAW, and SCOTT B. HOWARD *Administrative Patent Judges*.

SHAW, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

Appellants[2] seek our review under 35 U.S.C. § 134(a) of the Examiner's final rejection of claims 1–5, which represent all the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Throughout this Decision we have considered the Appeal Brief filed November 20, 2017 ("App. Br."), Reply Brief filed March 30, 2018 ("Reply Br."), the Specification filed May 11, 2014 ("Spec."), the Examiner's Answer mailed January 30, 2018 ("Ans."), and the Final Rejection mailed May 5, 2017 ("Final Act.").

[2] Appellants identify International Business Machine Corporation as the real party in interest (App. Br. 2).

RELATED APPEALS

This appeal is related to Appeal No. 2018-004665 for related Application No. 14/476,696.

INVENTION

Appellants' invention is directed to database connection management for multi-tenant environments. Spec. ¶ 2.

Claim 1 is illustrative of the claims at issue and is reproduced below:

> 1. A method for service level agreement (SLA) cognizant database connection management for multi-tenant environments, the method comprising:
>
> receiving different requests for data in a database from different application instances executing in memory of a host computing system supporting a multitenant computing environment;
>
> determining a priority for each of the requests;
>
> selecting for each request a particular portion of a database connection pool of a multiplicity of database connections to the database, the particular portion being associated with a corresponding priority of a corresponding one of each of the requests, each portion of the database connection pool comprising one or more of the database connections; and,
>
> processing each of the requests through a respectively selected one of the portions of the database connection pool.

REJECTION

The Examiner provisionally rejected claims 1–5 on the ground of nonstatutory double patenting as unpatentable over claims 6–15 of copending Application No. 14/476,696. Final Act. 6. This rejection was withdrawn in the Answer because Appellants previously filed a Terminal Disclaimer. Ans. 3.

The Examiner rejected claims 1–5 under 35 U.S.C. § 101 as allegedly directed to patent-ineligible subject matter. Final Act. 7–8.

The Examiner rejected claims 1–3 under 35 U.S.C. § 102 as anticipated by Westerman (US 2015/0127611 A1). Final Act. 9–10.

The Examiner rejected claims 4 and 5 under 35 U.S.C. § 103 as being unpatenable over Westerman, Saha (US 7,337,226 B2), and Bhogi (US 8,145,759 B2). Final Act. 10–12.

CONTENTIONS AND ANALYSIS

Section 101

Appellants argue the Examiner erred in rejecting claims 1–5 under 35 U.S.C. § 101. App. Br. 3–9; Reply Br. 2–7. The Examiner determines the claims are directed to an abstract idea of "comparing new and stored information and using rules to identify options." Final Act. 7. The Examiner determines that the claims do not include additional elements sufficient to amount to significantly more than the judicial exception. *Id.*

Appellants argue that the claims are not directed to an abstract idea. App. Br. 3–9. Instead, Appellants argue, the claims are directed to an improvement to the functionality of a computer. *Id.* We agree with Appellants.

We determine that Appellants' claims are patent eligible as directed to a specific improvement in a technological process (i.e., different requests for data in the database are received from different application instances in order to determine a priority for each of the requests). Our reviewing court has approved claims of this general character. *See Finjan, Inc. v. Blue Coat Sys., Inc.,* 879 F.3d 1299, 1305-06 (Fed. Cir. 2018). In *Finjan*, the court held claims patent eligible because they recited specific steps for generating a security profile that identifies suspicious code and linking it to a downloadable that accomplished the desired result. Similarly, the claims

here recite specific steps for receiving different requests for data in a database from different application instances to determine a priority for each of the requests. Accordingly, the claims at issue are not directed to an abstract idea. Because the claims are not directed to an abstract idea under step one of the *Alice* analysis, we need not proceed to step two of that analysis. The claims here are eligible because they are directed to an improvement in the functioning of a computer by selecting different requests for data in the database received from different application instances to determine a priority for each of the requests.

For these reasons, we do not sustain the rejection of claims 1–5 under 35 U.S.C. § 101.

Anticipation

Appellants argues Westerman is silent as to a "database connection pool" and silent "on the notion the pool that includes one or more database connections such that a particular request is chosen to utilize a particular one of the connections in the pool based upon a common priority." App. Br. 12. In the Reply Brief, Appellants acknowledge that Westerman *does* disclose a "connection pool," but argue this is optionally included in an SLA. Reply Br. 9. Appellants argue the priority levels of connection pools in Westerman are not sufficient to account for "selecting of a particular portion of a database connection pool." *Id.* at 9–10.

We are not persuaded by Appellants' arguments. Westerman discloses, as the Examiner finds, "multiple priority levels of *connection pools* per application." Ans. 10 (citing Westerman ¶ 42). Additionally, Westerman discloses that connections "may be prioritized for purposes of

rate limitations, perhaps based on the associated user, the type of *operations(s) requested*, and/or other criteria." *Id.* at 10–11 (citing Westerman ¶ 68) (emphasis added). We agree with the Examiner's findings.

We also agree with the Examiner that Westerman teaches in paragraph 68 that the particular *portion* of each the requests or type of operation "requested" "may be prioritized." *Id.* Under the broadest reasonable construction of the claim, Westerman's disclosure is sufficient to teach "select for each of the requests a particular one of the portions of the database connection pool associated with a corresponding priority of a corresponding one of each of the requests," because prioritizing the connections for certain requests for a type of operation associates the requests with a corresponding priority of each of the requests.

Appellants argue that the factual determination of anticipation requires an identical disclosure of each element of a claimed invention in a single reference. Reply Br. 10. Yet, anticipation "is not an 'ipsissimis verbis' test." *In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990) (citing *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 & n.11 (Fed. Cir. 1986)). "An anticipatory reference, . . . need not duplicate word for word what is in the claims." *Standard Havens Prods. v. Gencor Indus.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991). As discussed above, the Examiner sufficiently explains how Westerman anticipates the claims.

Therefore, for these reasons, and for the additional reasons stated in the Final Rejection and Answer, we sustain the 35 U.S.C. § 102 rejection of claim 1. We sustain the 35 U.S.C. § 102 rejection of claims 2 and 3, which are not separately argued with particularity. We also sustain the rejections

of claims 4 and 5 under 35 U.S.C. § 103(a), because Appellants present no new or additional arguments for those claims.

DECISION

We reverse the decision of the Examiner to reject claims 1–5 under 35 U.S.C. § 101.

We affirm the decision of the Examiner to reject claims 1–3 under 35 U.S.C. § 102.

We affirm the decision of the Examiner to reject claims 4 and 5 under 35 U.S.C. § 103.

Because we affirm at least one ground of rejection with respect to each claim on appeal, the Examiner's decision rejecting claims 1–5 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