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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CREE ADAMS EDWARDS, LARSH MAUR JOHNSON,
CHRISTOPHER SLABOSZEWICS, NARENDA PRASAD,
JOHN OLSON WAMBAUGH, and
THOMAS DAVID LOFGREN

Appeal 2018-005268
Application 11/846,501
Technology Center 3600

Before CAROLYN D. THOMAS, AMBER L. HAGY, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3, 4, 7, 15, 16, 26, and 28–32. Claims 2, 5, 6, 8–14, 17–25, and 27 are canceled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Siemens Industry, Inc. Appeal Br. 2.

The present invention relates generally to publishing/retrieving messages to a messaging bus simultaneously via middleware. *See Spec.*, Abstract.

Claim 1 is illustrative:

1. A meter data management computer system for managing meter data, the system configured to communicate with a meter data collection system that collects meter data from a plurality of meters recording utility usage, and with an application software system, the meter data management computer system comprising:
 - a computer processor;
 - a storage device;
 - a plurality of interfaces stored in the storage device, the plurality of interfaces including a first interface configured to interface the meter data collection system and a second interface configured to interface the application software system;
 - a database residing in the storage device and configured to store the meter data or related information, the related information including information derived from the meter data;
 - a first application stored in the storage device and configured to insert the meter data or the related information into the database;
 - a list of identifiers or flags stored in the storage device and shared by the first application and the plurality of interfaces; and
 - a message bus coupled to the computer processor and to the storage device, the message bus configured via middleware to transfer the meter data or the related information via one or more messages published thereon between the meter data collection system, the first application, the database, the plurality of interfaces, and the application software system wherein:
 - the plurality of interfaces and the first application are each configured to publish on the message bus the one or more messages each with one of the identifiers or flags;
 - the plurality of interfaces and the first application are each configured to retrieve from the message bus only the one or more messages of interest based on the identifiers or flags in the one or more messages; and

the plurality of interfaces and the first application are each configured to publish the one or more messages each with one of the identifiers or flags to the message bus simultaneously via the middleware such that none of the plurality of interfaces or the first application has to wait until publication of the one or more messages by another of the plurality of interfaces or the first application has completed.

Appellant appeals the following rejections:

R1. Claims 1, 3, 4, 7, 15, 16, 26, and 28–32 are rejected under 35 U.S.C. § 112(a) or 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement. Final Act. 4–5.

R2. Claims 1, 3, 4, 7, 15, 16, 26, and 28–32 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kelley (US 6,088,659, iss. July 11, 2000), Rickard (US 4,736,366, iss. Apr. 5, 1988), Peevey (US 7,043,459 B2, iss. May 9, 2006), and Narain (US 2003/0084135 A1, pub. May 1, 2003). Final Act. 5–10.

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 112

Issue 1: Did the Examiner err in finding that certain claim language is not supported by the Specification?

The Examiner finds that “independent claims 1, 15, and 29 recite, in newly-added language, ‘the plurality . . . simultaneously via the middleware . . . has completed,’ where the said language is not supported by the

Specification, as filed.” Final Act. 4. The Examiner emphasizes that “the Specification recites information being published simultaneously by adapters and applications (not interfaces).” Ans. 7.

Appellant contends that “support for the above-recited phrase can be found in Appellant’s specification in paragraph 26 . . . [and] [s]upport can also be found in Appellant’s specification on page 19, lines 14–16.” Appeal Br. 8. Furthermore, Appellant points out that the Specification explains that “. . . the interface to system 2 includes a data collection adapter 12.” Reply Br. 2, *citing* Spec. ¶ 19. We agree with Appellant.

Specifically, Appellant’s Specification states:

In one embodiment of the invention, information may be published by different applications and the adapters simultaneously so that no adapter or application will need to wait until the publication of information by another application or adapter has been completed. This greatly improves the flexibility and communication efficiency between the various systems and components in Fig. 1. In turn, the different applications and adapters will retrieve only the information that is pertinent to it and ignores the remaining information that is present on the message bus 14.

Spec. ¶ 26.

The meter data management computer system 10 includes a number of interfaces to the external systems 2, 4, 6 and 8. Thus the interface to system 2 includes a data collection adapter 12 that processes the meter data and information related to the meter data from system 2 and publishes the processed data on the message bus 14. Adapters 12, 16 and 18 are software components which are part of interfaces to the message bus 14, connecting the external systems 2, 4, 6 and 8 to bus 14 through signal lines. Data collection adapter 12 is able to process the meter data in different data formats and information related thereto from many different types of meters, so that the data published by adapter 12 on the message bus can be easily understood by other components and systems in Fig. 1.

Id. ¶ 19.

In other words, Appellant’s Specification expressly states that information may be published simultaneously by different applications and the adapters so that no adapter or application will need to wait until the publication of information by another application or adapter has been completed, whereas the adapters are software components which are part of interfaces. We find that this disclosure provides sufficient support for the claimed *interfaces and the first application are each configured to publish the one or more messages . . . simultaneously.*

Accordingly, we reverse the Examiner’s rejection of the claims under 35 U.S.C. § 112, first paragraph.

Rejection under § 103(a)

Issue 2: Did the Examiner err in finding that the cited art collectively teaches or suggests “to publish the one or more messages . . . to the message bus simultaneously via the middleware,” as set forth in the claims?

Appellant contends “Rickard does not disclose or suggest that any of its components are ‘configured to publish . . . one or more messages . . . to the message bus simultaneously . . .’” (App. Br. 10), and “Narain does not appear to disclose or suggest a message-oriented middleware (MOM) . . . wherein one or more messages can be published to the message bus simultaneously without waiting.” *Id.* at 10–11. Appellant further contends that “combining Rickard and Narain with Kelley would not result in a ‘publish/subscribe’ type of messaging system as recited in Appellant’s independent claim 1,” and “Peevey plainly does not make up the

deficiencies of Kelley, Rickard, and/or Narain.” Appeal Br. 11. We agree with Appellant.

Although the Examiner finds:

Peevey does disclose a list of identifiers or flags . . . Kelley does teach transferring the meter data . . . via one or more messages published . . . Peevey, also, discloses wherein these various messages are transferred via a network . . . Rickard teaches a message bus . . . and transferring information among the system components . . . [and] Narain teaches middleware for the transfer of data in communications network

(Ans. 8–9), we highlight that the Examiner is silent about, and fails to explicitly address, whether the combined teachings teach or suggest publishing the messages to the message bus *simultaneously* via the middleware.

Furthermore, the Examiner notes that “while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone.” Final Act. 8. In other words, it appears that the Examiner has concluded that the aforementioned functional claim limitations should not be given patentable weight.

However, our reviewing court has often accorded patentable weight to functional language. In 2016, it noted “that the phrase ‘adapted to’ generally means ‘made to,’ ‘designed to,’ or ‘configured to,’ though it can also be used more broadly to mean ‘capable of’ or ‘suitable for.’” *In re Man Mach. Interface Techs. LLC*, 822 F.3d 1282, 1286 (Fed. Cir. 2016) (reversing Patent Office rejection of claims including “adapted to” limitation); *see also In re Swinehart*, 439 F.2d 210, 212 (CCPA 1971) (“[T]here is nothing intrinsically wrong with [defining something by what it does rather than

what it is] in drafting patent claims.”); *K-2 Corp. v. Salomon S.A.*, 191 F.3d 1356, 1363 (Fed. Cir. 1999) (“The functional language [in this case] is, of course, an additional limitation in the claim.”). Here, the Examiner fails to explain how that the combined teachings are capable of publishing the messages to the message bus *simultaneously* via the middleware.

Importantly, an Examiner cannot entirely ignore any limitation in a claim while determining whether the subject matter of the claim would have been obvious. *In re Wilson*, 484 F.2d 1382, 1385 (CCPA 1970). In reviewing the record, we note that the Examiner’s Answer offers *no* rebuttal to the above-noted contention. This circumstance lead us to determine that because the particular argument under review is unrebutted by the Examiner, Appellant’s argument is therefore persuasive.

Because we agree with at least one of the arguments advanced by Appellant, we need not reach the merits of Appellant’s other arguments. Accordingly, we will *not* sustain the Examiner’s obviousness rejection of claims 1, 3, 4, 7, 15, 16, 26, and 28–32.

CONCLUSION

Appellant has demonstrated that the Examiner erred in rejecting claims 1, 3, 4, 7, 15, 16, 26, and 28–32 under 35 U.S.C. § 112, first paragraph.

Appellant has demonstrated that the Examiner erred in rejecting claims 1, 3, 4, 7, 15, 16, 26, and 28–32 as being unpatentable under 35 U.S.C. § 103.

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3, 4, 7, 15, 16, 26, 28–32	112	Written description		1, 3, 4, 7, 15, 16, 26, 28–32
1, 3, 4, 7, 15, 16, 26, 28–32	103	Kelley, Rickard, Peevey, Narain		1, 3, 4, 7, 15, 16, 26, 28–32
Overall Outcome				1, 3, 4, 7, 15, 16, 26, 28–32

REVERSED