UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/688,357	11/29/2012	Deepali Aphale	2964P120	4432

8791   7590   09/12/2019
WOMBLE BOND DICKINSON (US) LLP
Attn: IP Docketing
P.O. Box 7037
Atlanta, GA 30357-0037

EXAMINER
CORRIELUS, JEAN M

ART UNIT	PAPER NUMBER
2162	

NOTIFICATION DATE	DELIVERY MODE
09/12/2019	ELECTRONIC

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte DEEPALI APHALE, JAMES BOETTCHER, and
LEILA ROSSI
_____

Appeal 2018-007837
Application 13/688,357[1]
Technology Center 2100
_____

Before DEBRA K. STEPHENS, DANIEL J. GALLIGAN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of
claims 1–20, which are all of the claims pending in the application. We
have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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[1] Appellants identify Hewlett Packard Enterprise Development LP as the
real party in interest. *See* App. Br. 1.

STATEMENT OF THE CASE

According to Appellants, the claims are directed to configuring data backup settings for multiple computing devices using a template. Spec. ¶ 4; Abstract.[2] Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1.   A method comprising:
>
> accessing, by each of a plurality of backup agents, a template specifying backup control information for the plurality of backup agents, wherein the template is centrally stored in a configuration system, wherein each of the plurality of backup agents is included in a unique computing device of a plurality of computing devices;
>
> configuring each of the plurality of backup agents using the template, the backup control information relating to backing up data from the computing devices to a backup system; and
>
> responsive to a change of the template, reconfiguring each of the plurality of backup agents according to the changed template.

App. Br. i. (Claims Appendix)

REFERENCES AND REJECTIONS

Claims 1–4, 9–11, 13, 14, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Weathersby (US 7,831,968 B1; issued Nov. 9, 2010) and DeHaan (US 8,417,926 B2; issued Apr. 9, 2013). Final Act. 2–7.

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[2] This Decision refers to: (1) Appellants' Specification filed November 29, 2012 ("Spec."); (2) the Final Office Action ("Final Act.") mailed August 20, 2015; (3) the Appeal Brief ("App. Br.") filed January 28, 2016; (4) the Examiner's Answer ("Ans.") mailed August 11, 2016; and (5) the Reply Brief ("Reply Br.") filed October 11, 2016.

Claims 5–8 and 12 stand rejected under 35 U.S.C. § 103(a) as being
unpatentable over Weathersby, DeHaan, and Fehrle (US 7,603,445 B1;
issued Oct. 13, 2009). *Id.* at 7–10.

Claims 15–18 stand rejected under 35 U.S.C. § 103(a) as being
unpatentable over Weathersby, DeHaan, and Battepati I (US 2010/0287221
A1; published Nov. 11, 2010). *Id.* at 10–12.

Our review in this Appeal is limited to the above rejections and the
issues raised by Appellants. Arguments not made are waived. *See* MPEP
§ 1205.02; 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

Independent Claims 1 and 14

Appellants contend the Examiner erred in finding Weathersby teaches
"accessing, by each of a plurality of backup agents, a template specifying
backup control information . . . configuring each of the plurality of backup
agents using the template, the backup control information relating to backing
up data from the computing devices to a backup system," as recited in
claim 1 and similarly recited in claim 14. App. Br. 5–9; Reply Br. 2–4.
Specifically, Appellants argue Weathersby's "baseline template," which
"specifies an original or 'baseline' state of a software application," does not
teach "backup control information relating to backing up data from the
computing devices to a backup system." App. Br. 6 (emphasis omitted);
Reply Br. 3–4. Further, Appellants argue "the 'restoration tool' described in
Weathersby does not perform any backup of data to a backup system." App.
Br. 7 (emphasis omitted). Still further, Appellants argue Weathersby does
not "configur[e] the 'restoration tool' using the 'baseline template,'" but

instead, Weathersby's "'restoration tool' uses the 'baseline state' in the 'baseline template' to restore a software application to an original state." App. Br. 8.

We are not persuaded. The Examiner relies on (*see* Final Act. 2–3) Weathersby's description of a "baseline template," created from "a single correct or 'golden' installation of [a] software application," used "to restore previously used instances of the software application to a baseline state" (Weathersby 2:13–17). The Examiner points out (*see* Final Act. 2–3) that Weathersby's baseline template is "stored on a designated server and uploaded to any computing system needing a baseline instance of the software application" (Weathersby 2:21–23) and "may thereafter be transferred to each user computing system 204a, 204b, or 204c as needed over the network 206 to restore the software application 318" (*id.* at 5:2–5).

Additionally, the Examiner finds, and we agree, that "[i]t is well known in the art that a template includes a collection of one or more policies that are to be applied to . . . one or more computing devices." Final Act. 3. To support that finding, the Examiner relies on US 8,180,812 B2 (issued May 15, 2012) ("Battepati II").[3] *Id.* Indeed, Battepati II describes that a "template may include a collection of one or more policies" (Battepati II 5:53–55) "that are to be passed to other components in order to configure their actions" (*id.* at 7:38–40), and, in particular, that a template may be used to configure "[b]ackup policies" (*id.* at 9:25–26, 41). That is, the Examiner finds Weathersby teaches a template is used to configure various computing

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[3] Battepati II is the issued patent of Battepati I, which the Examiner also relies on in the Final Action. Final Act. 10–12.

functions and it is well known that configuring computing functions using a template includes configuring data backup. *See* Final Act. 3.

Appellants' arguments are all similarly based on the premise that "Weathersby relates to **restoring the state of a software application to a default state**, as opposed to **backing up data** from computing devices," i.e., "deleting and re-installing [software] configuration files cannot be interpreted as a back-up operation." Reply Br. 2–3; *see* Reply Br. 4; *see also* App. Br. 6–8. First, we disagree with Appellants that restoring software to a default state does not teach a "backup." The default state of the software is the previous original state, i.e., "clean" version, of that software and is, therefore, a "backup" of the software. *See* Weathersby 3:3–6, 13–16 ("The baseline template contains baseline versions of the files that are likely to be modified or deleted as the software application is used, along with the directory structure for these files."). Moreover, even if we were to agree with Appellants that Weathersby's restoration of software to a default state does not teach a "backup," Appellants do not address the Examiner's finding that "[i]t is well known in the art that a template includes a collection of one or more policies that are to be applied to . . . one or more computing devices" (Final Act. 3) nor the prior art's disclosure that the template is "passed to other components in order to configure their actions" (Battepati II 7:38–40), namely, to configure "[b]ackup policies" (*id.* at 9:25–26, 41). That is, Appellants' arguments do not address the Examiner's finding that using a template to configure various computing functions, including backup functions, is "well known." *See* Final Act. 3.

Accordingly, we are not persuaded the Examiner erred in finding Weathersby renders obvious "accessing, by each of a plurality of backup

agents, a template specifying backup control information . . . configuring each of the plurality of backup agents using the template, the backup control information relating to backing up data from the computing devices to a backup system," as recited in claim 1 and similarly recited in claim 14. Thus, we sustain the Examiner's rejection of claims 1 and 14.

Independent Claim 9

Appellants do not provide separate arguments for independent claim 9 and instead group claim 9 with Appellants' arguments for claim 1. *See* App. Br. 5–9. As discussed above, we are not persuaded that the Examiner erred in rejecting claim 1, and so we are not persuaded the Examiner erred in rejecting claim 9. Moreover, independent claim 9 does not recite the limitations in claim 1 upon which Appellants base their arguments. Specifically, claim 9 does not recite "backup control information relating to backing up data from the computing devices to a backup system." Because Appellants' arguments all similarly rely on that limitation (*see* Reply Br. 2–4; *see also* App. Br. 5–9), those arguments are not commensurate with the scope of claim 9 and are not persuasive for that additional reason. Accordingly, we are not persuaded the Examiner erred in rejecting claim 9 over the combination of Weathersby and DeHaan.

Dependent Claim 2

Appellants contend the Examiner erred in finding Weathersby teaches "the plurality of backup agents are configured using the template to perform backup operations for the plurality of computing devices," as recited in claim 2. App. Br. 9–10 (emphasis omitted); Reply Br. 4. Specifically,

Appellants argue, in Weathersby, "the installation software application of each computing device is backed up **into** the baseline template," but "[t]he baseline template of Weathersby does not configure any backup agent to perform backup operations for a computing device" because "[r]estoring and backup are **different operations**." Reply Br. 4; App. Br. 9–10.

We are not persuaded. The Examiner finds, and we agree, Weathersby's description that its "baseline template is used for the computing systems" (Final Act. 4), namely, for "configuring . . . computer systems by uploading the baseline template to all the computing system[s] as needed to restore the software application" (*id.* at 3), teaches "the plurality of backup agents are configured using the template to perform backup operations for the plurality of computing devices." *Id.* at 4. Indeed, Weathersby describes a "baseline template . . . may be uploaded to any user computing system 204a, 204b, or 204c requiring a baseline instance of the software application 318" (Weathersby 9:63–65) and then "decompressed, unpacked, expanded, or otherwise processed to retrieve the configuration files and directories for the software application 318 onto the new user computing system 204a, 204b, or 204c" (*id.* at 10:47–51). Further, as discussed above, the Examiner finds that using a template to configure various computing functions, such as backup functions, is "well known." *See* Final Act. 3.

As before, Appellants' arguments here similarly rely on distinguishing between restoring data to its default state and backing up data. *See* Reply Br. 4; *see also* App. Br. 9–10. However, as before, the default state of data, in Weathersby's case, a software application, is a backup of data. Furthermore, as discussed above, Appellants' arguments do not address the

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Examiner's finding that it is well known that the configuration of computing functions include data backup. *See* Final Act. 3 (citing Battepati II 7:38–40); *see also* Battepati II 9:25–26, 41.

Accordingly, we are not persuaded the Examiner erred in finding Weathersby renders obvious "the plurality of backup agents are configured using the template to perform backup operations for the plurality of computing devices," as recited in claim 2. Thus, we sustain the Examiner's rejection of claim 2.

Remaining Claims 3, 4–8, 10–13, and 15–20

Appellants do not argue separate patentability for dependent claims 3, 4–8, 10–13, and 15–20, which depend directly or indirectly from claims 1, 9, and 14. *See* App. Br. 5–11. Accordingly, for the reasons set forth above, we sustain the Examiner's rejection of claims 3, 4–8, 10–13, and 15–20.

DECISION

For the reasons above, we affirm the Examiner's decision rejecting claims 1–20.

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. § 41.50(f).

AFFIRMED