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EDELL, SHAPIRO, & FINNAN, LLC 9801 Washingtonian Blvd. Suite 750 Gaithersburg, MD 20878			CHOWDHURY, ZIAUL A.	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KEVIN B. BATES, WILLIAM J. CARPENTER,
and MICHAEL G. WINTER¹

Appeal 2018-007971
Application 14/986,953
Technology Center 2100

Before CARL W. WHITEHEAD JR., BRADLEY W. BAUMEISTER, and
JASON V. MORGAN, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–24. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

Summary of the disclosure

Appellant's Specification discloses updating a system that includes a plurality of server instances by adding one or more operational features

¹ Appellant is the applicant and real party in interest, International Business Machines Corporation. Appeal Br. 2.

“based on a comparison between the determined levels of configuration of the operating server instances and minimum levels of configuration associated with the one or more sets of operational features.” Abstract.

Illustrative claim (key limitations emphasized)

1. A computer-implemented method of updating a system including a plurality of sever instances comprising:

determining a level of revision for each operating server instance;

adding one or more sets of operational features compatible with an operating server instance to the system based on a comparison indicating that the determined levels of revision of each of the other operating server instances of the system satisfy levels of revision required by each of the one or more sets of operational features; and

performing server operations of the operating server instances and applying the added one or more sets of operational features to the server operations.

The Examiner’s rejections and cited references

The Examiner rejects claims 1–4, 6–12, 14–20, and 22–24 under 35 U.S.C. § 103(a) as being unpatentable over Toeroe (US 2008/0244552 A1; published Oct. 2, 2008) and Wetherly et al. (US 2006/0236317 A1; published Oct. 19, 2006) (“Wetherly”). Final Act. 3–16.

The Examiner rejects claims 5, 13, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Toeroe, Wetherly, and Hammond et al. (US 2005/0144616 A1; published June 30, 2005) (“Hammond”). Final Act. 16–20.

ANALYSIS

In rejecting claim 1 as obvious, the Examiner finds that Wetherly’s controlled distribution of software updates—which includes generating a multi-field version number representing different aspects of an application—teaches or suggests *adding one or more sets of operational features compatible with an operating server instance to the system based on a comparison indicating that the determined levels of revision of each of the other operating server instances of the system satisfy levels of revision required by each of the one or more sets of operational features*. Final Act. 4 (citing Wetherly ¶¶ 4, 19, 20); *see also* Ans. 5–8 (further citing Wetherly ¶¶ 11, 17, 38–41, 43, 45, 49–51; Toeroe ¶ 9), Ans. 10–12 (further citing Wetherly ¶¶ 5, 12, 16, 18, 19, 48).

Appellant contends the Examiner erred because Wetherly merely teaches “updating a specific device based on the application version of *that particular device* relative to the version number of the update (regardless of whether the update is compatible with the other devices).” Appeal Br. 13 (emphasis added). Appellant contrasts this purported aspect of Wetherly with the claimed invention, which Appellant characterizes as “updating that specific device when **all** of the other devices can support the update.” *Id.*

Appellant’s arguments accord with claim 1’s recitation of “adding one or more sets of operational features compatible with an operating server instance to the system based on a comparison indicating that the determined levels of revision of *each of the other operating server instances* of the system satisfy levels of revision” (emphasis added). That is, the disputed recitation requires that instead of analyzing each operating server instance in isolation for compatibility with additional features, the *other* operating

server instances must be considered to ensure that the *other* operating server instances are compatible with the new feature.

This required condition for installing the new feature is illustrated in the Specification's Figure 2, which checks revision levels on *all* servers at step 220 and installs the requested new feature only if the revision level is sufficient on *all* servers to support the new feature. Performing this check mitigates problems where "different server instances (e.g., instances of physical or virtual servers) [operating] with different code revision levels." Spec. ¶ 12. Specifically, the disclosed invention addresses the problem of "[n]ewer code revisions [being] aware of previous metadata elements and functionality, but older code revisions hav[ing] no knowledge of new data elements and/or functionality." *Id.* Checking the revision levels on *all* servers ensures "that newer server instances do not introduce new data elements or change the processing behavior for existing data elements in a way that causes integrity issues for either the old or new server instances." *Id.*

Appellant's arguments further accord with *Wetherly*, which teaches checking for compatibility of an update with the device on which the update is to be installed (*see Wetherly* Fig. 5), but is silent about checking whether the update is compatible with *other* systems before performing the installation (*see, e.g., Wetherly* ¶ 50). That is, the cited teachings of *Wetherly* do not teach or suggest ensuring that each of the *other* operating server instances of the system satisfy levels of revision required by each of one or more sets of operational feature.

The Examiner appears to base the rejection on two alternative interpretations. Under the first interpretation, the Examiner appears to be

interpreting *Wetherly* as teaching that an operational feature is added to a server instance when the levels or revisions of each server instance satisfy or support the update, as claimed. According to the Examiner, the Specification discloses that compatibility of the software update with each of the server instances

“. . . is determined using the update version number” (please see ¶[0017]) Therefore, *Wetherly* sufficiently discloses providing update[s] to the distributed terminal devices as equal to claimed server instances (different server instances (e.g., instances of physical or virtual servers) are enabled to operate with different code revision levels (please see original specification ¶[0011])), wherein the updates including major upgrade providing new features or functionality to the distributed terminals in an incremental manner based on potential update aspect relating to the features. Moreover, *Wetherly* teaches that the compatibility of the software update is determined by a software identifier [that] uniquely identif[ies] an application affected by the potential update.

Ans. 4.

We disagree. We understand *Wetherly* as merely verifying the version numbers of those server instances that are receiving the updates—not the *other* servers of the system. *Wetherly* ¶¶ 11, 17–20.

The Examiner alternatively reasons that “**each of the other operating server instances** has broad scope.” Ans. 12. We are unable, however, to discern under what reasonably broad interpretation of this recitation, when read in light of Appellant’s Specification, claim 1 could be interpreted broadly enough to read on the cited teachings of *Wetherly*.

For example, the Examiner cites to the Specification’s disclosures of server instances managing and communicating code revision levels and to a server system hosting a single server instance or a plurality of server

instances. *Id.* at 11–12 (citing Spec. ¶¶ 16, 17). But the Examiner does not explain how these disclosures evince a meaning for the claim language “*each of the other operating server instances*” that would be broad enough to read on Wetherly’s manner of installing updates on a plurality of systems. Ans. 11–12 (citing Wetherly ¶¶ 5, 16–18, 48). Therefore, we agree with Appellant that the Examiner’s findings do not show that Wetherly teaches or suggests the disputed recitation of claim 1.

Although the Examiner cites to a teaching in Toeroe related to a platform that routes requests for services to different entities supporting different sets of features (Toeroe ¶ 9 (cited in Ans. 6)), the Examiner’s findings do not show that Toeroe cures the noted deficiency of Wetherly. Nor does the Examiner show that Hammond cures the noted deficiency. Accordingly, we do not sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1, and the Examiner’s 35 U.S.C. § 103(a) rejections of claims 2–24, which contain similar recitations and are rejected based on similar findings and conclusions.

DECISION

We reverse the Examiner’s decision rejecting claims 1–24.

REVERSED