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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRANDON S. DIXON and
GREGORY S. SINCLAIR

Appeal 2018-008587
Application 15/293,963
Technology Center 2400

Before DANIEL N. FISHMAN, ADAM J. PYONIN, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

PYONIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the
Examiner's rejection. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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
VERISIGN, INC. Appeal Brief 2.

STATEMENT OF THE CASE

Introduction

The Application is directed to “malware defense, and more particularly, to creating and using an incubator environment to host and study malware and malware operators.” Spec. ¶ 2. Claims 1–20 are pending; claims 1, 13, and 17 are independent. App. Br. 21–25; Final Act. 10. Claim 1 is reproduced below for reference (emphasis added):

1. A system for tracking malware operator behavior patterns in a simulated network environment, the system comprising:
 - a memory storing instructions; and
 - a processor device that is coupled to the memory and, when executing the instructions, is configured to:
 - receive organizational data that describes a virtual organization and comprises *a plurality of simulated users* that are logged into a plurality of simulated machines;
 - create user profiles for the plurality of simulated users;
 - provide a simulated computer network of the virtual organization based at least partially on the organizational data and the user profiles, wherein after the simulated computer network is provided, malware is installed on the simulated computer network to create an incubator;
 - monitor one or more interactions between the simulated computer network and an operator of the malware, wherein the one or more interactions comprise the operator of the malware illicitly gathering information related to the user profiles; and
 - build a malware operator profile based on the one or more interactions.

*References and Rejections*²

Claims 1–20 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1–20 of U.S. Patent No. 9,473,520 B2. Final Act. 5.³

Claims 1–17, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Arnold (US 5,440,723; Aug. 8, 1995) and Chiruvolu (US 8,327,420 B2; Dec. 4, 2012). Final Act. 6.

ANALYSIS

Appellant argues “the combination of the cited references cannot teach or suggest each and every limitation of claim 1.” App. Br. 15. Particularly, Appellant contends “the directories, data, and files disclosed in Arnold are associated with a single decoy program executing on a single computing system of a single user,” so that “Arnold is completely silent about multiple simulated users that are logged into multiple simulated machines, much less that such simulated users and simulated machines are part of a virtual organization.” *Id.* at 11, 13.

We are persuaded by Appellant’s argument. The Examiner finds that Arnold teaches a “plurality of *simulated users are logged into the infected computer(s)* as the simulator(s).” Final Act. 6 (citing Arnold 26:34–35); *see also* Ans. 11. The cited portions of Arnold, however, only disclose running a simulator program; there is no mention of any users, let alone *simulated users* as required by the claim. *See, e.g.*, Arnold 26:32–36 (“[E]ach virus

² The Examiner has withdrawn the rejection of the claims as being patent ineligible under 35 U.S.C. § 101. *See* Ans. 3.

³ Appellant does not challenge the Examiner’s double patenting rejection. *See* App. Br. 9. Accordingly, we summarily affirm this rejection.

sample is executed on a simulator of the operating system calls. This simulator can be executed by the infected computer, or can be executed by the dedicated processor.”). That is, without speculation, we see no support for the Examiner’s determination that Arnold teaches the claimed “plurality of simulated users that are logged into a plurality of simulated machines.” *See App. Br. 11; see also In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967) (“A rejection based on section 103 clearly must rest on a factual basis.”).

Based on the foregoing, we agree with Appellant that Arnold does not teach or suggest all limitations of claim 1. We additionally agree that Chiruvolu—directed to methods of user authentication by presenting both actual and decoy data to a user—also does not teach or suggest a plurality of simulated users. *See App. Br. 15; Chiruvolu 2:23–24* (“Fig. 3a illustrates a display screen having authentication data sets and decoy data sets.”). Accordingly, we are persuaded the Examiner errs in finding the limitations of independent claim 1 to be taught or suggested by the cited references.

CONCLUSION

We summarily sustain the Examiner’s rejection of claims 1–20 under the judicially created doctrine of obviousness-type double patenting.

We are persuaded the Examiner errs in finding the limitations of independent claim 1 to be obvious in view of the cited references. Independent claims 13 and 17 recite similar limitations. *See App. Br. 23–24*. Thus, we do not sustain the Examiner’s obviousness rejection of independent claims 1, 13, 17, or the claims that depend thereon.

DECISION

The Examiner's decision rejecting claims 1–20 under the judicially created doctrine of obviousness-type double patenting is affirmed.

The Examiner's decision rejecting claims 1–17, 19, and 20 under 35 U.S.C. § 103 is reversed.

The Examiner's decision is affirmed because we have affirmed at least one ground of rejection with respect to each claim on appeal.

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(a)(1).

AFFIRMED