UNITED STATES PATENT AND TRADEMARK OFFICE

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14/079,344	11/13/2013	Amir Peles	RADW P0061C1	3278

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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte AMIR PELES and SHY MAROM
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Appeal 2019-000148
Application 14/079,344
Technology Center 2400
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Before DEBRA K. STEPHENS, JASON V. MORGAN, and
JAMES B. ARPIN *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–12 and 14–21. Claim 13 is canceled.
Appeal Br. 29. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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[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 RADWARE,
LTD. Appeal Br. 3.

Summary of the Disclosure

Appellant's claimed subject matter relates to "computing an optimal deployment of at least one web application in a multi-datacenter system" through a process that includes "generating a recommendation on an optimal deployment of the web application . . . by computing an expected [service level agreement] that can be guaranteed to . . . clients in each combination of datacenters." Abstract.

Illustrative Claim (*disputed limitations emphasized*)

1. A method for an optimal deployment of at least one web application in a multi-datacenter system, comprising:

collecting performance measurements with regard to a web application executed in the multi-datacenter system, wherein the performance measurements are collected from at least probes and measuring units that are communicatively connected to each datacenter in the multi-datacenter system;

grouping the performance measurements according to locations of a plurality of clients accessing the web application;

computing using the grouped performance measurements stored in a performance table an expected service level agreement (SLA) for clients in the plurality of client locations that can be guaranteed to the clients in each combination of the datacenters in the multi-datacenter system;

determining an optimal deployment of the web application in at least one combination of the datacenters in the multi-datacenter system based on the computed expected SLA, wherein the optimal deployment ensures that the computed expected SLA satisfies a SLA guaranteed to the clients; and

causing the deployment of the web application in the at least one combination of the datacenters in the multi-datacenter system according to the determined optimal deployment.

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The Examiner's Rejections and Cited References

The Examiner rejects claims 1–12 and 14–21 under 35 U.S.C. § 103(a) as unpatentable over the combined teachings of Wei (US 2010/0228819 A1; published Sept. 9, 2010), Hadar et al. (US 2011/0270804 A1; published Nov. 3, 2011) ("Hadar"), and Curley et al. (US 7,937,470 B2; issued May 3, 2011) ("Curley"). Final Act. 3–8.

ANALYSIS

In rejecting claim 1, the Examiner relies on the combined teachings of Wei, Hadar, and Curley to teach or suggest "computing using the grouped performance measurements stored in a performance table an expected service level agreement (SLA) for clients." *See* Final Act. 4–5. Specifically, the Examiner relies on Wei's application delivery network—which monitors and manages all nodes in a network (e.g., deploying and running applications to and on optimal locations)—to teach or suggest "computing using . . . performance measurements stored in a table." *See id.* at 4 (citing Wei Figs. 5, 11, ¶¶ 60–61, 67, 70, 75). The Examiner relies on Hadar's use of service level agreements or objectives—which are used to define metrics and indicators—to teach or suggest the computing of "an expected service level agreement (SLA) for clients." *See id.* at 4–5 (citing Hadar ¶¶ 37–38, 73). The Examiner relies on Curley's monitoring of a site's availability, response times, and transactions from multiple remote monitoring locations to teach or suggest the performance measurements being "grouped." *See id.* at 5 (citing Curley Figs. 5–7, 9, 10B–C, col. 25, l. 35–col. 26, l. 46).

Appellant contends the Examiner erred because "Hadar does **not** teach or suggest a *computed expected*" service level agreement. Appeal

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Br. 15. That is, "the claimed '*expected* SLA' is **not** just . . . [a set of]

performance measurements" (Reply Br. 9 (italic emphasis added)) as the

Examiner concludes (*see* Ans. 7). Appellant further argues that Wei and

Curley fail to cure the alleged deficiency of Hadar. *See* Reply Br. 5, 9.

      We agree with Appellant that the Examiner erred because, as

Appellant persuasively argues, the Examiner fails to give weight to the "the

word '*expected*' in the . . . phrase '*expected* SLA.'" Reply Br. 9. The

Examiner finds that the "performance monitoring" of Curley (Ans. 7 (citing

Curley col. 2, ll. 64–66)) and the "performance metrics" of Hadar[2] (*id.*

(citing Hadar ¶ 37)) disclose "calculating an 'expected SLA' because the

scope of that term really just refers to what performance measurement the

application is currently providing as opposed to any 'agreed' upon

performance level" (*id.* at 8). The Examiner's analysis is predicated on the

"expected SLA" being described in the Specification as "TT [transaction

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[2] In summarizing the pertinent findings, the Examiner states that "[t]he
performance measurements taken by *Wei*, and Curely are the 'expected
SLA.'" Ans. 8 (emphasis added); *see also id.* at 7–8 ("the art (both *Wei* and
Curely) clearly discloses monitoring performance measurements" (emphasis
added)). These appear to be typographical errors, however, because with
respect to the disputed recitation the Examiner does not cite with
particularity to Wei, but instead cites to Hadar. *See, e.g.*, *id.* at 7 ("Hadar
teaches that performance metrics are associated with a service model and are
defined by using a Service Level Agreement (paragraph 37)"). Moreover,
the Examiner finds that "Wei does *not* explicitly disclose using an SLA or
ensuring the expected SLA satisfies a guaranteed SLA[;] however[,] this is
taught by Hadar (paragraphs 37–38 and 73)." Final Act. 4 (emphasis added).
Appellant also argues Hadar (Reply Br. 9). We thus find this to be harmless
error.

time] values together with RTT [round-trip time] values [to] allow computing of the 'expected SLA.'" Ans. 7 (citing Spec. ¶ 31[3]). But the Specification discloses the use of "*projected* TT values together with the RTT values [to] allow computing the expected SLA . . . *if* executed in a particular datacenter." Spec. ¶ 31 (emphases added) (quoted in Reply Br. 9). That is, the claimed "expected SLA" represents a *projection* of a hypothetical execution of an application in a particular datacenter rather than merely performance *measurement*. *See also* Spec. ¶ 32 (a projected transaction time value is a value that has been *extrapolated*). Thus, the Examiner's interpretation of the "expected SLA" is unreasonably broad when the recitation is read in light of the Specification. Therefore, the Examiner's findings and analysis fail to show that the combined teachings of Wei, Hadar, and Curley teach or suggest "computing using the grouped performance measurements stored in a performance table an expected service level agreement (SLA) for clients," as recited in claim 1.

Accordingly, we do not sustain the Examiner's 35 U.S.C. § 103(a) rejection of claim 1, and of claims 2–12 and 14–21, which contain similar recitations.

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[3] The Examiner cites to paragraph 32 instead of paragraph 31 of the Specification. Ans. 7. This appears to be a typographical error, however, because although the disclosure of the Specification's paragraph 32 includes "SLA guarantee parameters" and "a projected (extrapolated) TT value," the term "expected SLA" is found in preceding paragraph (i.e., the Specification's paragraph 31). This is harmless error.

CONCLUSION

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1–12, 14–21	103(a)	Wei, Hadar, Curley		1–12, 14–21

REVERSED