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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TOMMASO CUCINOTTA and ERIC JUL

Appeal 2019-003836
Application 14/994,298
Technology Center 2100

Before JAMES B. ARPIN, MICHAEL J. ENGLE, and
PHILLIP A. BENNETT, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's
rejection of claims 1–15, which are all of the claims pending in the
application. 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(a). According to Appellant, the real party-in-interest is
"Alcatel Lucent," which "has been acquired by Nokia." Appeal Br. 2.

TECHNOLOGY

The application relates to "migrating a data session from a first VM [i.e., virtual machine] to a second VM." Spec. Abstract.

ILLUSTRATIVE CLAIM

Claim 1, reproduced below with limitations at issue emphasized, is illustrative:

1. A method, in a virtualized system comprising multiple virtual machine (VM) instances executing over physical hardware, for migrating a data session from a first VM instance to a second VM instance, the method comprising:

modifying a routing rule of a load balancer of the system such that the routing rule specifies that data from a client device destined for the first VM instance is queued, the routing rule representing at least one parameter for communications from the client device;

suspending processing, at the first VM instance, of pending requests from the client device;

transmitting, from the first VM instance to the load balancer, data representing a state of each pending request among the pending requests;

modifying the routing rule such that the routing rule specifies that the endpoint for a communication channel from the client device is the second VM instance;

transmitting the pending requests to the second VM instance; and

after transmitting the pending requests, modifying the routing rule such that the routing rule specifies that data from the client device is transmitted directly to the second VM instance.

REJECTION

Claims 1–15 stand rejected under 35 U.S.C. § 103 as obvious over the combined teachings of Miyazaki (US 2012/0096459 A1; Apr. 19, 2012) and Ashihara (US 2012/0195187 A1; Aug. 2, 2012). Final Act. 3.

ISSUE

Did the Examiner err in finding Miyazaki or Ashihara teaches or suggests "transmitting, from the first VM instance to the load balancer, data representing a state of each pending request among the pending requests," as recited in claim 1?

ANALYSIS

The Examiner determines that "[u]nder the broadest reasonable interpretation 'data representing a state of each pending request' can include any information that describes the state of the pending request." Ans. 4. The Examiner then finds that Miyazaki "teaches that each pending request is in a migrating state" and "[t]his information is transmitted to the load balancer (i.e. *Miyazaki's* 'virtual switch 32-1')." *Id.* (citing Miyazaki ¶¶ 57–58, 47, 61, 69).

In the paragraphs cited by the Examiner, Miyazaki discloses that "the virtual switch 32-1 determines whether the virtual machine . . . which has transmitted the packet is being migrated," and, if so, "the virtual switch 32-1 controls the selector 321-1 so as to store the received packet in the migration transmission buffer included in the migration buffer 323-1." Miyazaki ¶¶ 57–58. However, even if data representing the state *of the virtual machine* did qualify as "data representing a state *of each pending request*," the Examiner fails to explain whether and why the virtual switch's

determination is based on data transmitted from the virtual machine, as required by claim 1 ("transmitting, *by the first VM instance . . .* ").

Similarly, the Examiner finds that Ashihara "also teaches 'data representing a state of each pending request' that is transmitted to the load balancer," yet fails to explain how such data is transmitted *by a virtual machine.* Ans. 5 (citing Ashihara ¶¶ 120–21, 127).

Accordingly, we do not sustain the Examiner's rejection of claims 1–15.

OUTCOME

The following table summarizes the outcome of the appeal of the rejection:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–15	103	Miyazaki, Ashihara		1–15

REVERSED