

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SERVICENOW, INC.,
Petitioner,

v.

BMC SOFTWARE, INC.,
Patent Owner.

Case IPR2015-01211
Patent 7,617,073 B2

Before JUSTIN T. ARBES, BRIAN P. MURPHY, and
JOHN A. HUDALLA, *Administrative Patent Judges*.

HUDALLA, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Petitioner ServiceNow, Inc. (“ServiceNow”) filed a Petition (“Pet.”) (Paper 1) to institute *inter partes* review of claims 1–4 of Patent 7,617,073 B2 (“the ’073 patent”) (Ex. 1001) pursuant to 35 U.S.C. §§ 311–319. Patent Owner BMC Software, Inc. (“BMC”) filed a Preliminary Response

(“Prelim. Resp.”) (Paper 10) to the Petition. We have jurisdiction under 35 U.S.C. § 314.

Pursuant to 35 U.S.C. § 314(a), the Director may not authorize an *inter partes* review unless the information in the petition and preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” For the reasons that follow, we institute an *inter partes* review as to claims 1–4 of the ’073 patent on the asserted ground of unpatentability.

I. BACKGROUND

A. *Related Proceeding*

The parties identify the following proceeding related to the ’073 patent (Pet. 1; Paper 6, 1): *BMC Software, Inc. v. ServiceNow, Inc.*, Case No. 14-CV-00903-JRG (E.D. Tex. Sept. 23, 2014). On August 13, 2015, the U.S. District Court for the Eastern District of Texas issued a claim construction order in this action. *See* Ex. 2003.¹

B. *The ’073 Patent*

The ’073 patent is directed to “visualization of the components of an enterprise system and the rendering of information about the health or status of the enterprise system, its components, and/or its subcomponents.”

Ex. 1001, Abstract. Examples of such components include “computers, computer peripherals, computer programs, networking equipment, . . .

¹ BMC filed only excerpts of the district court’s order as Exhibit 2003. To ensure a complete record, we enter a copy of the entire order into the record as Exhibit 3001. The parties are encouraged to do so, when possible, for future materials filed in this proceeding as well.

manufacturing equipment,” and “virtual components like business processes that can be combined into a business system.” *Id.* at 1:27–31.

Figure 1 of the '073 patent is reproduced below:

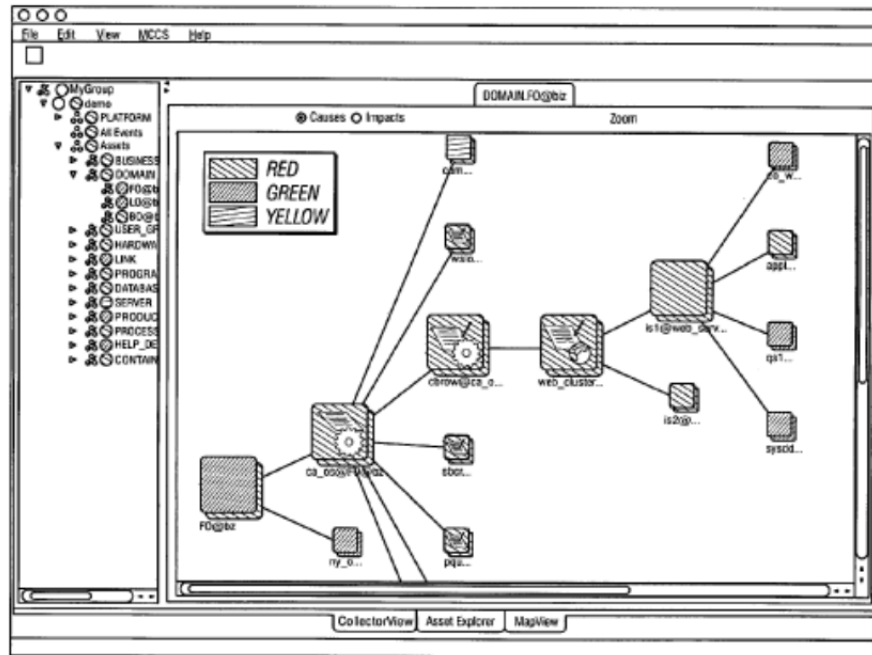


FIG. 1

Figure 1 illustrates the use of color codes or indicators of component health presented in “a tree structure and a branching hierarchy.” *Id.* at 3:29–38, 3:65–4:11. An algorithm can compute the health statuses associated with components in the hierarchy, including “the ‘self-severity’ based on the health/status of the component itself” and the “‘sub-severity’ based on the health/status of the subcomponents or the components that the component depends upon.” *Id.* at 2:13–16, 3:48–57. The '073 patent also teaches “the health/status of a component can be completely independent from the health/status of its sub-components or components depending from it.” *Id.* at 3:39–41.

C. Illustrative Claim

Claim 1 of the '073 patent recites:

1. A system for indicating the health status of an IT component and at least one IT subcomponent comprising:

an IT component processor adapted to compute a component health status of the IT component;

an IT subcomponent processor adapted to compute a subcomponent health status for the at least one IT subcomponent; and

a renderer adapted to display the health status of the IT component by showing a first indicator for the IT component and a second indicator for the at least one IT subcomponent, wherein the first and second indicator are each separately visible at the same time on a single display window of a display unit.

D. The Prior Art

ServiceNow relies on the following prior art:

International Patent Application Publication No. WO 00/72183 A2 to Lundy Lewis, published Nov. 30, 2000 (Ex. 1004, "Lewis").

E. The Asserted Ground

ServiceNow challenges claims 1–4 of the '073 patent under 35 U.S.C. § 102(b) over Lewis. Pet. 3.

F. Claim Interpretation

In an *inter partes* review, we construe claims by applying the broadest reasonable interpretation in light of the specification. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–78 (Fed. Cir. 2015). Under the broadest reasonable interpretation standard, and absent

any special definitions, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definitions for claim terms or phrases must be set forth “with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

ServiceNow identifies three terms for construction: “IT component,” “IT subcomponent,” and “processor.” Pet. 11–17. In response, “BMC submits that no construction is necessary in addressing the ground proposed in this Petition because plain and ordinary meaning controls as to all the terms the Petition identifies.” Prelim. Resp. 12. BMC likewise notes that the district court’s claim construction order applied the plain and ordinary meaning to all of these terms. *Id.* (citing Ex. 2003, 96–101). For purposes of this decision, we agree that none of these terms requires explicit construction at this time. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

II. ANALYSIS

We turn now to ServiceNow’s asserted ground of unpatentability and BMC’s arguments in its Preliminary Response to determine whether ServiceNow has met the threshold standard of 35 U.S.C. § 314(a).

A. *The Lewis Reference*

ServiceNow argues that claims 1–4 of the ’073 patent are anticipated by Lewis. Pet. 23–38. Lewis qualifies as prior art to the ’073 patent under

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