UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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SERVICENOW, INC.,
Petitioner,

v.

BMC SOFTWARE, INC.,
Patent Owner.

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Case IPR2015-01601
Patent 6,816,898 B1

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

ARBES, *Administrative Patent Judge*.

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

Petitioner ServiceNow, Inc. filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 1–12 of U.S. Patent No. 6,816,898 B1 (Ex. 1001, "the '898 patent") pursuant to 35 U.S.C. § 311(a). Patent Owner BMC Software, Inc. filed a Preliminary Response (Paper 9, "Prelim. Resp.") pursuant to 35 U.S.C. § 313. We have jurisdiction under 35 U.S.C. § 314 and 37 C.F.R. § 42.4(a). 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 have decided not to institute an *inter partes* review.

I. BACKGROUND

A. The '898 Patent

The '898 patent describes a system for "interfacing with network management." Ex. 1001, col. 1, ll. 6–8. According to the '898 patent, "[t]ypical network management systems collect information regarding the operation and performance of the network and analyze the collected information to detect problems in the network," such as the network or a particular device "approaching an overloaded condition." *Id.* at col. 1, ll. 38–44. Prior art systems required new software to be written for each new application and only collected typical infrastructure information and network parameters (e.g., number of packets transmitted, number of packets lost), not "specific business-oriented data useful in commercial applications" (e.g., number of tickets sold on an airline's web site). *Id.* at col. 1, l. 50–col. 2, l. 9. The disclosed system attempts to solve these problems by

collecting performance data along with meta data that defines the
performance data and indicates operations to be performed on the
performance data. *Id.* at col. 2, ll. 22–29, col. 4, ll. 11–36. The system then
displays collected performance data according to the meta data. *Id.*

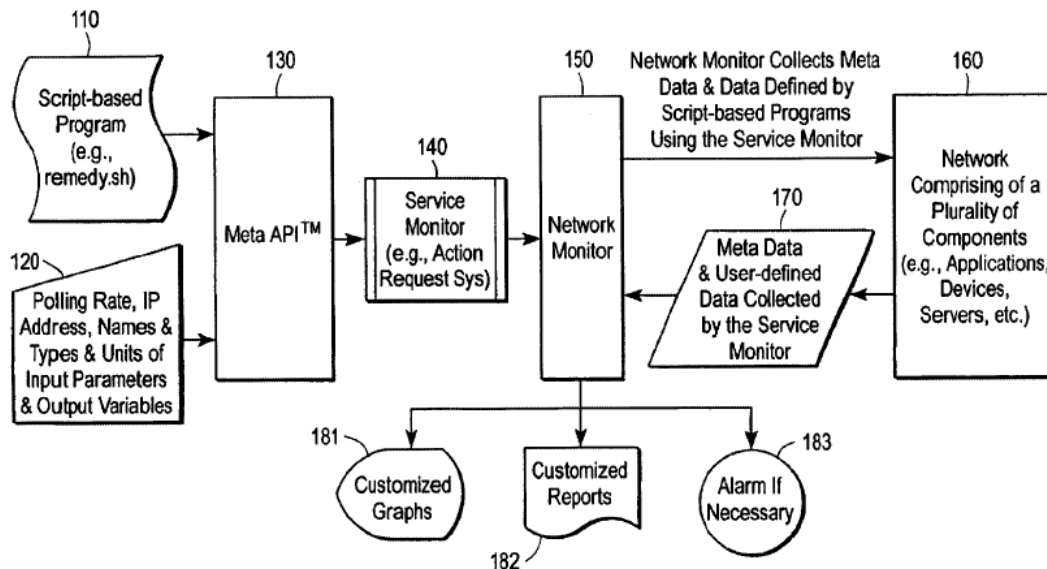Figure 3 of the '898 patent is reproduced below.

FIG. 3

As shown in Figure 3, a user provides to meta application programming
interface (API) 130 (1) script-based program 110 containing instructions for
monitoring some aspect of the network, and (2) information 120 about how
such monitoring should take place, such as the rate at which network
components should be polled for information. *Id.* at col. 7, ll. 13–27. Based
on information 120, script-based program 110 is integrated into the system
as service monitor 140, which is registered and activated. *Id.* at col. 8,
ll. 17–19, 44–46, col. 9, ll. 31–32. Network monitor 150 then runs service
monitor 140 periodically to collect meta data and user-defined data 170 from
components on network 160. *Id.* at col. 7, ll. 28–30. Network monitor 150
analyzes the data according to the received meta data, and generates

customized graphs 181, customized reports 182, and alarm 183 for display to a user. *Id.* at col. 7, ll. 30–34, col. 10, l. 67–col. 11, l. 6.

B. Illustrative Claims

Claims 1 and 6 of the '898 patent recite:

1. A method comprising:

collecting performance management data having accompanying meta data, the meta data including information defining the performance management data and information indicating operations to be performed on the performance management data; and

generating output data for display using the collected performance management data according to the information indicating the operations to be performed on the performance management data.

6. A method for providing an interface between a user and a performance management system, the performance management system being connected with a network, the network including a plurality of components coupled by a plurality of connections, the performance management system collecting data of the components, the method comprising:

receiving at least one script-based program from the user, the script-based programs defining data types not provided by the performance management system;

integrating the program to the performance management system as a service monitor, the performance management system using the service monitor to periodically collect data of the defined data types from the components.

C. The Prior Art

Petitioner relies on the following prior art:

Brian W. Kernighan & Dennis M. Ritchie, THE C PROGRAMMING LANGUAGE (1988) (Ex. 1004, "Kernighan");

Todd Miller, Christopher Stirlen, & Evi Nemeth, *satool—A System Administrator's Cockpit, An Implementation*, USENIX Association, Proceedings of the Seventh Systems Administration Conference (LISA VII), Nov. 1–5, 1993 (Ex. 1003, "Miller"); and

Tim O'Reilly, Troy Mott, & Walter Glenn, WINDOWS 98 IN A NUTSHELL: A DESKTOP QUICK REFERENCE (1999) (Ex. 1005, "O'Reilly").[1]

D. The Asserted Grounds

Petitioner challenges claims 1–12 of the '898 patent on the following

grounds:

Reference(s)	Basis	Claim(s) Challenged
Miller	35 U.S.C. § 103(a)[2]	1–7 and 9–12
Miller, Kernighan, and O'Reilly	35 U.S.C. § 103(a)	8

E. Claim Interpretation

The Board interprets claims using the "broadest reasonable

construction in light of the specification of the patent in which [they]

appear[]." 37 C.F.R. § 42.100(b); *see* Office Patent Trial Practice Guide,

77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012); *In re Cuozzo Speed Techs.,*

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[1] When citing Miller, Kernighan, and O'Reilly, we refer to the page numbers added by Petitioner at the bottom of each page. *See* 37 C.F.R. § 42.63(d)(2).

[2] The Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (2011) ("AIA"), amended 35 U.S.C. § 103. Because the '898 patent has an effective filing date before the effective date of the applicable AIA amendment, we refer to the pre-AIA version of 35 U.S.C. § 103.

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