

In re: Cox et al.
Serial No.: 09/211,528
Filed: December 14, 1998
For: METHODS, SYSTEMS AND COMPUTER PROGRAM PRODUCTS
FOR CENTRALIZED MANAGEMENT OF APPLICATION PROGRAMS ON A
NETWORK

Group Art Unit: 2158
Examiner: Wiley, D.

5/22/02

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APPELLANTS' BRIEF ON APPEAL UNDER 37 C.F.R. §1.192

Sir:

This Appeal Brief is filed pursuant to the "Notice of Appeal to the Board of Patent Appeals and Interferences" mailed 10 April 2002.

Real Party In Interest

The real party in interest is assignee International Business Machines Corporation, Armonk, New York.

Related Appeals

Appellants are aware of no appeals or interferences which would be affected by the present appeal.

Status of Claims

Appellants appeal the final rejection of Claims 1-14, 21 and 23-49, which, as of the filing date of this brief, remain under consideration. These claims were finally rejected in the Final Official Action of February 22, 2002 ("Final Action") and the Advisory Action of April 4, 2002 ("Advisory Action"). A copy of the claims as they stand on appeal is attached hereto as Appendix A.

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The attached Appendix A presents Claims 1-14, 21 and 23-49 as they currently stand. No amendments were submitted which were not entered.

Summary of the Invention

The claimed invention, as recited in Claims 1-14, 21 and 23-49, provides methods, systems and computer program products for management of **application programs** on a network including a server supporting client stations. The server provides applications on-demand to a user logging in to a client supported by the server. Mobility and hardware portability are provided by establishing a user desktop interface responsive to a login request that presents to the user a desktop screen through a web browser interface. The desktop accesses and downloads selected application programs from the server responsive to a request from the user. For example, an icon associated with the application program, which is displayed on the user desktop screen at the client, may be selected. An "instance of the selected" application program is then provided from the server for execution at the client. Thus, the application programs may be maintained at the server and provided to clients when needed for execution.

As defined in the specification of the present application:

the term **"application program" generally refers to the code associated with the underlying program functions, for example, Lotus Notes or a terminal emulator program**. However, it is to be understood that the application program will preferably be included as part of the application launcher which will further include the code associated with managing usage of the application program on a network according to the teachings of the present invention. Further it is to be understood that, as used herein, the term "application launcher program" may refer to the entire program provided by a software vendor or to merely a portion thereof distributed to a client to perform particular operations. **For example, the application launcher program distributed to initially populate the user desktop preferably does not include the code associated with the underlying application program** and obtaining preferences which may only be distributed to the client later when execution of the application program is requested. The application launcher program distributed to populate the user desktop may only include a URL and an associated ICON and, possibly, code to allow obtaining of user identification and password information. Memory usage on the client stations may thereby be limited.

(Specification, pp. 22-23)(emphasis added). In other words, the "application program" is an application level software program, such as Lotus Notes, while the "application launcher program" is provided to "initially populate the user desktop" and need not include the application program code. The application launcher program interacts with the desktop, such as a user browser interface, while an instance of the application program is requested through the desktop but executes locally at the client as a separate application from the browser interface. For example, Lotus Notes would not execute within the browser window.

The present invention may, therefore, be used so that a variety of application programs can be maintained at the server, and an instance of a selected one of the application programs may be provided as needed to a user logged onto a client device. The provided instance of the application may then be executed at the client device to process the request of the user. Thus, individual application programs are provided to the user as needed (on-demand) where they are executed at a client device rather than having the application program executed at the server responsive to a request from a user. Furthermore, a customized user interface desktop is provided at the client device, which displays the applications the user is authorized to access.

Issues

1. Are Claims 1-14, 21 and 23-49 properly rejected under 35 U.S.C. § 103(a) as being unpatentable over Rose (U.S. Patent No. 5,708,709) in view of Win et al. (U.S. Patent No. 6,182,142)?

Grouping of Claims

For appeal, the claims may be grouped together as follows:

Group I: Claims 1-14, 21 and 23-49

Claims of Group I do not all stand or fall together as Appellants submit that dependent Claims 3, 10-11, 25, 32-33, 38 and 45-46, which stand or fall together, are separately patentable and dependent Claims 4-5, 26-27 and 39-40, which stand or fall together, are separately patentable.

Argument

I. Introduction

To establish a *prima facie* case of obviousness, the prior art reference or references when combined must teach or suggest all the recitations of the claim, and there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. M.P.E.P. § 2143. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. M.P.E.P. § 2143.01, citing *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). As stated by the Court of Appeals for the Federal Circuit, to support combining references, evidence of a suggestion, teaching, or motivation to combine must be clear and particular, and this requirement for clear and particular evidence is not met by broad and conclusory statements about the teachings of references. *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Court of Appeals for the Federal Circuit has also stated that, to support combining or modifying references, there must be particular evidence from the prior art as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *In re Kotzab*, 55, U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000). Furthermore, when relying on general knowledge to negate patentability, and Examiner must articulate and place this knowledge on the record. *See In re Sang Su Lee*, 277 F.3d 1338,1345, 61 U.S.P.Q.2d 1430, 1435 (Fed. Cir. 2002).

II. The Group I Claims Are Patentable Over Rose and Win

The Group I claims stand rejected as obvious in light of Rose and Win. Appellants respectfully submit that the Group I claims are patentable for at least the reasons set forth below.

Claim 1 of the present application recites:

1. A method for management of application programs on a network including a server and a client comprising the steps of:
installing a plurality of **application programs** at the server;
receiving at the server a login request from a user at the client;

establishing a user desktop interface at the client **associated with the user** responsive to the login request from the user, the desktop interface including a plurality of display regions associated with a set of the plurality of application programs installed at the server for which the user is authorized;

receiving at the server a selection of one of the plurality of application programs from the user desktop interface; and

providing an instance of the selected one of the plurality of application programs to the client for execution responsive to the selection.

(Emphasis added). Similar recitations are also found in independent Claims 21 and 23, which are corresponding system and computer program product claims, respectively.

The rejection asserts that Rose teaches all of the recitations of Claims 1-14, 21 and 23-49 except that Rose fails to teach "the inventive concept of receiving at the server a login request from the user at the client." (Final Action, p.3). Win is relied on to provide the missing teaching of the "inventive concept of receiving at the server a login request from the user at the client." (Final Action, p.3).

Respectfully, the Examiner has failed to meet the requirements for a showing of obviousness under § 103. As discussed in more detail below, the cited combination of references fails to teach all of the recitations of the claims. In particular, Rose does not teach or suggest a "user desktop **associated with the user**." Furthermore, Win does not teach or suggest such a user desktop include "a plurality of display regions associated with a set of the plurality of **application programs** installed at the server for which the user is authorized." The rejections should also be withdrawn as the Rose and Win references cannot properly be combined in the manner relied on in the rejections to arrive at the present invention in light of the different problems addressed by these references and the lack of motivation for the combination.

A. Rose Does Not Teach or Suggest a User Desktop Associated With the User

Rose is directed to managed distribution of licensed application programs stored on a server where the server "maintains control over the program even after the program has been distributed to a client computer." (Rose, Abstract). As described in Rose, for example, with reference to Figure 2, trial versions of application programs may be selected for downloading from the server to a client through a browser interface. (Rose, Col. 4, lines 10-17). In other words, Figure 2 illustrates a display screen at the client showing application programs

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