UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte CRAIG S. ETCHEGOYEN

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Appeal 2014-001653
Application 12/784,426
Technology Center 3600

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Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
NINA L. MEDLOCK, *Administrative Patent Judges.*

FETTING, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE[1]

Craig S. Etchegoyen (Appellant) seeks review under 35 U.S.C. § 134 of
a final rejection of claims 1–18, the claims pending in the application on
appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

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[1] Our decision will make reference to the Appellant's Appeal Brief ("App.
Br.," filed July 22, 2013) and Reply Brief ("Reply Br.," filed November 11,
2013), and the Examiner's Answer ("Ans.," mailed September 11, 2013),
and Final Action ("Final Act.," mailed February 20, 2013).

The Appellant invented a way of software activation. Specification para. 2.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

> 1. A license server for activating use of software on a computing device, the license server comprising:
>
> one or more processors;
>
> and
>
> a computer readable medium operatively coupled to the processors;
>
> wherein the license server is configured so that, in response to a communication link being available between the license server and the computing device, the license server:
>
>> [1] receives from the computing device, via the communication link, an activation request including
>>
>>> (a) a software identifier identifying the software,
>>>
>>> (b) a device identifier identifying the computing device and being based on a combination of at least one user-configurable parameter of the computing device and at least one non-user-configurable parameter of the computing device,
>>>
>>> and
>>>
>>> (c) a license key for the software;
>>
>> [2] accesses a database storing previously received software identifiers, device identifiers, and license keys;
>>
>> [3] determines an activation instruction through application of a usage policy, wherein application of the usage policy includes a comparison between the activation request and one or more records within the database;

> and

> [4] sends the activation instruction to the computing device.

App. Br. 16 (Claims App.).

The Examiner relies upon the following prior art:

Demeyer	US 2005/0076334 A1	Apr. 7, 2005
Carpenter	US 7,017,044 B1	Mar. 21, 2006
Jorden	US 2007/0143228 A1	June 21, 2007
Nikitin	US 2010/0293622 A1	Nov. 18, 2010

Claims 1, 2, 6, 7, 9–11, 15, 16, and 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Demeyer.

Claims 1, 2, 6, 7, 9–11, 15, 16, and 18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Demeyer, Carpenter, and Jorden.

Claims 3–5, 8, 12–14, and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Demeyer, Jorden, Carpenter, and Nikitin.

Claims 1–18 stand rejected under obviousness type double patenting.

ISSUES

The issues of anticipation and obviousness turn primarily on the patentable weight afforded labels attached to data in structural and process claims and to the extent such labels are afforded weight, whether the art shows they were used or predictable.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Demeyer

01. Demeyer is directed to licensing software. Demeyer para. 1.

02. Demeyer describes using a software identifier and machine identifier in licensing schemes. The machine identifier may be a serial number or a parameter such as a service code. Demeyer paras. 39 and 52.

03. Demeyer describes storing licensing identifiers in a registration database. Demeyer para. 45.

04. Demeyer describes providing licensing on a per-use basis. For example, each time an end user executes a functionality module, the registration procedure may include incrementing and recording a count in a registration database for use in determining ongoing licensing fees. Demeyer para. 54.

05. Demeyer describes, the licensing system may execute some combination of registration and enabling steps each time a technology module is used. In this embodiment, registration information for each use is stored in the registration database and billed to the software provider. Demeyer para. 64.

Carpenter

06.   Carpenter is directed to "securing specific files in a storage medium device to prevent use of unauthorized copies." Carpenter 1:7–10.

07.   Carpenter describes an inherent physical signature that statistically differentiates each hard disk drive (HDD) from another. Carpenter 2:35–46.

Jorden

08.   Jorden is directed to product activation. Jorden para. 1.

09.   Jorden describes using a license key as part of a license activation process. Jorden paras. 43 and 52.

ANALYSIS

Claims 1, 2, 6, 7, 9–11, 15, 16, and 18 rejected under 35 U.S.C. § 102(b) as anticipated by Demeyer

Claims 1, 2, 6, 7, 9–11, 15, 16, and 18 rejected under 35 U.S.C. § 103(a) as unpatentable over Demeyer, Carpenter, and Jorden

Claim 1 is an apparatus claim with two recited parts, viz. processors and computer readable media. Claim 1 recites that the apparatus is configured to be able to perform four steps, viz. receiving an activation request, accessing a database, determining an activation instruction, and sending that instruction.

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