2017 Pat. App. LEXIS 386

Patent Trial and Appeal Board

January 23, 2017, Decided

Appeal 2016-000452Application 12/822,036Technology Center 2100

USPTO Bd of Patent Appeals & Interferences; Patent Trial & Appeal Bd Decs.

Reporter
2017 Pat. App. LEXIS 386 *

Ex parte CHRISTOPHER A. EVANS, SCOTT JENSEN, ADVAY V. MENGLE, JEFFREY T. PEARCE, JOHN ELSBREE, LOUIS M. KAHN, CHAD C. NEFF, NERMIN OSMANOVIC, NOSHERWAN MINWALLA, RAJADURAI ISAAC RAJAKUMAR, DALE A. SATHER, MANUEL A. SCHRODER, OVIDIU G. TEMEREANCA

Notice:

[*1]

ROUTINE OPINION. Pursuant to the Patent Trial and Appeal Board Standard Operating Procedure 2, the opinion below has been designated a routine opinion.

Core Terms

update, rejected claim, install, module, package

Panel: Before STEPHEN C. SIU, JOHN A. EVANS, and ALEX S. YAP, Administrative Patent Judges.

Opinion By: ALEX S. YAP

Opinion

YAP, *Administrative Patent Judge*.

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DECISION ON APPEAL

Appellants [1] appeal under *35 U.S.C. § 134(a)* from the final rejection of claims 1, 3-7, 9-12, 15-17, and 20, which are all the claims pending in this application. We have jurisdiction under *35 U.S.C. § 6(b)*

We reverse.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates to an application that includes multiple experience modules installed on a device. (June 23, 2010, Specification ("Spec.") P 3.) Claim 1 is illustrative, and is reproduced below:

1. A method in a device, the method comprising:

installing, on the device, an application that includes **[*2]** multiple experience modules that are each configured to implement a set of features when the application is running, each of the multiple experience modules including a first component that includes code specific to a particular type of the device, and a second component that includes code that is common across multiple types of devices, the code specific to the particular type of the device including presentation logic and resources that tailor presentation of an associated experience of the experience module to the particular type of the device based on physical features of the particular type of the device, and the code that is common across multiple types of devices including business logic that is common across the particular type of the device as well as other types of devices; and

sending a request to a deployment service to check for updates to the application, the request including an identifier of the particular type of the device and a master version number of the application installed on the device, the master version number indicating a current experience version number for each of the one or more experience modules of the application installed on the device; receiving, **[*3]** from the deployment service, one or more update packages for the one or more of the multiple experience modules, the one or more update packages corresponding to the particular type of the device; installing, on the device, the one or more update packages; and

updating the master version number of the application installed on the device to a most recent master version number of the application, the most recent master version number corresponding to a most recent update package of the one or more update packages installed on the device.

Prior Art and Rejections on Appeal

The following table lists the prior art relied upon by the Examiner in rejecting the claims on appeal:

Chen et al. ("Chen")	US 8,131,875 B1	Mar. 6, 2012
Williams et al.		

[1] According to Appellants, the real party in interest is Microsoft Corporation. (App. Br. 3.)

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("Williams")	US 2011/0047540 A1	Feb. 24, 2011
Haenel et al. ("Haenel")	US 2009/0249296 A1	Oct. 1, 2009
Ushiyama	US 2009/0037445 A1	Feb. 5, 2009
Vu et al. ("Vu")	US 2008/0133569 A1	June 5, 2008
Leitner	US 2008/0016176 A1	Jan. 17, 2008
Bilange	US 2007/0232223 A1	Oct. 4, 2007
Hayasi et al. ("Hayashi")	US 2007/0077921 A1	Apr. 5, 2007
Higgins et al. ("Higgins")	US 2007/0067373 A1	Mar. 22, 2007
Cheng et al. ("Cheng")	US 2005/0273779 A1	Dec. 8, 2005
Morris	US 2005/0223376 A1	Oct. 6, 2005
Butt et al. ("Butt")	US 6,754,829 B1	June 22, 2004
MacInnis	US 6,487,723 B1	Nov. 26, 2002

[*4]

Claims 1, 3, 10-12, and 15-17 stand rejected under *35 U.S.C. § 103(a)* as being unpatentable over Vu, in view of Bilange and Haenel, further in view of Chen and/or Hayashi, Ushiyama, and MacInnis, and/or Cheng, and further in view of Higgins. (*See* Final Office Action (mailed Sept. 18, 2014) ("Final Act. ") 4-27.)

Claim 4 stands rejected under *35 U.S.C. § 103(a)* as being unpatentable over Vu, in view of Bilange and Haenel, further in view of Chen and/or Hayashi, Ushiyama, and MacInnis, and/or Cheng, and Higgins and further in view of Williams. (*See Final Act.* 27-29.)

Claims 5-7 stand rejected under *35 U.S.C. § 103(a)* as being unpatentable over Vu, in view of Bilange and Haenel, further in view of Chen and/or Hayashi, Ushiyama, and MacInnis, and/or Cheng and Higgins, and further in view of Leitner and/or Morris. (*See Final Act.* 29-33.)

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Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vu, in view of Bilange and Haenel, further in view of Chen and/or Hayashi, Ushiyama, and MacInnis, and/or Cheng, and further in view of Higgins, and further in **[*5]** view of Williams and Butt. (*See Final Act.* 33-38.)

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments that the Examiner has erred. We are persuaded that the Examiner erred in rejecting the claims on appeal.

With regard to claim 1, the Examiner finds the claim obvious to one of ordinary skill in the art in view of nine references. (Final Act. 4-20.) Appellants, however, contend that the Examiner's rejections of claim 1 is in error because it "is legally insufficient for asserting an obvious combination of nine different references without providing a clear articulation that: supports an alleged benefit of combining the nine different references." (App. Br. 24.) In other words, Appellants are contending that the Examiner fails to provide any rationale for combining these nine references. The Examiner disagrees and explains that the Office Action has provided different rationales (for issues A, B, C, or D) for each of the limitations at issue. (Ans. 44; Final Act. 6-20.) For example, for the updating limitation (issue D), the Examiner provides well-reasoned rationales for combining Vu with Ushiyama, Bilange, Cheng, and/or MacInnis. (Final Act. 19-20.) **[*6]**

The number of references alone does not weigh against obviousness. *See* In re Gorman, 933 F.2d 982, 986 (Fed. Cir. 1991) ("The criterion, however, is not the number of references, but what they would have meant to a person of ordinary skill in the field of the invention. " (Citation omitted.)). However, "[e]ven if the references disclosed all of the limitations of the asserted claims [the Examiner must still] proffer evidence indicating why a person having ordinary skill in the art would combine the references to arrive at the claimed invention. " Kinetic Concepts, Inc. v. Smith & Nephew, Inc., 688 F.3d 1342 (Fed. Cir. 2012). Here, while the Examiner articulates rationales to combine a subset of the references for each of the four issues, the Examiner, however, does not articulate any reasoning for why a person of ordinary skill in the art would combine all the references.

For the foregoing reasons, we are persuaded of Examiner error in the rejection of claim 1 and do not sustain the 35 U.S.C. § 103 rejection of claim 1. [2] Independent claims 10 and 20 contain similar limitations at issue and the Examiner **[*7]** rejected these claims under the same rationale. (Final Act. 5.) Thus, we do not sustain the 35 U.S.C. § 103 rejection of claims 10 and 20, and of claims 3-7, 9, 11, 12, and 15-17, which depend from either claims 1 or 10.

DECISION

We reverse the decision of the Examiner to reject claims 1, 3-7, 9-12, 15-17, and 20.

REVERSED

[2] Because we do not sustain the Examiner's rejection for the reasons discussed herein, we need not address Appellants' further arguments. *See* Beloit Corp. v. Valmet Oy, 742 F.2d 1421, 1423 (Fed. Cir. 1984) (finding an administrative agency is at liberty to reach a decision based on "a single dispositive issue").

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