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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SIVA R. JASTHI and VENKATA N. MARRAPU

Appeal 2010-004936
Application 11/075,397
Technology Center 2100

Before BRUCE R. WINSOR, BARBARA A. BENOIT,
and JAMES B. ARPIN, *Administrative Patent Judges*.

WINSOR, *Administrative Patent Judge*.

Concurring Opinion filed by BENOIT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-20, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm and designate a new ground of rejection within the provisions of 37 C.F.R. § 41.50(b).

STATEMENT OF THE CASE

Appellants' invention relates to information processing and transformation. Spec. ¶ [0002]. More particularly, Appellants' invention relates to

transformation of markup-language objects which rely on the in the [sic] data patterns present in the input [eXtensible Markup Language (XML)] objects and the relationships between these objects Such pattern-based interpretation and transformation of the input XML objects is achieved through the use of "Generic Style Sheets".

Abstract. Claim 1, which is illustrative of the invention, reads as follows:

1. A method performing a data conversion, comprising:
 - loading a style sheet;
 - parsing an input data to determine data patterns;
 - creating an output data, corresponding to the input data, according to the data patterns and the style sheet, the output data being a conversion of the input data; and
 - storing the output data in a data processing system storage.

Claims 1-5, 9, 11-15, and 19 stand rejected under 35 U.S.C. § 102(e) as anticipated by Kuznetsov (US 6,772,413 B2; Aug. 3, 2004; filed Dec. 8, 2000).¹ Final Rej. 4-7; Ans. 4-11.

Claims 6-8 and 16-18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kuznetsov and Golden (US 6,925,631 B2; Aug. 2, 2005; filed Dec. 8, 2000). Final Rej. 7-10; Ans. 11-15.

¹ Claim 11 was rejected under 35 U.S.C. § 101 in the Final Rejection mailed December 11, 2007. Final Rej. 3. The rejection was withdrawn in an Advisory Action mailed March 3, 2008.

Claims 10 and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Kuznetsov and Sulistio (US 7,036,072 B1; Apr. 23, 2006; filed Dec. 18, 2001). Final Rej. 10-11; Ans. 15-17.

Rather than repeat the arguments here, we refer to the Briefs (App. Br. filed Dec. 12, 2008; Reply Br. filed May 19, 2009) for the positions of Appellants and the Final Rejection (Final Rej. mailed Dec. 11, 2007) and Answers (Ans. mailed Mar. 19, 2009; Supp. Ans. mailed Nov. 16, 2009) for the positions of the Examiner.² We note that, in the Answer (Ans. 4-17), the Examiner has rephrased the statement of the grounds of rejection from that given in the Final Rejection (Final Rej. 4-11). The Examiner did not designate the rephrased statement as new grounds of rejection, nor did Appellants petition to have new grounds designated. *See* MPEP § 1207.03(IV) (8th ed., Rev. 3, Aug. 2005). Accordingly, we base our opinion on the statement of the grounds of rejection included in the Answer.

ISSUES

The issues presented by Appellants' contentions are as follows:

Does Kuznetsov disclose “parsing an input data to determine *data patterns*; [and] creating an output data, corresponding to the input data, according to the *data patterns*,” as recited in claim 1 (emphases added), and more particularly, does Kuznetsov disclose “data patterns”?

² We have not considered the Appeal Briefs filed May 15, 2008, and August 20, 2008, as they are deemed to have been superseded by the Appeal Brief filed December 12, 2008.

Does Kuznetsov disclose “*receiving a selection of an output type, wherein the output data is formatted according to the output type,*” as recited in claim 2 (emphasis added)?

- Does the combination of Kuznetsov and Golden teach or suggest:
- (a) “data patterns [that] include at least one object,” as recited in claim 6?
 - (b) “data patterns [that] include relationships between at least two objects,” as recited in claim 7?
 - (c) “data patterns [that] include at least one object and at least one corresponding object attribute,” as recited in claim 8?

PRINCIPLES OF LAW

[The USPTO] applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant’s specification.

In re Morris, 127 F.3d 1048, 1054 (Fed. Cir. 1997). “Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim.” *SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004).

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). “These elements must be arranged as in the claim under review, but this is not an ‘ipsissimis verbis’ test.” *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (citations omitted).

ANALYSIS

CLAIM 1

Regarding claim 1, we have reviewed Appellants' contentions (App. Br. 12-18; Reply Br. 12-20) in light of the Examiner's findings (Ans. 4-10) and explanations (Ans. 17-23; Supp. Ans. 4-7). Except as discussed *infra*, we agree with the Examiner's findings and explanations, and adopt them as our own. The following findings, conclusions, and explanations are provided for emphasis.

As an initial matter, we construe the phrase "data patterns," giving it its broadest reasonable interpretation, as may be enlightened by the Specification. *See Morris*, 127 F.3d at 1054. A pertinent meaning of data is: "**data** *n.* [p]lural of the Latin datum, meaning an item of information" (MICROSOFT COMPUTER DICTIONARY 141 (5th ed. 2002)), and of pattern: "**pattern** . . . *n.* . . . 11 : a discernible coherent system based on the intended interrelationship of components parts . . ." (MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 853 (10th ed. 1999)). We conclude that the ordinary meaning "data patterns" encompasses a discernible coherent system based on the intended interrelationships of items of information, e.g., related data.³ Appellants do not direct us to any passage of the Specification that would persuasively lead us to a different construction of "data patterns."

The Examiner finds that Kuznetsov discloses "parsing an input data to determine *data patterns*; [and] creating an output data, corresponding to the

³ The Concurring Opinion offers an alternative construction of "data pattern." We note, as does the Concurring Opinion, that the disposition of the appeal is the same under either construction.

input data, according to the *data patterns*,” as recited in claim 1 (emphases added). Ans. 6-8 (citing, *inter alia*, Kuznetsov Figs. 8A, 8B; col. 1, ll. 35-55, 61; col. 2, ll. 50-54; col. 3, ll. 9-10; col. 14, ll. 15-22, 28-30, 44-46, 50-59, 64; col. 15, ll. 44-49; col. 16, ll. 30-35); *see generally* Ans. 19-23; Supp. Ans. 4-5. Appellants contend “[i]t is clear that there is no teaching or suggestion of anything at all related to data patterns in [Kuznetsov].” App. Br. 16; *see generally* App. Br. 15-18; Reply Br. 12-20.

The Examiner’s position is that the structured nature of XML documents means that Kuznetsov’s disclosure of “parsing the source data” (Kuznetsov col. 14, l. 53) necessarily discloses determining data patterns, i.e., the intended interrelationships of items of information in the input data, as recited in claim 1. *See generally* Ans. 6-7. The Examiner further states that “[t]he term ‘data patterns’ is an extraordinarily broad term of art” (Supp. Ans. 5) that “refers to any set of related data” (Supp. Ans. 6).

We agree with the Examiner. For example, in Figures 8A and 8B, Kuznetsov discloses an XML element or node 750 comprising an opening tag <invoice>, included data represented by an ellipsis, and a closing tag </invoice>. Kuznetsov’s opening tag, included data, and closing tag comprise a discernible coherent system based on the intended interrelationships of items of information, i.e., a “data pattern.” Indeed, it is difficult to imagine a data conversion that does not require parsing input data to determine the intended interrelationships of items of information in the input data and creating output data, according to those intended interrelationships.

That Kuznetsov does not use the phrase “data patterns” is of no significance. *Bond*, 910 F.2d at 832. Furthermore, Appellants’ contention

that the Examiner has improperly interpreted Kuznetsov (Reply Br. 14-16) is unpersuasive. We note that the Examiner has incorrectly relied in part on principles that apply to rejections based on obviousness, rather than anticipation. *See, e.g.*, Supp. Ans. 5 (ll. 5-11). We do not adopt the Examiner's explanations to the extent that they refer to obviousness analyses, rather than anticipation analyses. Nevertheless, we agree with the Examiner that the Examiner has merely explained what one of ordinary skill in the art would understand from Kuznetsov's disclosure of XML input and output data. *See generally* Ans. 19-20; Supp. Ans. 4-6. Appellants do not point to specific errors in the Examiner's explanation. Further, we note that the Examiner's explanation is consistent with, although not identical to, Appellants' explanation of XML in the Background of the Invention section of Appellants' Specification. *See* Spec. ¶ [0003].

Accordingly, we sustain the rejection of (1) independent claim 1; (2) independent claim 11, the patentability of which was argued in together with claim 1; and (3) claims 3-5 and 13-15, which depend from claims 1 and 11, respectively, and the patentability of which was not separately argued with particularity.

CLAIM 2

Appellants' contention that claim 2 is allowable because it depends from claim 1 (App. Br. 18) is unpersuasive for the reasons discussed *supra* regarding claim 1.

The Examiner finds that Kuznetsov discloses formal machine readable format descriptions (FMRFD) that describe data for a destination node (*see* Kuznetsov col. 5, ll. 14-15) and are selected manually or semi-automatically (*see* Kuznetsov col. 5, l. 27) encompasses "receiving a selection of an output

type, wherein the output data is formatted according to the output type,” as recited in claim 2 (emphasis added). Ans. 10. The Examiner further finds that Kuznetsov discloses a plurality of output types, including HTML, PDF, bXML, and WAP types. Ans. 10-11 (citing Kuznetsov col. 14, ll. 38-42; col. 17, ll. 38-42; Figs. 8A, 8B); *see also* Ans. 23-24. Appellants contend that:

[Kuznetsov’s] description of defined “FMRFDs” of the structural layout of packets does not teach receiving a selection of an output type, wherein the output data is formatted according to the output type, as claimed. The Examiner alleges that the “output type” can be “HTML, PDF, bXML, or WAP output types”, but none of these are the FMRFDs, and there is no selection of them received.

Reply Br. 22 (citing Kuznetsov col. 5, ll. 21-31).

We agree with the Examiner that Kuznetsov discloses each and every element recited in claim 2. In particular, we agree with the Examiner that Kuznetsov discloses a plurality of possible output types (Kuznetsov col. 14, ll. 38-42; col. 17, ll. 38-42) and discloses that the output data is formatted in accordance with the output data type (Kuznetsov Figs. 8A, 8B). Thus, we find that, in order for a specific output to be generated, it is implicit that an output type selection is received by Kuznetsov’s translator, either during operation of the translator or during the initial loading of the translator into the system on which the translator operates. We note that claim 2 does not limit how or when the selection of an output type is received. As it is not

necessary to our analysis, we do not reach the question of whether the Examiner's findings regarding the FMRFDs are correct.⁴

Accordingly, we will sustain the rejection of (1) claim 2; (2) claim 12, the patentability of which was argued in together with claim 2; and (3) claims 9 and 19 which depend from claim 2 and 12 respectively and the patentability of which was not separately argued with particularity. However, because we are sustaining the rejections on an explanation of Kuznetsov's disclosure that is different from that relied upon by the Examiner, we designate our affirmance as a new ground of rejection under 37 C.F.R. § 41.50(b).

CLAIMS 6-8

Regarding claims 6-8, we have reviewed Appellants' contentions (App. Br. 20-26; Reply Br. 23-27) in light of the Examiner's findings (Ans. 11-15) and explanations (Ans. 25-29). We agree with the Examiner's findings and explanations and adopt them as our own. The following findings, conclusions, and explanations are provided for emphasis.

Appellants' contentions that claims 6-8 are allowable because they depend from claim 1 (App. Br. 20, 22, 24) are unpersuasive for the reasons discussed *supra* regarding claim 1.

Claim 6

Appellants contend that Golden, alone or in combination with Kuznetsov, does not teach or suggest "data patterns [that] include at least one object," as recited in claim 6. App. Br. 20.

⁴ We note that Kuznetsov's disclosure of FMRFDs appears to relate to a different embodiment than those illustrated in Kuznetsov's Figures 8A and 8B. See Kuznetsov col. 14, ll. 28-33.

The Examiner relies on Kuznetsov to teach or suggest data patterns (*see* Ans. 4-10) and relies on Golden to teach or suggest that items of information (i.e., data) in an input data stream may include objects (Ans. 12 (citing Golden col. 3, ll. 40-42)). Appellants' arguments (App. Br. 20-21; Reply Br. 23-24) amount to little more than an assertion that Golden does not teach or suggest the recited limitation, without persuasive explanation as to why Golden's data objects are not data patterns. Merely reciting the language of the claims and asserting that the cited prior art reference does not teach or suggest the claim limitations is insufficient. *See* 37 C.F.R. § 41.37(c)(vii) ("A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim."); *see also In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) ("[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art."); *cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art."). Therefore, in view of the breadth of the term "data patterns" discussed *supra* regarding claim 1, we agree with the Examiner.

Accordingly, we sustain the rejection of claim 6 and of claim 16, the patentability of which was argued together with claim 6.

Claim 7

Appellants contend that Golden, alone or in combination with Kuznetsov, does not teach or suggest "data patterns [that] include

relationships between at least two objects,” as recited in claim 7. App. Br. 22.

The Examiner relies on Kuznetsov to teach or suggest data patterns (*see* Ans. 4-10) and relies on Golden to teach or suggest that items of information (i.e., data) in an input data stream may include objects that have relationships between objects (Ans. 13 (citing Golden Fig. 5; col. 8, ll. 56-67)). Appellants’ arguments (App. Br. 22-23; Reply Br. 25-26) amount to little more than an assertion that Golden does not teach or suggest the recited limitation, without persuasive explanation as to why Golden does not teach or suggest related data objects or why the relationships among Golden’s data objects are not “data patterns.” *See* 37 C.F.R. § 41.37(c)(vii). In view of the breadth of the term “data patterns” discussed *supra* regarding claim 1, we agree with the Examiner.

Accordingly, we sustain the rejection of claim 7 and of claim 17, the patentability of which was argued together with claim 7.

Claim 8

Appellants contend that Golden, alone or in combination with Kuznetsov, does not teach or suggest “data patterns [that] include at least one object and at least one corresponding object attribute,” as recited in claim 8. App. Br. 24.

The Examiner relies on Kuznetsov to teach or suggest data patterns (*see* Ans. 4-10) and relies on Golden to teach or suggest that items of information (i.e., data) in an input data stream may include objects that have corresponding object attributes (Ans. 15 (citing Golden col. 5, ll. 29-41; col. 6, ll. 29-35)). Appellants’ arguments (App. Br. 24-26; Reply Br. 26-27) amount to little more than an assertion that Golden does not teach or suggest

the recited limitation, without persuasive explanation as to why Golden does not teach or suggest data objects having corresponding attributes or why Golden's data objects and corresponding attributes are not "data patterns." See 37 C.F.R. § 41.37(c)(vii). In view of the breadth of the term "data patterns" discussed *supra* regarding claim 1, we agree with the Examiner.

Accordingly, we sustain the rejection of claim 8 and of claim 18, the patentability of which was argued together with claim 8.

CLAIM 10

Appellants' contention that claim 10 is allowable because it depends from claim 1 (App. Br. 16) is unpersuasive for the reasons discussed *supra* regarding claim 1. Accordingly, we sustain the rejection of claim 10 and of claim 20, the patentability of which was argued together with claim 10.

ORDER

The decision of the Examiner to reject claims 1-20 is affirmed.⁵ Our affirmance of the rejection of claims 2, 9, 12, and 19 is designated as a new ground of rejection.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). Section 41.50(b) provides that "[a] new ground of rejection . . . shall not be considered final for judicial review."

⁵ In the event of further prosecution of claims 11-20, or claims in similar form, we leave to the Examiner to ascertain whether such claims are directed to statutory subject matter under 35 U.S.C. § 101. See *In re Nuijten*, 500 F.3d 1346, 1357 (Fed. Cir. 2007); David J. Kappos, *Subject Matter Eligibility of Computer Readable Media*, 1351 OFF. GAZ. PAT. OFFICE 212 (Feb. 23, 2010).

Section 41.50(b) also provides that Appellants, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record.

37 C.F.R. § 41.50(b).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2010).

AFFIRMED
37 C.F.R. § 41.50(b)

BENOIT, *Administrative Patent Judge*, CONCURRING:

I concur with the majority's decision and new ground of rejection, but write separately to present an alternative claim construction for "data patterns." Based on my review of dictionary definitions, I conclude that a person of ordinary skill in the art of computer programming also would recognize the term "data pattern" to mean a model or an original of a data item to be followed in making other data items.⁶ This construction is also consistent with Appellants' Specification, for example: "The system parses the input data to recognize data patterns, as described herein (step 620). The system then creates an output according to the input data and recognized data pattern, using a presentation template in the generic style sheet, as described above (step 625)." Spec. ¶ 0073; *see also* Spec. ¶¶ 0047-48, 0053, 0077.

With this construction, Kuznetsov's description in Figures 8A and 8B, on which the Examiner relied (Ans. 6), discloses a data pattern. In particular, Figures 8A and 8B disclose an XML element or node 750 (comprising an opening tag, included data, and a closing tag) is a model or an original of a data item to be followed in making other data items, i.e., a "data pattern."

⁶ AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1329 (3rd ed. 1992) (defining "pattern" as "1.a. A model or an original used as an archetype. b. A person or thing considered worthy of imitation. 2. A plan, diagram, or model to be followed in making things: *a dress pattern*. 3. A representative sample; a specimen. . . . 5. A consistent, characteristic form, style, or method, as: a. A composite of traits or features characteristic of an individual or a group: *one's pattern of behavior*"); *see also id.* at 95 (defining "archetype" as "1. An original model or type after which other similar things are patterned; a prototype").

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