Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROSHI KOBATA

Appeal No. 2001-1341
Application No. 09/170,431

HEARD: September 19, 2002

Before BARRETT, DIXON, and LEVY, **Administrative Patent Judges.**

DIXON, **Administrative Patent Judge.**

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 12, 13, and 17- 34, which are all of the claims pending in this application.

We AFFIRM-IN-PART.

BACKGROUND

Appellant's invention relates to a smart Internet information delivery system and automatic notification of completion of transmission/reception of data. An understanding of the invention can be derived from a reading of exemplary claims 21 and 27, which are reproduced below.

> 21. A method for transmitting data over a network from a first node to a second node having a second node processor in electrical communication with a display and in electrical communication with said network, the method comprising the steps of:
>
> automatically communicating between said second node and said first node;
>
> transmitting said data from said first node to said second node; and
>
> automatically displaying an icon on said display representing said transmitted data in response to said data being completely transmitted from said first node to said second node.
>
> 27. A method for transmitting data over a network from a server node to a client node, the method comprising the steps of:
>
> measuring an activity level at the client node to determine whether the activity level meets a busyness threshold;
>
> generating a hold signal if the activity level meets the busyness threshold;

suspending transmission of the data to the client node in response to the hold signal.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Jaaskelainen	5,301,348	Apr. 05, 1994
Rakavy et al. (Rakavy)	5,913,040	Jun. 15, 1999 (Filed Aug. 22, 1995)

Claims 22-33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rakavy. Claims 20, 21, 34, 12, 13, 18, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Rakavy in view of Jaaskelainen.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejections, we make reference to the examiner's answer (Paper No. 24, mailed Oct. 27, 2000) for the examiner's reasoning in support of the rejections, and to appellant's brief (Paper No. 22, filed Sep. 11, 2000) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the

The examiner maintains that Rakavy teaches and suggests the invention as recited in claims 22-33. The examiner maintains that Rakavy does not specifically teach the transmitting of a hold signal to a server. The examiner maintains that the Polite Agent of Rakavy would send a hold signal to the server to suspend the data transfer and to close the session and efficiently manage to communication session resources.

Appellant argued at the Oral Hearing that the Polite Agent was located at the server and the server was performing the monitoring rather than the "measuring an activity level at the client node." We tend to agree with appellant that the monitoring is being performed at the server since column 13, line 5 to column 14, line 21 of Rakavy states that:

> [t]he system incorporates a type of intelligent software agent technology referred to herein as a "Polite Agent." . . . The TCP/IP Polite Agent 280 transmits information during periods of low line utilization without causing a noticeable slowdown in the data transfer rate of other processes communicating over the Communications Link 703. The TCP/IP Polite Agent 280 constantly monitors communications status and determines periods of low communication line utilization. It then uses the TCP/IP communications resources, available on the platform, to transfer a portion of the data. Preferably, the agent does not initiate the communication itself, but rather takes advantage of communications resources once the initial Communications Link 703 with the Network Service Provider 701

> becomes high due to other applications executing on the Local Computer 500 or the Communications Link 703 is disconnected (e.g., the line goes down), the TCP/IP Polite Agent 280 temporarily suspends its data transfer operation until ample resources are available once again. At that point, the TCP/IP Polite Agent 280 recovers the data transfer process from the point where the transfer was suspended, thereby avoiding the need to retransmit data.
>
> Low line utilization occurs when the communications line is busy no more than a predetermined percentage of time. This threshold may be fixed (typically at 30%) user-configurable, or dynamic. When dynamically determined, the threshold may vary with a number of parameters such as the length of time the TCP/IP Polite Agent 280 has been waiting to transmit, the number or type of Polite Agent Jobs 285 on the Polite Agent Queue 286, the amount of data which the TCP/IP Polite Agent wishes to transfer, and the type of data being transferred.
>
> .
> .
> .
>
> In step D (44), the current communications line utilization is compared to the calculated threshold. If the current utilization is higher than the calculated threshold, the TCP/IP Polite Agent 280 will not perform communication and will return to step A. At this point the TCP/IP Polite Agent 280 may be temporarily suspended by the operating system. (Emphasis added.)

From the above discussion, it is clear to us that the server is monitoring the communication resource utilization performed by the server which is transmitting the data to the client. Therefore, there is no teaching or suggestion of monitoring at the

In an embodiment where the Polite Agent transmits data to the network (see Rakavy at column 14), again, we find no discussion of the client monitoring the communications status and receiving at the server of a hold signal as recited in independent claim 27. Since we find that Rakavy does not teach or fairly suggest the invention as recited in independent claim 27, we will not sustain the rejection of claim 27 and dependent claims 17-19 and 28-34. Independent claim 22 contains limitations similar to claim 27. Therefore, we will not sustain the rejection of claim 22 and dependent claims 12, 13 and 23-26.

With respect to independent claims 20 and 21, the examiner maintains that Jaaskelainen teaches generating an icon to provide the user with status of a task in an efficient manner and that it would have been obvious to one of ordinary skill in the art at the time of the invention to generate an icon in response to completion of the data transmission because it would have enabled the system to provide a visual cue with a minimal amount of display space to alert the user that the new data was available. (See answer at page 4.) We agree with the examiner. While the examiner relies upon the combination of teachings of Rakavy and Jaaskelainen, we find that Jaaskelainen teaches all of the limitations of independent claim 21. We find that the col. 2, lines

> [a] dynamic progress marker icon is disclosed that dynamically changes to mark the progress of a task. In this manner, the user is kept informed of the status of a task being performed without resorting to language sensitive messages such as "Now processing object number 12 of 100" . The icon does not require a graphics display to be used and therefore can be used on both graphics and non-graphics displays. The icon of the prepared embodiment has five rows consisting of four percent (%) symbols surrounded by a border. At the beginning of a task, a task monitor quantifies the task into substantially equivalent task work units. All twenty "%" symbols are present and displayed to the user. When the task monitor determines that one task work unit has completed, one "%" symbol is replaced in the icon by a replacement character, such as a blank or null character. The replacement of one "%" symbol each time a task work unit completes continues until all of the "%" symbols are replaced, indicating 100% completion of the task. The order in which symbols inside the icon are replaced is determined by a pattern array and can be modified if desired. The symbols used inside the icon and for the border are selected to be available in virtually all languages, and can also be modified to meet the needs of a particular user.

We find that each time the icon is updated, a new icon is automatically displayed and the final icon for completion would be the icon with all of the “%” symbols changed. Therefore, we find that Jaaskelainen alone teaches the invention recited in independent claim 21. Since appellant elected to group independent claim 20 with claim 21, we sustain the rejection of claim 20 as well as the rejection of claim 21.

CONCLUSION

To summarize, the decision of the examiner to reject claims 21 and 22 under 35

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

LEE E. BARRETT Administrative Patent Judge	)))))) BOARD OF PATENT
JOSEPH L. DIXON Administrative Patent Judge	) APPEALS) AND) INTERFERENCES
STUART S. LEVY Administrative Patent Judge	))))

jld/vsh

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