

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 16

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY EDWARD BROCK and STEVEN JAY MUNROE

Appeal No. 2001-2672
Application 08/990,360

ON BRIEF

Before BARRETT, FLEMING, and RUGGIERO, **Administrative Patent Judges**.

FLEMING, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the twice rejection of claims 1 through 24, all the claims pending in the instant application.

The invention relates to remote object access mechanisms in data processing systems. See page 1 of Appellants' specification. There are currently two types of remote object access models that are used within the various segments of the

computer industry. They are referred to within the Appellants' specification as "page shipping" and "function shipping." See page 3 of Appellants' specification. Each model is known in the industry to have certain strengths and certain weaknesses. See page 3 of Appellants' specification. The two remote object access models require programmers to write their programs differently under each model. While the industry experts are able to debate the respective strengths and weaknesses of each of these remote object access mechanisms, the basic truth is that the potential of distributed object computing will never be fully realized without a remote access mechanism that maximizes the benefits of each of the two models. See page 4 of Appellants' specification.

Figure 4 shows a switch submechanism 415 within shipper 110. The switch submechanism 415 is responsible for dynamically switching between the page shipping model and the function shipping model. See pages 14 and 15 of Appellants' specification. Figures 11A and 11B show the switch processing of the preferred embodiment. See page 25 of Appellants' specification. Switch submechanism 415, which begins in block 1100 of figure 11A, runs periodically to determine whether the system or network condition warrants a change to the object

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access mechanism being used to service requests for objects stored in its computer system. See pages 25 through 27 of Appellants' specification for a detailed disclosure as to how switch submechanism 415 dynamically switches between the two remote object access models.

Independent claim 1 present in the application is reproduced as follows:

1. A first computer system, said first computer system comprising:

a bus;

a central processing unit;

computer system memory, said computer system memory being connected to said central processing unit via said bus;

at least one server object, said server object being stored in said computer system memory; and

a shipper contained in said computer system memory for execution on said central processing unit, said shipper being used to ship said at least one server object to a second computer system, said shipper being able to ship said at least one server object to said second computer system via more than one remote object access model.

References

The references relied on by the Examiner are as follows:

Morris et al. (Morris)	5,724,538	Mar. 3, 1998 (Filing date Feb. 27, 1996)
Colyer	5,862,328	Jan. 19, 1999 (Filing date Sept. 6, 1996)

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Rymer J., OMG's UNO, **Distributed Computing Monitor** v9, N12, p32(8), 1994.

Rejections at Issue

Claims 1, 3 through 5, 8 and 11 through 21 stand rejected under 35 U.S.C. § 103 as being unpatentable over Colyer in view of Rymer. Claims 2, 6, 7, 9, 10 and 22 through 24 stand rejected under 35 U.S.C. § 103 as being unpatentable over Colyer in view of Rymer and further in view of Morris.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the briefs¹ and the answers² for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and arguments of Appellants and

¹Appellants filed an appeal brief on October 23, 2000. The Examiner in response to this brief reopened prosecution and issued another non-final rejection on January 3, 2001. Appellants filed another supplemental appeal brief in response to the non-final rejection on April 5, 2001. We will refer to the supplemental appeal brief as simply the brief.

²In response to the appeal brief filed on April 5, 2001, the Examiner mailed an Examiner's answer on June 15, 2000. The Board remanded to the Examiner on January 28, 2002. In response to the remand, the Examiner mailed a supplemental Examiner's answer on March 29, 2002. We will refer to the supplemental Examiner's answer simply as the answer.

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Examiner for the reasons stated **infra**, we reverse the Examiner's rejection of claims 1 through 24 under 35 U.S.C. § 103.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a **prima facie** case of obviousness. **In re Oetiker**, 977 F.2d 1443, 1445, 24 USPQ 1443, 1444 (Fed. Cir. 1992). **See also In re Piasecki**, 745 F.2d 1468, 1472 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. **In re Fine**, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellants. **Oetiker**, 977 F.2d at 1445, 24 USPQ at 1444. **See also Piasecki**, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and arguments." **Oetiker**, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of

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record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." **In re Lee**, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002). With these principles in mind, we commence review of the pertinent evidence and arguments of Appellants and Examiner.

Appellants argue that Rymer does not teach, disclose or suggest the use of more than one remote object access model as required by all of the Appellants' claims. For claims 1 through 3 and 11 through 15, see page 4 of the brief; for claims 4 and 6 through 10, see page 6 of the brief; for claims 5, 17 and 22 through 24, see page 7 of the brief. Appellants point out that Rymer pertains to managing different implementations of the same remote object access model. Thus, Rymer does not describe a shipper that works using more than one remote object model but rather pertains to different implementations of the same model, namely CORBA 1.x.

The Examiner responds by arguing that the scope of the claimed "remote access model" is reasonably subject to a broad range of interpretations that would include Rymer's different implementations of the same remote object access model. See pages 7 and 8 of the answer.

We note that Appellants' claim 1 recites "said shipper being able to ship said at least one server object to said second computer system via more than one remote object access model." Appellants' claim 4 recites "said shipper mechanism being capable of dynamically switching between said more than one remote object access model." Appellants' claim 8 recites "said shipper mechanism being capable of dynamically switching between said more than one remote object access model." Appellants' claim 11 recites "said shipper being able to ship said at least one server object to said second computer system via more than one remote object access model." Appellants' claim 16 recites "said shipper mechanism being capable of dynamically switching between said more than one remote object access model." Finally, Appellants' claim 22 recites "selecting a remote access model based on said evaluating step, said remote access model being one of at least two remote access models that are available for selection; and shipping said server object to said client computer system using said remote access model." Thus, we find that the scope of all the claims require a shipper being able to ship at least one server object to said second computer via more than one remote

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object access model. Therefore, the question before us is whether Rymer teaches or suggests or discloses the use of more than one remote object access model.

Upon our review of Rymer, we find that Rymer pertains to managing different implementations of the same remote object access model. See page 1, paragraph 5, lines 5 through 11 of Rymer. Thus, Rymer pertains to different implementations of the same model, namely CORBA 1.x1.

As our reviewing court states, “[t]he terms used in the claims bear a ‘heavy presumption’ that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art.” **Texas Digital Sys. Inc. v. Telegenix, Inc.**, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1817 (Fed. Cir. 2002).

Moreover, the intrinsic record also must be examined in every case to determine whether the presumption of ordinary and customary meaning is rebutted. [citation omitted]. Indeed, the intrinsic record may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning reflected, for example, in a dictionary definition. In such a case, the inconsistent dictionary definition must be rejected.

Id. at 1204, 64 USPQ2d at 1819. “[A] common meaning, such as one expressed in a relevant dictionary, that flies in the face of the patent disclosure is undeserving of fealty.” **Id.** (citing **Renishaw**

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PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250, 48 USPQ2d 1117, 1122 (Fed. Cir. 1998) "Indiscriminate reliance on definitions found in dictionaries can often produce absurd results." (citing **Liebscher v. Boothroyd**, 258 F.2d 948, 951, 119 USPQ 133, 135 (C.C.P.A. 1958)). "In short, the presumption in favor of a dictionary definition will be overcome where the patentee, acting as his or her own lexicographer, has clearly set forth an explicit definition of the term different from its ordinary meaning." **Id.** "Further, the presumption also will be rebutted if the inventor has disavowed or disclaimed scope of coverage, by using words or expressions of manifest exclusion or restriction, representing a clear disavowal of claim scope." **Id.**

Turning to the specification, it is clear that the remote object access models are page shipping most currently associated with Object-Oriented Database providers, and function shipping which is a newer approach that is supported by a group called OMG. See page 3 of Appellants' specification. Page shipping is explained in greater detail on pages 9 and 10 of the specification and function shipping is similarly described in greater detail on pages 10 and 11. From the specification, it is clear that remote access models are completely different designs

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for a remote object access request. Furthermore, we find that this is not inconsistent with the ordinary meaning. In particular, model is defined as a style or design, any series or different styles or designs of a particular product.³

We find that more than one remote object access model does not read upon the same model with different implementations. Therefore, we will not sustain the Examiner's rejection of claims 1, 3 through 5, 8 and 11 through 21 under 35 U.S.C. § 103 as being unpatentable over Colyer in view of Rymer. Furthermore, we note that the Examiner relied on the same interpretation in the rejection of claims 2, 6, 7, 9, 10 and 22 through 24 under 35 U.S.C. § 103 as being unpatentable over Colyer in view of Rymer and further in view of Morris. Therefore, we will not sustain this rejection for the same reasons.

³ **Webster's New World Dictionary**, Third College Edition copyright 1988, page 871, third definition of "model." Copy provided.

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In view of the foregoing, we have not sustained the
Examiner's rejection of claims 1 through 24 under 35 U.S.C.
§ 103.

REVERSED

Lee E. Barrett)	
Administrative Patent Judge)	
)	
)	
)	BOARD OF PATENT
Michael R. Fleming)	
Administrative Patent Judge)	APPEALS AND
)	
)	INTERFERENCES
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