

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GREG A. DYCK and BRIAN B. MOORE

Appeal No. 2002-0382
Application No. 09/133,878

ON BRIEF

Before FLEMING, GROSS, and LEVY, **Administrative Patent Judges**.
GROSS, **Administrative Patent Judge**.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 29, which are all of the claims pending in this application.

Appellants' invention relates to a method for runtime remediation of object-code instructions in a computer program by executing the instructions in accordance with remediation parameters stored with the instructions. Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. A method for runtime remediation of object-code instructions in a computer program, comprising the steps of:

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storing a table containing a table entry for each program instruction that is to be remediated, each table entry containing one or more remediation parameters;

detecting a program location corresponding to an instruction to be remediated while executing the program; and

upon detecting a program location corresponding to an instruction to be remediated, executing the instruction to be remediated in accordance with the remediation parameters in the table entry corresponding to the instruction to be remediated.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Roth et al. (Roth)	5,878,422	Mar. 02, 1999 (filed Apr. 09, 1997)
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Claims 1 through 29 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roth.

Reference is made to the Final Rejection (Paper No. 9, mailed January 4, 2001) and the Examiner's Answer (Paper No. 13, mailed August 22, 2001) for the examiner's complete reasoning in support of the rejections, and to appellants' Brief (Paper No. 12, filed June 15, 2001) for appellants' arguments thereagainst.

OPINION

We have carefully considered the claims, the applied prior art references, and the respective positions articulated by

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appellants and the examiner. As a consequence of our review, we will reverse the obviousness rejection of claims 1 through 29.

The examiner asserts (Final Rejection, page 2) that Roth shows in Figures 2-4 and describes in column 6 storing a table of instructions to be remediated and associated remediation parameters. The examiner further reads Roth, column 7, lines 34-47, as remediating an instruction and executing the instruction in accordance with the corresponding remediation parameters. The only limitation the examiner finds lacking from Roth is the explicit detection of a program location corresponding to an instruction to be remediated. However, the examiner asserts that detection of a program location would have been obvious for the data adapter to be able to convert the program.

Appellants argue (Brief, page 5-6) that Roth does not teach remediating instructions. Roth instead supplies data in a format expected by the instruction. As such, Roth does not store a table containing a table entry for each program instruction that is to be remediated. The examiner responds (Answer, page 3) that appellants' "remediation of instructions is equivalent to remediation of data as shown on pages 8-10 of the specification."

We agree with appellants. We first note that "equivalence" is not the same as being the same. Equivalence suggests an

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alternate way of doing the same thing. Further, Roth specifically states (column 5, line 64-column 6, line 2) that the programs have been converted already, and that the format of the data is being changed for use in the converted program. In column 8, lines 15-17, Roth states that the data is virtualized and the application program is unaware that the data originally had the old formatting. Thus, only the format of the data is being changed or remediated, not the instructions. Furthermore, we find no disclosure of storing the instructions with remediation parameters. The programs that have been converted are stored such that data adapter intercepts the I/O calls from those programs and performs a virtual change of data format. It is unclear to us what the examiner believes to be the table of stored instructions to be remediated with corresponding remediation parameters. Accordingly, we cannot sustain the rejection of claims 1 through 29 over Roth.

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CONCLUSION

The decision of the examiner rejecting claims 1 through 29 under 35 U.S.C. § 103 is reversed.

REVERSED

MICHAEL R. FLEMING)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
ANITA PELLMAN GROSS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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)	
STUART S. LEVY)	
Administrative Patent Judge)	

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