

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. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES R. DEW, BARRY F. RUZEK
AND MARK G. HAZZARD

Appeal No. 2002-0884
Application No. 08/852,507

ON BRIEF

Before RUGGIERO, BARRY, and BLANKENSHIP, Administrative Patent Judges.

RUGGIERO, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal from the final rejection of claims 1-11 and 15-18, which are all of the claims pending in the present application. Claims 12-14 have been canceled.

The disclosed invention relates to a user "help" system useful in data processing systems using different and heterogeneous computer platforms. A user is provided assistance concerning the interoperation of diverse application programs which may be located within the different and heterogeneous computer platforms.

Appeal No. 2002-0884
Application No. 08/852,507

Claim 1 is illustrative of the invention and reads as follows:

1. In a data processing system having a first autonomous application program and having a second autonomous application program, the improvement comprising;

a third autonomous application program having means for describing interoperability of said first autonomous application program and said second autonomous application program in human understandable form.

The Examiner relies on the following prior art:

Fults et al. (Fults) 5,327,529 Jul. 05, 1994

Claims 1-11 stand finally rejected under 35 U.S.C. § 102(b) as being anticipated by Fults. Claims 15-18 stand finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Fults.¹

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs², final Office action, and Answer for their respective details.

OPINION

¹Although in the final Office action, the Examiner's stated ground of rejection of claims 15-18 included a reliance on the combination of Fults and Hickey (U.S. Patent No. 5,627,977 issued May 6, 1997), the statement of the grounds of rejection of claims 15-18 at page 3 of the Answer relies on Fults alone. Since the Examiner makes no mention of Hickey anywhere in the Answer, we consider the rejection of claims 15-18 to be based solely on Fults.

²In response to the final Office action mailed February 3, 1999 (Paper No. 7), the Appeal Brief was filed June 7, 1999 (Paper No. 8). In response to the Examiner's Answer dated August 2, 1999 (Paper No. 10), a Reply Brief was filed September 28, 1999 (Paper No. 11), which was acknowledged and entered by the Examiner as indicated in the communication dated October 9, 2002 (Paper No. 14).

Appeal No. 2002-0884
Application No. 08/852,507

We have carefully considered the subject matter on appeal, the rejections advanced by the Examiner, the arguments in support of the rejections, and the evidence of anticipation and obviousness relied upon by the Examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, Appellants' arguments set forth in the Briefs along with the Examiner's rationale in support of the rejections and arguments in rebuttal set forth in the Examiner's Answer.

It is our view, after consideration of the record before us, that the Fults reference does not fully meet the invention as set forth in claims 1-6, but reach the opposite conclusion with respect to claims 7-11. It is further our view that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as recited in claims 15-18. Accordingly, we affirm-in-part.

Initially, we note that anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L.

Appeal No. 2002-0884
Application No. 08/852,507

Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to independent claims 1 and 4, the Examiner attempts to read the various limitations on the disclosure of Fults. In particular, the Examiner points to the illustrations in Figures 1, 2, 45, and 46 of Fults along with the accompanying descriptions at columns 3, 6, 7, 9, 10, 22, and 24.

Appellants' arguments in response assert a failure of Fults to disclose every limitation in independent claims 1 and 4 as is required to support a rejection based on anticipation. In particular, Appellants' arguments (Brief, pages 9-11; Reply Brief, pages 4 and 5) assert the Examiner's misinterpretation of the Fults reference which, in Appellants' view, has no disclosure of three application programs, let alone how one application program describes the interoperability of two other application programs as set forth in the appealed claims. Appellants' arguments in the Briefs assert (Brief, at 10) that Fults is not concerned with the relationship of separate autonomous application programs but, rather, with an attempt to design a user interface for a single application program.

Appeal No. 2002-0884
Application No. 08/852,507

After reviewing the Fults reference in light of the arguments of record, we are in general agreement with Appellants' position as expressed in the Briefs. Although the Examiner interprets (Answer, page 4) the specific user interfaces and the generic user interface in Fults as being "application programs," we find no evidentiary support for such a conclusion. We agree with Appellants that the Examiner has provided no documentary support for the asserted definition (id.) of an "application program" as "... a program designed to assist in the performance of a specific task, such as to exchange information with the operating system." When not defined by an applicant in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1547, 218 USPQ 385, 388 (Fed. Cir. 1983).

Our review of Fults reveals that the generic user interface software as well as the specific user interface software are specifically described as being part of the operating system software (Fults, column 15, line 6 to column 16, line 5, column 24, lines 38-49, and column 25, lines 26-35) which, in our view, a skilled artisan would recognize as being in contrast with

Appeal No. 2002-0884
Application No. 08/852,507

application programs.³ The Fults reference clearly recognizes this distinction since the generic and user interface programs are unambiguously referred to as "operating system programs", not "application programs." We also note that the generic and specific user interface programs in Fults, described therein as included within the operating system software, would not meet the Examiner's proffered and unsupported definition of an application program.

Further, it is our opinion that the Examiner has failed to show how Fults discloses another key feature of independent claims 1 and 4, i.e., the requirement that an application program describe the interoperability of two other application programs. We find no basis in Fults, and the Examiner has provided none, for the Examiner's conclusion (Answer, page 4) that an "... operator can direct communication between the interfaces using the generic user interface." The Examiner must not only make requisite findings, based on the evidence of record, but must also explain the reasoning by which the findings are deemed to support the asserted. See In re Lee, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002).

³ The attached copies of excerpts from Computer Dictionary, (Microsoft Press[®], Second Edition 1994) and Computer Desktop Encyclopedia, establish, in our view, that one of ordinary skill would recognize and appreciate that the ordinary and accepted meaning of the term "application program" signifies something distinct from "operating system programs."

Appeal No. 2002-0884
Application No. 08/852,507

In view of the above discussion, since all of the claimed limitations are not present in the disclosure of Fults, we do not sustain the Examiner's 35 U.S.C. § 102(b) rejection of independent claims 1 and 4, nor of claims 2, 3, 5, and 6 dependent thereon.

We also do not sustain the Examiner's 35 U.S.C. § 103(a) rejection, based on Fults, of independent claim 15, as well as claims 16-18 dependent thereon. In addressing the language of independent claim 15, the Examiner, recognizing that Fults does not explicitly disclose a multiple computer structure, nevertheless suggests the obviousness to the skilled artisan of implementing the plural application program interoperability features of Fults in a network computer environment. We find, however, for all of the reasons discussed supra, that Fults does not teach or suggest a system with plural autonomous application programs, let alone one in which the interoperability of two application programs is described by another application program.

Turning to a consideration of the Examiner's 35 U.S.C. § 102(b) rejection of claims 7-11, we note that, while we found Appellants' arguments to be persuasive with respect to the 35 U.S.C. § 102(b) rejection of claims 1-6 previously discussed, we reach the opposite conclusion with respect to claims 7-11. At the outset, a review of the language of claims 7-11 reveals that,

Appeal No. 2002-0884
Application No. 08/852,507

unlike claims 1-6 which recite "autonomous application programs", claims 7-11 require a plurality of "software products." It is apparent to us that, in Fults, the application program for which a designer is to develop a user interface, as well as the generic and user interface operating system programs for implementing the interface design, are undisputably "software products." Further, we fail to see how the stored "hint" functions described by Fults in columns 9, 10, and clearly designed to aid a developer in designing a specific user interface, could be considered anything other than a "help" function as claimed.

We also find to be unpersuasive Appellants' arguments with respect to dependent claims 8 and 9, directed to the interoperability of the claimed first and second products. Appellants' arguments are based on their previous assertion that Fults lacks two separate software products and a help function, assertions which, from our previous discussion, we find to be unfounded. We also find, as asserted by the Examiner (Answer, page 4) that Fults discloses that the "hint" functions provide information regarding the interoperability of the various "software products," i.e., the application program for which a user interface is to be developed, as well as the generic and specific interface operating system programs used in developing the user interface.

Appeal No. 2002-0884
Application No. 08/852,507

We further agree with the Examiner, in contrast to Appellants' contentions regarding dependent claims 10 and 11, that clear disclosure exists in Fults of software products produced by different vendors (e.g. column 17, lines 10-16), and that the system of Fults (e.g. column 6, lines 48-67 and column 20, lines 35-50) describes different software interface environments and operating systems constituting "heterogeneous computer platforms" as broadly claimed by Appellants.

In summary, we have not sustained the Examiner's 35 U.S.C. § 103(a) rejection of claims 15-18. With regard to the Examiner's rejection under 35 U.S.C. § 102(b), we have not sustained the rejection of claims 1-6, but have sustained the rejection of claims 7-11. Therefore, the Examiner's decision rejecting claims 1-11 and 15-18 is affirmed-in-part.

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

Appeal No. 2002-0884
Application No. 08/852,507

AFFIRMED-IN-PART

JOSEPH F. RUGGIERO)	
Administrative Patent Judge)	
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LANCE LEONARD BARRY)	APPEALS
Administrative Patent Judge)	AND
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Appeal No. 2002-0884
Application No. 08/852,507