

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte INGOLF SALM

Appeal No. 95-2205
Application 07/750,807¹

ON BRIEF

Before KRASS, FLEMING and LEE, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge.***

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1, 4 through 7, 9, 10, 21 through 24 and 26 through 30, all of the claims present in the application. Claims 2,3, 8, 11 through 20 and 25 have been canceled.

¹Application for patent filed August 27, 1991.

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Appellant's invention relates to a virtual storage organization concept providing storage space for parallel program execution in pre-allocated partitions of a virtual address storage containing shared areas and private areas in several address spaces.

Independent claim 1 is reproduced as follows:

1. A computer system comprising:

a virtual storage; and

means for allocating from said virtual storage (a) a plurality of private storage areas to a respective plurality of programs before or at a start of execution of the respective programs, (b) another storage area which is shared by said plurality of programs, one of said programs performing a plurality of jobs, and (c) an additional private storage area to said one program for one of said jobs at a start of said one job subsequent to the start of one program; and

means for de-allocating said additional private storage area at an end of said job.

The reference relied on by the Examiner is as follows:

IBM VSE/Advanced Functions, System Management Guide, Version 4, Release 1.

Claims 1, 4 through 7, 9, 10, 21 through 24 and 26 through 30 stand rejected under 35 U.S.C. § 102 as being anticipated by the IBM Guide.

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

OPINION

After a careful review of the evidence before us, we agree with the Examiner that claims 1, 4 through 7, 9, 10, 21 through 24 and 26 through 30, are anticipated under 35 U.S.C. § 102 by the IBM Guide.

At the outset, we note that Appellant has indicated on page 3 of the brief that claims 1, 4 through 7, 9, 10, 24, 26 and 27 are grouped together. We further note that Appellant has argued these claims as one group. Appellant also has indicated on the same page that claims 21 through 23 and 28 through 30 are grouped together. We further note that Appellant has argued these claims as one group. As per 37 CFR § 1.192(c)(5) revised Oct. 22, 1993 which was controlling at the time of Appellant's filing the brief, it will be presumed that the rejected claims stand or fall

²The Examiner responded to the brief with an Examiner's answer, mailed February 1, 1995. We will refer to the Examiner's answer as simply the answer. The Examiner mailed a supplemental Examiner's answer on July 24, 1996. The supplemental Examiner's answer withdraws the 35 U.S.C. § 101 rejection.

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together unless there is a statement otherwise, and in the

appropriate part or parts of the arguments, Appellant presents reasons as to why Appellant considers the rejected claims to be separately patentable. We will, thereby, consider the Appellant's claims 1, 4 through 7, 9, 10, 24, 26 and 27 as standing or falling together with claim 24 being the representative claim. We further will consider the Appellant's claims 21 through 23 and 28 through 30 as standing or falling together.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. **See *In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984). "Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention." ***RCA Corp. v. Applied Digital Data Systems, Inc.***, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984), ***cert. dismissed***, 468 U.S. 1228 (1984), *citing ***Kalman v. Kimberly-Clark****

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Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983).

Appellant argues on page 5 of the brief that the size of the GETVIS area can increase or decrease, but this is accomplished by moving the partition and the total allocation remains the same in all cases, 200 Kbytes. Appellant argues that contrary to claims 1 and 24, the GETVIS area of the IBM guide is not allocated from virtual storage at the start of a job, but rather the GETVIS area is merely partitioned from the fixed, pre-existing 200 Kbytes virtual storage allocation made for the program at the start of the program execution.

We appreciate Appellant's argument that IBM discloses that the virtual storage area is 200 Kbytes. However, Appellant's claim 24 does not recite that the virtual storage space cannot be a fixed amount of storage. We note that Appellant's claim 24 recites "allocating from a virtual storage" and does not require that the virtual storage cannot be a fixed amount of space such as the IBM 200 Kbytes.

Furthermore, we appreciate that IBM discloses that the partitioned GETVIS area of 48K is a default allocation. However, the Examiner is not relying on the default allocation for teaching Appellant's claimed "allocating from said virtual

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storage an additional private storage area to said one program for one of said jobs at a start of said one job subsequent to the start of said one program" as recited in Appellant's claim 24. As pointed out on pages 4 and 5 of the answer, the Examiner

argues that the IBM teaching of allocating of additional GETVIS area reads on Appellant's claimed step of allocating additional private storage area.

The IBM guide teaches on page 87 that Figure 28 shows allocating from said virtual storage, an additional private storage area to said one program, for one of said jobs at a start of said one job, subsequent to the start of said one program. In particular, IBM teaches that the default GETVIS area may be increased in size by the SIZE job control or attention routine command or the SIZE parameter of the job control EXEC command. The IBM guide shows that the allocation of additional 12K of private storage area to the 48K shown in Figure 27 for a total amount of private storage of 60K shown in Figure 28. Thus, it is this teaching of allocating an additional 12K of private storage area to the program for one of the jobs at a start of the one job subsequent to the start of said one program that meets

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Appellant's claimed step of allocating additional private storage area recited in claim 24.

Appellant argues on page 5 of the brief that contrary to claims 1 and 24, the IBM's GETVIS is not deallocated at the end of the job. However, we note that it is not the GETVIS including the default area that the Examiner is relying on for the finding

of allocating and deallocating additional private storage area.

As point out above, IBM teaches the step of allocating an additional storage area of 12K as shown in Figure 28.

Furthermore, on page 88, IBM teaches deallocating the additional storage area (the 12K shown in Figure 28) at the end of the job.

We appreciate that IBM teaches that the GETVIS has the 48K of default storage space at the end of the deallocation step.

However, Appellant's claim 24 only recites that the additional private storage space is deallocated.

On page 6 of the brief, Appellant argues that claims 21 through 23 and 28 through 30 further specify that the allocation of storage for a job is made on a job basis at various time throughout program execution. Appellant argues that the IBM guide does not provide allocation on a job basis.

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As pointed out above, IBM teaches on page 87 an allocation of storage for a job. This allocation is the additional 12k of GETVIS area where the total GETVIS is increased from 48k to 60k as shown in Figures 27 and 28. Therefore, we find that the IBM guide does teach an allocation of additional private storage area on a job basis.

We note that Appellant has not argued that IBM has failed to meet any of the other limitations of the claims. Appellant has chosen not to argue any of these specific limitations of the claims as a basis for patentability. We are not required to raise and/or consider such issues. As stated by our reviewing court in *In re Baxter Travenol Labs.*, 952 F.2d 388, 391, 21 USPQ2d 1281, 1285 (Fed. Cir. 1991), "[i]t is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." 37 CFR § 1.192(a) as amended at 58 F.R. 54510 Oct. 22, 1993, which was controlling at the time of Appellant's filing the brief, states as follows:

The brief ... must set forth the authorities and arguments on which the appellant will rely to maintain the appeal. Any arguments or authorities not included in the brief will be refused consideration by the Board of Patent Appeals and Interferences.

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Also, 37 CFR § 1.192(c)(8)(iii) states:

For each rejection under 35 U.S.C. 102, the argument shall specify the errors in the rejection and why the rejected claims are patentable under 35 U.S.C. 102, including any specific limitations in the rejected claims which are not described in the prior art relied upon in the rejection.

Thus, 37 CFR § 1.192 provides that just as the court is not under any burden to raise and/or consider such issues this board is not under any greater burden.

In view of the foregoing, the decision of the Examiner rejecting claims 1, 4 through 7, 9, 10, 21 through 24 and 26 through 30, under 35 U.S.C. § 102 is affirmed.

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

AFFIRMED

ERROL A. KRASS)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
MICHAEL R. FLEMING)	APPEALS AND
Administrative Patent Judge)	INTERFERENCES
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JAMESON LEE)
Administrative Patent Judge)

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Arthur J. Samodovitz
IBM Corp., Intellectual Prop. Law
Dept. N50/251-2
1701 North Street
Endicott, NY 13760