

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opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.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. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

JUN 19 1996

Ex parte WILLIAM G. CROUSE
and
MALCOLM S. WARE

PAT.&T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 95-2973
Application 07/847,128¹

HEARD: June 3, 1996

Before KRASS, JERRY SMITH and FLEMING, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 through 9, constituting all the claims pending in the application.

The invention is directed to a diagnostic system for a multi-media computer. More particularly, the system monitors the

¹ Application for patent filed March 6, 1992.

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Reference is made to the brief and answer for the respective details of the positions of appellants and the examiner.

OPINION

The examiner admits that although Matsuura is concerned with a diagnostic routine within a programmable controller, Matsuura does not teach "modifying execution instructions" by inserting a branch instruction in the DSP task execution sequence. However, the examiner contends that this modification of instruction execution sequence is merely an interrupt and that it would have been obvious to incorporate such a feature in Matsuura because "interrupting instruction execution when any fault occurs is well known in the art" [Answer, page 3]. The examiner further points to column 16, lines 54 et. seq. of Matsuura for a teaching of invoking an abnormality detection program only when an abnormality flag is set in an effort to counter appellants' argument that Matsuura did not teach invoking the diagnostic code by modifying the execution instruction and when no processing overload was determined [Answer, page 4].

We will not sustain the examiner's rejection of claims 1 through 9 under 35 U.S.C. § 103 because, in our view, the examiner has failed to establish a prima facie case of obviousness.

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We agree with appellants [Brief, pages 4-5] that in Matsuura the diagnostic program is always present and executed as part of the main program running in the controller, slowing operation of the controller and this is not gainsaid by the examiner.

Yet, in the instant invention, as claimed, the diagnostic code is invoked only when needed by modifying execution instructions and only if no processing overload is determined to exist.

We find no reason, within the meaning of 35 U.S.C. § 103, for the artisan to have modified the controller program of Matsuura to include a modification of execution instructions therein "whenever a diagnostic task is invoked and no processing overload is determined to exist," as set forth in instant claim 1.

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