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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PATRICK J. O’SULLIVAN and JAMES C. THORBURN

Appeal 2014-007269
Application 13/171,558
Technology Center 3600

Before ANTON W. FETTING, BIBHU R. MOHANTY, and
JAMES A. WORTH, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Patrick J. O’Sullivan and James C. Thorburn (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims 1–25, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

¹ Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed April 4, 2014) and Reply Brief (“Reply Br.,” filed June 19, 2014), and the Examiner’s Answer (“Ans.,” mailed April 23, 2014), and Final Action (“Final Act.,” mailed November 7, 2013).

The Appellants invented mechanisms for migrating computing environment entitlement contracts (CEEC) between a seller and a buyer using a CEEC market. Spec. para. 1.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method, in a data processing system comprising at least one computing device and a plurality of computing resources,

for migrating a computing environment entitlement contract from one computing resource to another,

comprising:

[1] generating, by the at least one computing device,

one or more computing environment entitlement contract (CEEC) data structures,

each CEEC data structure defining terms of a business level agreement between a contracting party and a provider of the data processing system,

wherein the terms of the CEEC

specify a set of computing resources having a specified configuration,

and

further specify that the set of computing resources are to be used by the contracting party for a specified purpose at a specified level and pattern of intensity for a specified period of time;

[2] associating, by the at least one computing device,

the one or more CEEC data structures

with

a computing resource cohort,

wherein the computing resource cohort is a collection of computing resources having similar configurations;

- [3] identifying, by the at least one computing device,
 - a seller of a CEEC data structure,
 - in the one or more CEEC data structures;
- [4] identifying, by the at least one computing device,
 - a buyer of a CEEC data structure,
 - in the one or more CEEC data structures;
- [5] migrating the CEEC data structure from the seller to the buyer;
- and
- [6] executing workloads
 - in accordance with terms specified in the CEEC data structure at the buyer
 - after migrating the CEEC data structure from the seller to the buyer,
 - wherein the seller and the buyer are computing resources or collections of computing resources.

The Examiner relies upon the following prior art:

Chen	US 2005/0222885 A1	Oct. 6, 2005
Chambliss	US 7,334,032 B2	Feb. 19, 2008
Souder	US 7,516,221 B2	Apr. 7, 2009

Claims 13–24 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–4, 6–10, 13–16, 18–22, and 25 stand rejected under 35 U.S.C. § 102(b) as anticipated by Chambliss.

Claims 5 and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chambliss and Chen.

Claims 11 and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chambliss.

Claims 12 and 24 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Chambliss and Souder.

ISSUES

The issues of statutory subject matter turn primarily on whether a propagating signal is within the scope of the recited medium. The issues of novelty and obviousness turn primarily on whether Chambliss describes migrating a CEEC data structure between computers.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to Claim Construction

01. The disclosure lexicographically defines, in the context of the Specification, a computer readable storage medium as any tangible medium that can contain or store a program for use by or in connection with an instruction execution system, apparatus, or device. Spec. para. 39

Facts Related to the Prior Art

Chambliss

02. Chambliss is directed to storage systems that service multiple workloads, each with potentially different quality of service (QOS) requirements, and more particularly to an improved system

for determining whether new workloads can be added to an existing system. Chambliss 1:7–11.

03. Chambliss describes how in storage systems that service multiple workloads, the multiple workloads may originate from different sources including different applications, different departments of a company, or from totally independent customers, as in the case of a Storage Service Provider (SSP). One issue in shared storage systems that provide service guarantees to existing workloads is how to determine whether a new workload that wants to be serviced by the storage system should be accepted for service or not. Chambliss 1:13–21.
04. Chambliss describes how the degree to which a shared storage system meets QOS requirements is usually evaluated using a contractual agreement called a Service Level Agreement (SLA). The SLA spells out the performance Service Level Guarantees (SLGs) that must be satisfied by the system. Chambliss 1:22–26.
05. Chambliss describes a multi-workload storage system adapted to service input/output requests. The storage system includes storage elements and a proxy load generator connected to the storage elements. The proxy load generator creates a proxy workload based on an additional workload from a potential client. The proxy workload has a reduced duty cycle when compared to a duty cycle of the additional workload. A control server is connected to the storage elements and the proxy load generator.

The control server applies the proxy workload to the storage elements during discontinuous time slices. Chambliss 1:48–58.

ANALYSIS

Claims 13–24 rejected under 35 U.S.C. § 101 as directed to non–statutory subject matter

This is a rejection based on a transitory signal rather than abstract ideas. The claims at issue recite a computer readable storage medium. The Examiner finds a propagating signal is within the scope. Final Act. 2.

As Appellants contend, the Examiner ignores the lexicographic definition narrowing the scope of this limitation. App. Br. 5–6. Such a medium is defined as being tangible. As such, the lexicographic definition explicitly excludes intangible embodiments, such as signals.

Claims 1– 4, 6–10, 13–16, 18–22, and 25 rejected under 35 U.S.C. § 102(b) as anticipated by Chambliss

Independent claims 1, 13, and 25 each recite migrating the CEEC data structure from the seller computer to the buyer computer. We are persuaded by Appellants' argument that Chambliss fails to describe this.

The Examiner finds that the Chambliss service level agreement (SLA) is equivalent to the claimed CEEC. Final Act. 10. Chambliss has exactly four recitations regarding the SLA, none of which describe migrating it in the form of a data structure between computers.

Chambliss does migrate a proxy workload, but this is not described as having the data structure of the recited CEEC, and the Examiner did not find the workload to be the equivalent to the recited CEEC. The Examiner does

not make any finding as to which specific portion of Chambliss describes the recited migration, but instead finds that several limitations are generally described by several portions of Chambliss. *See* Final Act. 3–7 and Ans. 6–19. The Examiner’s finding at Answer 16 that Chambliss “teaches the identification of data structure buyers and sellers and the migration of data structures from a seller to a buyer” is particularly telling as the Examiner omits the essential reference to the CEEC itself. Thus, Chambliss fails to describe the recited migration and the Examiner has made no specific finding for us to further consider.

To the extent the Examiner finds that the content of the CEEC should be given no weight as being non-functional (Ans. 18), the final limitation in each independent claim recites a functional application of the CEEC content.

*Claims 5 and 17 rejected under 35 U.S.C. § 103(a) as unpatentable over
Chambliss and Chen*

These claims depend from claims 1 and 13.

*Claims 11 and 23 rejected under 35 U.S.C. § 103(a) as unpatentable over
Chambliss*

These claims depend from claims 1 and 13.

*Claims 12 and 24 rejected under 35 U.S.C. § 103(a) as unpatentable over
Chambliss and Souder*

These claims depend from claims 1 and 13.

CONCLUSIONS OF LAW

The rejection of claims 13–24 under 35 U.S.C. § 101 as directed to non-statutory subject matter is improper.

The rejection of claims 1–4, 6–10, 13–16, 18–22, and 25 under 35 U.S.C. § 102(b) as anticipated by Chambliss is improper.

The rejection of claims 5 and 17 under 35 U.S.C. § 103(a) as unpatentable over Chambliss and Chen is improper.

The rejection of claims 11 and 23 under 35 U.S.C. § 103(a) as unpatentable over Chambliss is improper.

The rejection of claims 12 and 24 under 35 U.S.C. § 103(a) as unpatentable over Chambliss and Souder is improper.

DECISION

The rejection of claims 1–25 is reversed.

REVERSED