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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,597	10/26/2001	Curtis W. Heisey	82273763	6523
22879	7590	01/17/2012	EXAMINER	
HEWLETT-PACKARD COMPANY Intellectual Property Administration 3404 E. Harmony Road Mail Stop 35 FORT COLLINS, CO 80528			KISS, ERIC B	
			ART UNIT	PAPER NUMBER
			3992	
			NOTIFICATION DATE	DELIVERY MODE
			01/17/2012	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CURTIS W. HEISEY, RAVINDRA V. GOKHALE and
KATHY A. KAMINSKI

Appeal 2009-012978
Application 10/016,597
Technology Center 2100

Before ROBERT E. NAPPI, JASON V. MORGAN, and ERIC B. CHEN,
Administrative Patent Judges.

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-18. Claims 19-37 have been cancelled.¹ We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants' invention relates to a tool for replacing a code image in an embedded device including a control program for issuing device commands in order to replace a code image within the embedded device. A monitoring program generates event indications in response to detecting a change in an attribute associated with the embedded device. (Abstract.)

Claim 1 is exemplary, with disputed limitations in italics:

1. A system for replacing a code image in an embedded device, comprising:

control program code responsive to at least one user command for issuing a plurality of device commands including at least one device command to replace said code image in said embedded device;

monitoring program code, asynchronous with respect to said control program code, for generating at least one event indication in response to *a change of at least one predetermined attribute of said embedded device* and forwarding said at least one event indication to said control program code; and

wherein said at least one device command replaces said code image in response to said at least one event indication.

Claims 1-17 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Reynolds (U.S. Patent Application Publication No. 2003/0126195 A1).

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being obvious over Reynolds and Spring (U.S. Patent No. 6,549,943 B1).

¹ Miscellaneous Communication to Appellants, mailed December 31, 2008.

ANALYSIS

Claims 1-17

Claim limitation – “of said embedded device”

We are not persuaded by Appellants’ arguments (App. Br. 12²) that Reynolds does not describe the claim limitation “of said embedded device.”

The Examiner found that each board of Reynolds corresponds to the claimed “embedded device.” (Ans. 4.) The Examiner also found that the board-by-board upgrade performed by a network device administrator corresponds to the claim limitation “a change . . . of said embedded device.” (Ans. 4.) We agree with the Examiner.

Reynolds relates to a “common command interface (CCI) [that] provides an interface abstraction allowing network device applications to maintain one set of code for each command regardless of which command interface (e.g., web, CLI, NMS, etc.) initiates the command.” (Abstract.) Upgrades are managed by a software management system (SMS) service (§ [0503]) and can be performed on a board-by-board basis (§ [0505]). Reynolds describes that SMS clients can include a Master Control Driver (MCD) and a program supervisor module (PSM) within a mission kernel image (MKI) on each board. (§ [0512].) “A board-by-board upgrade may allow a network device administrator to chose [sic] certain boards on which to upgrade applications and allow older versions of the same applications to continue running on other boards.” (§ [0505].) In other words, the board-by-board upgrade by the SMS corresponds to the claimed “embedded device.”

² The Reply Brief, filed July 3, 2007, was not considered by the Examiner because it was not in compliance with 37 C.F.R. § 41.41(a).

Appellants argue that “Reynolds’ download files are generic, and Reynolds describes that they may be downloaded to any of the devices” and “[t]hey are not specific to the embedded device, but are separate from the device and are changed independently of the embedded device.” (App. Br. 12.) However, the claim language “embedded device” is broad enough to encompass the SMS clients of Reynolds (e.g., the Master Control Driver (MCD) and the program supervisor module (PSM) within the mission kernel image (MKI) on each board).

Therefore, we agree with the Examiner that Reynolds describes the claim limitation “of said embedded device.”

Claim limitation – “at least one predetermined attribute”

We are not persuaded by Appellants’ arguments (App. Br. 12) that Reynolds does not describe the claim limitation “a change of at least one predetermined attribute.”

The Examiner found that the periodic polling of the installation directory 1222 of Reynolds by the Master SMS 184 for new releases of software corresponds to the claimed “a change of at least one predetermined attribute.” (Ans. 4.) We agree with the Examiner.

As discussed previously, Reynolds describes that software upgrades are managed by a software management system (SMS) service. (¶ [0503].) “Master SMS 184 periodically polls installation directory 1222 for new sub-directories including new releases” (¶ [0504].) In other words, this software upgrade replaces a previous version of the software, which corresponds to the claim limitation “at least one predetermined attribute.” Furthermore, because the master SMS 184 “periodically polls” the

installation directory 1222 for new software releases, Reynolds discloses the claim limitation “a change of at least one predetermined attribute.”

Appellants argue that “these files [of Reynolds] are not predetermined” and “[t]he files in Reynolds arrive asynchronously and will be unique.” (App. Br. 12.) However, as discussed previously, the software upgrade of Reynolds replaces a previous version of the software, and thus discloses the claim limitation “at least one predetermined attribute.”

Therefore, we agree with the Examiner that Reynolds describes the claim limitation “a change of at least one predetermined attribute.”

Accordingly, we sustain the rejection of independent claim 1 under 35 U.S.C. § 102(e). Claims 2-9 depend from independent claim 1 and Appellants have not presented any substantive arguments with respect to these claims. Therefore, we sustain the rejection of claims 2-9 under 35 U.S.C. § 102(e) for the same reasons discussed with respect to independent claim 1.

Independent claim 10 recites limitations similar to those discussed with respect to independent claim 1, and Appellants have not presented any substantive arguments with respect to this claim. We sustain the rejection of claim 10, as well as claims 11-17, which depend from claim 10, for the same reasons discussed with respect to claim 1.

Claim 18

With respect to the rejection of independent claim 18, Appellants merely argue that “Spring . . . does not apply to the download of embedded devices” and “Reynolds does not teach the ‘at least one event indication in response to a change of at least one predetermined attribute of said embedded device’ element of claim 18.” (App. Br. 13.) We are not

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persuaded by this argument for the same reasons discussed with respect to independent claim 1. Accordingly, we sustain the rejection of independent claim 18.

DECISION

The Examiner's decision to reject claims 1-18 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD