2010 WL 2985362 (Bd.Pat.App. & Interf.)

Board of Patent Appeals and Interferences
Patent and Trademark Office (P.T.O.)

***1** Ex Parte Tse-Huong Choo, Scott A. Leerssen, and Joubert Berger

Appeal 2009-006352
Application 09/896,019 Technology Center 2400

July 28, 2010

Before JOHN A. JEFFERY, LANCE LEONARD BARRY, and JAMES R. HUGHES
Administrative Patent Judges
JEFFERY
Administrative Patent Judge

DECISION ON APPEAL[FN1]

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-18 and 21-30.[FN2] We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

STATEMENT OF THE CASE

Appellants invented a computer system that restricts access to files using processes. *See generally* Spec. 1. Claim 1 is illustrative:

> 1. A computer system for controlling access to certain files by processes, said computer system comprising:
> compartments implemented on an operating system;
> a database containing access rules, said access rules defining which compartments are authorized to access particular file resources;
> a kernel module the receiving a system call to access a file from a user space application belonging to a compartment; and
>
> a security module for determining whether said user space application is authorized to access said file utilizing access rules stored in said database.

The Examiner relies on the following as evidence of unpatentability: Lee Hadfield et al., *Windows NT® Server 4 Security Handbook* 63-87, 153, 154, 194-198, 200 (1997) (“Hadfield”).

Mark Minasi, *Mastering Windows® NT® Server 4 Sixth Edition* 521-22 (1999) (“Minasi”).

Microsoft® Press, *Supporting Microsoft® Windows NT® Server in the Enterprise* 698 (1998) (“Microsoft Press”).

Default NTFS Permissions in Windows NT 1-5[FN3], *available at* http:// sup-

port.microsoft.com/default.aspx?scid=KB;EN-US;Q148437&ID=KB;EN-US;Q148437 1-3 (on or before March 5, 1999) ("Article Q148437")

THE REJECTIONS

1. The Examiner rejected claims 1-18 and 21-29 under 35 U.S.C. § 101. Ans. 4-5.

2. The Examiner rejected claims 1, 3, 5-11, 14, 15, 17, 18, 22, 24, 26, 29, and 30 under 35 U.S.C. § 102(b) as anticipated by Microsoft® Windows NT. Ans. 5-6.[FN4],[FN5]

3. The Examiner rejected claims 2, 4, 13, 16, 21, 23, and 25 under 35 U.S.C. § 103(a) as unpatentable over Microsoft® Windows NT. Ans. 6-8.[FN6]

THE NON-STATUTORY SUBJECT MATTER REJECTION

Claims 1-13

Regarding representative independent claim 1, the Examiner finds that the recited system is an abstract idea and claims software. Ans. 4. Appellants argue that claim 1 is directed to a system or a "machine" as set forth under § 101. Br. 10. The issue before us, then, is follows:

ISSUE

***2** Under § 101, has the Examiner erred in rejecting claim 1 by finding that the claimed system is an abstract idea that is patent-ineligible subject matter?

FINDINGS OF FACT (FF)

1. The Specification defines a compartment as "groups of processes or threads which are limited to accessing certain subsets of system resources of a computer system." Spec. 6:1-2.

2. The Specification states that rules database 316 may include various components, modules, and tables. Spec. 7:24-26; Fig. 3.

3. Kernel module 322 includes routines that manipulate objects. Spec. 8:21-25; Fig. 3.

4. Security module 320 prevents unauthorized access to system resources. Spec. 9:14-22; Fig. 3.

PRINCIPLES OF LAW

Section 101 of the Title 35 of the United States Code states:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. § 101 (2002).

An abstract idea which constitutes "descriptive material" or a data structure per se is nonstatutory. *See In re Warmerdam,* 33 F.3d 1354, 1360-61 (Fed. Cir. 1994).

ANALYSIS

Based on the record before us, we find no error in the Examiner's non-statutory subject matter rejection of claim 1. Claim 1 recites a computer system having compartments implemented on an operating system, a database, and modules. Appellants' disclosure defines a compartment as “groups of processes or threads which are limited to accessing certain subsets of system resources of a computer system.” FF 1. Thus, the recited compartments and operating system are no more than code or data located in an address space.

Additionally, Appellants in the Brief map various data structures shown in Figure 3 of the present disclosure to the recited database, kernel modules, and security modules. Br. 4-5. The accompanying disclosure states that the database 316 may include various components, modules, and tables. FF 2. The claimed database is thus no more than a data structure. Moreover, the Specification states the kernel module 322 not only includes routines that manipulate objects, but also prevents the authorized access to system resources. FF 3-4. Based on Appellants' disclosure, these modules are therefore nothing more than data structures having code to perform various routines.

The clear import of the above discussion is that the invention can exist solely in software and data structures. As such, the breadth of claim 1 does not preclude a nonstatutory embodiment directed only to software and data structures per se. Reciting descriptive material per se (e.g., data structures and computer programs), however, is nonstatutory. *See Warmerdam*, 33 F.3d at 1360-61; *see also* Manual of Patent Examining Procedure (MPEP), Rev. 6, Sept. 2007 § 2106.01 (noting that functional descriptive material is nonstatutory when claimed as descriptive material *per se*).

***3** Appellants contend that the preamble of claim 1 recites a “system” and thus is a statutory “machine” under § 101. Br. 10. We disagree. Even assuming that claim 1 is directed to the “machine” category in § 101, this does not end the patent-eligibility analysis. *See In re Ferguson*, 558 F.3d 1359, 1364 (Fed. Cir. 2009). Claim 1 must be construed in its entirety. That is, as previously discussed, the claim's body recites nothing more than data structures and software, and the claim's preamble (i.e., “[a] computer system for controlling access to certain files by processes”) only serves to limit the claim by describing the invention's intended use. *See Catalina Marketing Int'l, Inc., v. Coolsavings.com Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). Moreover, the compartments, operating system, database, and modules do not operate on the system recited in the preamble, and thus are given little patentable weight. *See Corning Glass Works v. Sumitomo Electric U.S.A., Inc.*, 868 F.2d 1251, 1257 (Fed. Cir. 1989).

For the foregoing reasons, we sustain the § 101 rejection of claim 1 and claims 2-13 not separately argued.

Claims 14-18 and 21-23

Regarding representative independent claim 14, the Examiner finds that the method does not produce a useful, concrete and tangible result. Ans. 4. Appellants assert that “controlling the access to a file by a process” as recited in claim 14's preamble is a concrete, tangible, and useful result and is directed to a process set forth in § 101. Br. 10-12. The issue before us, then, is follows:

ISSUE

Under § 101, has the Examiner erred in rejecting claim 14 by finding the claim recites a patent-ineligible process?

PRINCIPLES OF LAW

The machine-or-transformation test states "an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article" into a different state or thing." *In re Bilski,* 545 F.3d 943, 961 (Fed. Cir. 2008) (en banc), *aff'd sub nom. Bilski v. Kappos,* 95 USPQ2d 1001 (U.S. 2010). The U.S. Supreme Court recently reaffirmed that "the machine-or-transformation test is a useful and important clue … for determining whether some claimed inventions are processes under § 101." *Bilski v. Kappos,* 95 USPQ2d at 1007 ("*Bilski*").

ANALYSIS

***4** Based on the record before us, we find no error in the Examiner's non-statutory subject matter rejection of claim 14. At first blush, claim 14 appears to recite a method and thus falls within a statutory class set forth in § 101. However, not every process claim is patent-eligible under § 101. *See Bilski,* 95 USPQ2d at 1009-10 (discussing the process claims in *Gottschalk v. Benson,* 409 U.S. 63 (1972) and *Parker v. Flook,* 437 U.S. 584 (1978) being non-statutory under § 101). To make this determination, we apply the machine-or-transformation test, which the Court has stated is a useful in determining whether a claim is a process under § 101. *Bilski,* 95 USPQ2d at 1007.

Claim 14 recites a method that: (1) receives a request from a process associated with a compartment implemented on an operating system to access the file; (2) determines a compartment's identifier; and (3) searches for access rules in a database to determine whether the process is permitted to access certain file resources. Because the process' request, the compartment's identifier, and the database along with its access rules are not tied to any machine, whether particular or otherwise, claim 14 does not satisfy the first prong of the machine-or-transformation test. *See In re Bilski,* 545 F.2d at 961. Additionally, these steps (e.g., receiving, determining, and searching) do not transform an article into a different state or thing. *See id.* We therefore find that the process in claim 14 is an abstract idea and is therefore non-statutory under § 101.

For the foregoing reasons, we sustain the § 101 rejection of claim 14 as well as claims 15-18 and 21-23 not separately argued.

Claims 24-29

Regarding representative independent claim 24, the Examiner finds that the claim overall recites code that does not produce a tangible and useful result. Ans. 4-5. Appellants argue that a computer readable medium is patent-eligible based on *In re Beauregard,* 53 F.3d 1583 (Fed. Cir. 1995) and MPEP § 2106. Br. 12-13. The issue before us, then, is follows:

ISSUE

Under § 101, has the Examiner erred in rejecting claim 24 by finding that the claimed medium is patent-ineligible?

ANALYSIS

Based on the record before us, we find no error in the Examiner's non-statutory subject matter rejection of claim 24. Claim 24 recites a computer readable medium comprising code for: (a) receiving a request from the process to access the file, the process being associated with a compartment implemented on an operating system and (b)

searching for access rules in a database containing access rules defining whether processes associated with particular compartments are permitted to access certain file resources. Except for the preamble, claim 24 recites code or software per se that is not statutory under § 101 as previously stated.

***5** A computer readable medium can be considered a manufacture or machine under § 101. *See Ferguson*, 558 F.3d at 1364 (explaining a "machine" is "a concrete thing, consisting of parts, or of certain devices and combination of devices.…[that] includes every mechanical device or combination of mechanical powers and devices to perform some function and produce a certain effect or result."); *see also In re Nuijten*, 500 F.3d 1346, 1356 (Fed. Cir. 2007) (explaining "[a] 'manufacture' (in its verb form) [is defined] as 'the production of articles for use from raw or prepared materials by giving to these materials new forms, qualities, properties, or combinations, whether by hand-labor or by machinery"' and "[a]n 'article' [is] a 'particular substance or commodity.…"'). Nonetheless, merely reciting data or instructions on a stored computer readable medium does not make a claim statutory under § 101. *See Ex parte Langemyr*, 89 USPQ2d 1988, 1999 (BPAI 2008) (informative). Similarly, merely placing instructions or code on a computer readable medium does not render claim 24 statutory.

Although Appellants contend that a computer-readable medium is statutory and cite *In re Beauregard*, 53 F.3d 1583 (Fed. Cir. 1995) to support this contention (Br. 12-13), the court did not so decide in that case. Rather, the court merely indicated that the Commissioner agreed that the printed matter doctrine was inapplicable under the specific facts of that case, and therefore no case or controversy existed. *Id.* at 1584. Appellants' reliance on *Beauregard* is therefore unavailing.

Finally, as Appellants indicate (Br. 12), MPEP § 2106 states that a computer readable medium having functional descriptive material is statutory *in most cases*. Thus, claim 24 is not necessarily statutory under § 101 just because the claim recites a computer readable medium. In this case, the recited code only permits receiving a request from a process and searching the database. While the code does permit the function of accessing a file or file resources, it does not functionally interrelate the medium so that theses functions are realized. Also, limiting the claim to computer-readable media does not add any practical limitation to the scope of the claim (over Appellants' rejected method claims). To permit such a practice would exalt form over substance and permit Appellants to circumvent the limitations contemplated by § 101. We therefore find that the claim 24 is directed to nonstatutory subject matter.

***6** For the foregoing reasons, we sustain the § 101 rejection of independent claim 24 and claims 25-29 not separately argued.

THE ANTICIPATION REJECTION OVER MICROSOFT NT

Claims 1 and 6

Regarding representative independent claim 1, the Examiner finds that Windows NT discloses all recited limitations, and equates the objects in Windows NT to the recited compartments implemented on an operating system. Ans. 5-6, 13-17.

Appellants first argue that Article Q148437 does not qualify as prior art because the referenced knowledge base article fails to describe Windows NT properties as of the present application's filing date. Br. 14. Second, Appellants assert they have not been given proper notice of the rejection. Br. 14-16. Lastly, Appellants contend that Hadfield's objects are not compartments as recited in claim 1. Br. 16-17. The issues before us, then, are as follows:

ISSUES

(1) Under § 102, has the Examiner erred by finding that Article Q148437 qualifies as prior art?

(2) Under § 102, has the Examiner erred by finding that Hadfield discloses a computer system comprising compartments implemented on an operating system as recited in claim 1?

ADDITIONAL FINDINGS OF FACT

5. The filing date of the present application is June 29, 2001.

6. Article Q148437 entitled, "Default NTFS Permissions in Windows NT," states: "[t]his article was previously published under Q148437"; "Article ID: 148437"; and "Last Review: May 7, 2003." *See* Article Q148437.

7. Savill describes Microsoft Knowledge Base Article Q148437 which includes default permissions in Windows NT. John Savill, *A description of Permissions in NT. Permission in NT.* 1[FN7] (March 5, 1999).

8. Citrix describes the article "Default NTFS Permissions in Windows NT" associated with "Q148437." Citrix, *Related Third Party Integration Links* 1[FN8] (June 8, 2000).

9. Hadfield discloses an object manager that controls the creation, deletion, and modification of all object types within the Windows NT. The operating system resources are represented by objects, and resource quota limits are placed on all objects. Objects can represent thread processes and file directories and include: thread objects, symbolic link objects, port objects, file objects, and directory objects. Hadfield 64, 67; Fig. 3.1.

ANALYSIS

The subject matter of Article Q148437 qualifies as prior art under § 102. The filing date of the present application is June 29, 2001. FF 5. We note that Article Q148437 has a date of May 7, 2003 (*see* FF 6) and therefore does not clearly indicate that the knowledge-based article Q148437 was reviewed back in February 1998. *See* Ans. 11. Nonetheless, the Examiner has provided us with two other articles that reference Article Q148437. *See* FF 7-8. Savill refers to Article Q148437 as of March 5, 1999. *See* FF 7. Citrix lists Q148437 and associates the article with the title "Default NTFS Permissions in Windows NT" as of June 8, 2000. *See* FF 8. Thus, these two additional articles show that the subject matter discussing the default permissions in Windows NT shown by Article Q148437 existed at the latest on June 8, 2000. Because June 8, 2000 precedes Appellants' June 29, 2001 filing date (FF 5), we find that the subject matter in Article Q148437, entitled "Default NTFS Permissions in Windows NT," qualifies as prior art.

***7** We next construe the key disputed limitation of claim 1 which calls for, in pertinent part, "compartments implemented on an operating system." The Specification defines a compartment as "groups of processes or threads which are limited to accessing certain subsets of system resources of a computer system." FF 1. Thus, in light of the disclosure, we construe a "compartment" to be a process or thread that accesses a subset of the computer system's resources. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

Based on this construction, Hadfield discloses the operating system's resources are represented by objects, including thread objects or objects represented by thread processes. *See* FF 9. Additionally, Hadfield discloses that resource quota limits are placed on all objects. *See id.* Thus, Hadfield demonstrates that Windows NT has objects that access a subset of the computer system's resources due to their resource quota limitations. *Id.* Hadfield

therefore demonstrates, according to Appellants' definition (FF 1), that Windows NT has compartments as recited in claim 1.

For the foregoing reasons, we are not persuaded that the Examiner erred in rejecting claim 1 and claim 6 not separately argued.

Claim 3

Regarding claim 3, the Examiner finds that Hadfield discloses each compartment in Windows NT is assigned a unique identifier or security ID (SID). Ans. 6, 17-19. Appellants argue that the cited page eighty-three of Hadfield has not been provided. Br. 18. Appellants further assert that an object is not a compartment and therefore Windows NT fails to teach each compartment is assigned a unique identifier. Br. 19-20. The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 3 by finding that Hadfield discloses each compartment is assigned a unique identifier?

ADDITIONAL FINDING OF FACT

10. Hadfield discloses a security reference monitor that uses an access control listing (ACL) associated with each object to control the internal security of the system and to govern access, creation, and deletion of objects. Each object contains elements called access control entries (ACEs), and each of these entries contains a unique security ID (SID) for a user or group. The ACL contains access and auditing permissions allowed on an object by users and groups, and each user or group will have an associated ACE within the ACL. Hadfield 68, 83. [FN9]

ANALYSIS

Based on the record before us, we find no error in the Examiner's anticipation rejection of claim 3. As stated above in connection with claim 1, a thread object is a compartment, as defined by Appellants (FF 1), and Hadfield demonstrates that Windows NT has compartments implemented on an operating system. Hadfield also explains that each object (i.e., a compartment) contains entries, each having a unique SID. *See* FF 10. Appellants further admit that Hadfield discloses each object (e.g., compartment) in a system contains a SID to determine whether a user should be allowed to access an object. *See* Br. 19. We therefore find that the Examiner did not err in finding Hadfield discloses each compartment is assigned a unique identifier as recited in claim 3.

Claim 5

***8** Regarding claim 5, the Examiner finds that Hadfield discloses at least one access rule in the database (e.g., ACL) defines whether a process belonging to a compartment is permitted to access files within a subdirectory. Ans. 6, 19-20. Appellants repeat that Windows NT does not teach the claimed compartments and additionally argue that the ACL does not disclose rules that define whether any process belonging to a compartment is permitted to access a file. Br. 20. The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred in rejecting claim 5 by finding that Hadfield discloses an access rule in the database that defines whether a process belonging to a compartment is permitted to access a file?

ANALYSIS

Based on the record before us, we find no error in the Examiner's anticipation rejection of claim 5. Hadfield discloses that an object can represent thread processes. FF 9. Moreover, we explained above that this object representing thread processes is a compartment. To execute the compartment's processes in Hadfield, each process must access a file. Thus, when a user attempts to access an object represented by thread processes (FF 9-10), the entries in the ACL or database will define whether a process belonging to a compartment (i.e., one of the processes in the object representing thread processes) is permitted to access a particular file as recited in claim 5. We therefore sustain the rejection of claim 5.

Claims 7-11

Regarding claim 7, the Examiner finds that Hadfield's Table 9-10, Minasi's Table 7.3, and Article Q148437's objects disclose the file resources are maintained on a file system possessing a subdirectory-based structure and the database organizes access rules in the manner that parallels the subdirectory-based structure. Ans. 6, 20-22. Appellants contend that these teachings do not demonstrate that the database organizes the access rules or ACLs in a manner that parallels the subdirectory-based structure possessed by the file system. Br. 21. The issue before us, then, is as follows:

ISSUE

Under § 102, has the Examiner erred by finding that the cited references used to demonstrate Windows NT discloses a database organizes the access rules in a manner that parallels the subdirectory-based structure possessed by the file system?

ADDITIONAL FINDINGS OF FACT

11. Article Q148437 lists default NT File System (NTFS) permissions on common Windows NT directories. The directories include: (a) C:\; C:\YSTEMROOT%-; (B) C:\ystemRoot%\msapps and <subdirectories>; and (c) C:\YSTEMROOT%\SYSTEM32\DRIVERS AND <SUBDIRECTORIES>. ARTICLE Q148437, 1..

12. Minasi discloses group permission associated with directories and subdirectories in Windows NT. For example, the root directory and SYSTEM32 subdirectory have the following permissions for the following groups: Adminstrators (Full Control) and Everyone (Change). Minasi 521-22; Table 7.3.

ANALYSIS

***9** Based on the record before us, we find error in the Examiner's anticipation rejection of claim 7. Hadfield discusses the ACL has ACEs for each object, but does not provide any further details regarding its organization. *See* FF 10. Although the Examiner cites “Table 9-10” in Hadfield to support the Examiner's position (Ans. 6), we cannot locate a Table 9-10 in Hadfield or any other table that shows the database's organization as claimed. We therefore agree with Appellants that Hadfield fails to demonstrate the limitations of claim 7.

Article Q148437 demonstrates that a file system is maintained with a subdirectory-based structure (e.g., C:\, C:\YSTEMROOT%-, C:\ystemRoot%\msapps and <subdirectories>,

C:\YSTEMROOT%\SYSTEM32\DRIVERS AND <SUBDIRECTORIES>). FF 11. AND MINASI DISCLOSES GROUP PERMISSIONS ASSOCIATED WITH DIRECTORIES AND SUBDIRECTORIES IN WINDOWS NT. FF 12. BUT NEITHER OF THESE REFERENCES DISCUSSES HOW ACCESS RULES WITHIN A DATABASE ARE ORGANIZED—A CRUCIAL DEFICIENCY THAT IS FATAL TO THE EXAMINER'S ANTICIPATION REJECTION.

Moreover, even assuming, without deciding, that such a subdirectory-based structure for the database's access rule would have been a predicable variation from that disclosed in the prior art, we nevertheless are constrained to find that the cited references fail to evidence that Windows NT *necessarily* has a database that organizes access rules in a manner that parallels the subdirectory-based structure as recited in claim 7. *See In re Robertson,* 169 F.3d 743, 745 (Fed. Cir. 1999) (internal citations omitted).

For the foregoing reasons, Appellants have shown error in the rejection of claim 7 based on Windows NT. We therefore will not sustain the rejection of claim 7 and dependent claims 8-11 for similar reasons.

Claims 14 and 22

Representative independent claim 14 is similar in scope to claim 1. Moreover, Appellants present the similar arguments for claim 14 regarding Windows NT failing to disclose a compartment implemented on an operating system. Br. 22. We are not persuaded for the reasons discussed regarding claim 1 and will sustain the rejection of claim 14 and claim 22 not separately argued.

Claims 15, 17, and 18

Claim 15 depends from claim 14 and is commensurate in scope to claim 7. Because we found that the cited prior art fails to disclose the limitation to a database organized in a subdirectory-based structure, we will not sustain the rejection of claim 15 and dependent claims 17 and 18.

Claims 24, 29, and 30

Representative independent claim 24 is commensurate in scope to claim 1. We are not persuaded by Appellants arguments (Br. 24-25) for the reasons discussed regarding claim 1, and will therefore sustain the rejection of claim 24 and claims 29 and 30 not separately argued.

Claim 26

Claim 26 depends from claim 24 and is commensurate in scope to claim 7. Because we found that the cited prior art fails to disclose all the recitations in claim 7, we will not sustain the rejection of claim 26.

THE OBVIOUSNESS REJECTION OVER MICROSOFT NT

Claim 2

***10** Appellants state claim 2 is allowable because the claim depends from claim 1 and refers to the arguments made for claim 1. Br. 31. We are not persuaded for the reasons discussed above regarding claim 1.

Claim 4

Regarding claim 4, the Examiner finds relies on Hadfield and Official Notice to demonstrate an access rule in a

database defines whether any process belonging to a particular compartment is permitted to access files within a subdirectory. Ans. 7-8, 13-17. Appellants contend that these teachings do not demonstrate that an access rule defines whether a process belonging to a compartment is permitted access to files in a subdirectory or provide a motivation to modify Windows NT. Br. 31-32. The issue before us, then, is as follows:

ISSUE

Under § 103, has the Examiner erred in rejecting claim 4 by concluding that one skilled in the art would have recognized including in a Windows NT system an access rule that defines whether a process belonging to a compartment is permitted to access files within a subdirectory?

ADDITIONAL FINDINGS OF FACT

13. Hadfield teaches users are assigned personal directories which give the user greater flexibility when assigning access permissions within their directories. Hadfield 197.

PRINCIPLE OF LAW

The court in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007) states:

> "[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" …. [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR, 550 U.S. at 418 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

Based on the record before us, we find no error in the Examiner's rejection of claim 4. Since the scope of claim 4 is similar to claim 5, we refer to our previous discussion of claim 5 for further details concerning how Hadfield discloses an access rule in a database that defines whether a process belonging to a compartment is permitted to access a file. Additionally, taking into account the inferences an ordinarily skilled artisan would have employed, an ordinarily skilled artisan would have recognized an object representing thread processes (FF 9) includes multiple processes and, thus, Hadfield's database (e.g., ACL) also defines access permissions for each process of an object represents thread processes. *See* FF 10. Moreover, an ordinarily skilled artisan would have recognized each process accesses a file so as to execute its application and thus the object's multiple processes access multiple files. Lastly, an ordinarily skilled artisan would have recognized that files are stored in personal directories or subdirectories in order to provide greater flexibility when assigning access permission. *See* FF 13. We therefore find the prior art coupled with inferences employed by the ordinarily skilled artisan at least would have suggested an access rule in the database that defines whether a process belonging to a compartment is permitted to access files within a subdirectory as recited in claim 4.

Claim 13

***11** Regarding claim 13, the Examiner finds that Hadfield, Minasi and Microsoft Press do not explicitly teach the security module is operable to permit access when no access rule is located in the database for the file, but that such an operation is an obvious variation and well known. Ans. 8. Appellants argue that this assertion by the Examiner does not provide the requisite motivation to establish obviousness under § 103. Br. 33. The issue be-

fore us, then, is as follows:

ISSUE

Under § 103, has the Examiner provided some articulated reasoning with some rational underpinning to support the conclusion that a security module that is operable to permit access when no access rule is located in the data for file, as recited in claim 13, would have been well known to an ordinarily skilled artisan?

ANALYSIS

Based on the record before us, we find no error in the Examiner's obviousness rejection of claim 13. Hadfield discloses a security module (e.g., security reference monitor) that governs access to objects within a system using the ACL. *See* FF 10. As the Examiner concedes, this reference fails to teach that access is permitted when no access rule is located in the database for a file. Ans. 8. However, an obviousness analysis need not seek out precise teachings directed to the claimed subject matter of claim 13 to render the claim obvious. *See KSR*, 550 U.S. at 418. Employing the inferences and the creativity of an ordinarily skilled artisan, such a variation from Hadfield which includes a rule for access (*see* FF 10) to another security module that does not include a rule when access is permitted, would simplify the system and require less memory. *See KSR*, 550 U.S. at 418. Moreover, since there is a general design need in the art to optimize computer resource utilization and enhance security, we find the recited file access permission scheme would have been obvious since there are only a finite number of predictable solutions to permit access to a file (i.e.,, including an access rule or not). *See KSR*, 550 U.S. at 421. We therefore sustain the Examiner's rejection of claim 13.

Claim 16

Claim 16 depends from claim 15 which we reversed as not being anticipated by Hadfield. Since the Examiner has not shown how Hadfield cures these deficiencies, let alone teaches or suggests those limitations or those recited in claim 16, we likewise reverse the rejection of claim 16.

Claim 21

Claim 21 depends from claim 14. Appellants rely on the discussion of claim 14. Br. 31. Because we sustain the rejection of claim 14, we likewise sustain the rejection of claim 21.

Claim 23

Claim 23 depends from claim 14 and is commensurate in scope to claim 4. Appellants rely on the discussion of claim 14 (Br. 34) and we are unpersuaded by these arguments for the reasons previously discussed in connection with claims 4 and 14.

Claim 25

***12** Claim 25 depends from claim 24. Appellants repeat the argument made for claim 23. Br. 35-36. We are unpersuaded by these arguments for the reasons previously discussed in connection with claim 23.

CONCLUSION

The Examiner did not err in rejecting: (1) claims 1-18 and 21-29 under § 101; (2) claims 1, 3, 5, 6, 14, 22, 24,

29, and 30 under § 102; and (3) claims 2, 4, 13, 21, 23, and 25 under § 103. The Examiner, however, erred in rejecting: (1) claims 7-11, 15, 17, 18, and 26 under § 102, and (2) claim 16 under § 103.

DECISION

The Examiner's decision rejecting claims 1-18 and 21-29 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

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FN1. The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

FN2. The Examiner did not reject claims 19 and 20. *See* Ans. 4-8. *Accord* Br. 8.

FN3. Three printed pages of this reference were provided, and we refer to the page numbers as they appear in the record.

FN4. Throughout this opinion, we refer to the Appeal Brief filed July 10, 2007 and the Examiner's Answer mailed July 14, 2008.

FN5. Hadfield, Minasi, Microsoft Press, and Article Q148437 are used as supporting evidence to explain the meaning of Windows NT terms or to show inherent characteristics of Windows NT. *See* MPEP § 2131.01.

FN6. The Examiner has withdrawn the § 112, second paragraph rejection and the § 103 rejections based on the Admitted Prior Art, Nigel, and NCAA. *See* Ans. 2-3.

FN7. Two printed pages of this reference were provided, and we refer to the page number as it appears in the record.

FN8. Three printed pages of this reference were provided, and we refer to the page number as it appears in the record.

FN9. While Hadfield further explains each object has access control entries with unique identifiers at page eighty-three, Hadfield states on page sixty-eight, which Appellant received (*see* Br. 19), the entries have unique identifiers.

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