

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL A. MARTIN

Appeal No. 2000-1326
Application No. 08/658,272

HEARD: Feb. 20, 2002

Before LALL, DIXON, and BARRY, *Administrative Patent Judges*.
BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

The examiner rejected claims 30-36. The appellant appeals therefrom under 35 U.S.C. § 134(a). We reverse.

BACKGROUND

The invention at issue in the appeal relates to developing code to be executed by computers in a distributed computing environment. More specifically, the invention provides a compiler and a pre-compiler for generating code for use in a plurality of computers. Source code comprises first

and second statements. The first statements are the actual source code to be compiled while, the second statements are placed in comment fields and used to adapt the code for operation with the plurality of computers.

During development, the compiler compiles the first statements for execution on a single computer while ignoring the second statements. Accordingly, a programmer can validate the basic operation of the source code without testing it on the plurality of computers.

During operation, the pre-compiler interprets the second statements to ensure that functional requirements are met. For example, the requirements may specify a response time or a number of objects. The compiler then compiles the first statements and the interpretations of the second statements for execution on the plurality of computers.

Claim 30, which is representative for present purposes, follows:

30. A compiler apparatus for a distributed computing system comprising a multiplicity of interconnected computers, said apparatus being arranged to accept functional requirements for the performance of the distributed computing system and arranged to interpret said functional requirements in accordance

with stored data relating to the computers of said system to achieve the functional requirements.

(Appeal Br., App.)

The prior art applied by the examiner in rejecting the claims follows:

Furukawa et al. ("Furukawa") 10, 1998	5,717,929	Feb.
	(filed Mar. 28,	

1994).

Claims 30-36 stand rejected under 35 U.S.C. § 102(e) as anticipated by Furukawa.

OPINION

After considering the record, we are persuaded that the examiner erred in rejecting claims 30-36. Accordingly, we reverse.

Rather than reiterate the positions of the examiner or appellant *in toto*, we address the main point of contention therebetween. The examiner makes the following assertions.

Furukawa teaches the use of a program interpreter that interprets and executes the program code a line at a time [e.g., col. 10, line 20, col. 14, lines 10, 36, 61, 62]. The program interpreter taught by Furukawa clearly transforms one set of symbols (e.g., the commands shown in fig. 2) into another (e.g., machine code executable by a processor) by following a set of syntactic and semantic rules, and is therefore a type of compiler (i.e., an interpreter). The Examiner has a duty and responsibility to the public and to Applicant to interpret the claims as broadly as reasonably possible during prosecution. . . .

(Examiner's Answer at 5.) He adds, "[t]he Microsoft Computer Dictionary (Third Edition) was consulted by the Examiner to verify that the Examiner's interpretation of 'compiler' is reasonable." (*Id.*) The appellant argues, "those of ordinary skill art would recognize that a compiler and an interpreter are different." (Reply Br. at 3.)

In deciding anticipation, "the first inquiry must be into exactly what the claims define." *In re Wilder*, 429 F2d 447, 450, 166 USPQ 545, 548 (CCPA 1970). "Although the PTO must

give claims their broadest reasonable interpretation, this interpretation must be consistent with the one that those skilled in the art would reach." *In re Cortright*, 165 F3d 1353, 1358, 49 USPQ2d 1464, 1467 (Fed. Cir. 1999)(citing *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997); *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990); M.P.E.P. § 2111.01). Here, claim 30 specifies in pertinent part the following limitations: "[a] compiler apparatus. . . ." The issue, then, is whether the examiner's interpretation of the claimed compiler as reading on Furukawa's program interpreter is consistent with the one that those skilled in the art would reach.

Contrary to the examiner's interpretation, the dictionary on which he relies evidences that those skilled in the art distinguish an interpreter from a compiler. Specifically, it defines the term "interpret" as "execut[ing] a program by translating one statement at a time rather into executable form and executing it before translating the next statement, **rather than by** translating the program completely into

executable code (**compiling it**) before executing it separately." *Microsoft Press Computer Dictionary* 261 (3d ed. 1997)(emphasis added)(copy attached). Because the dictionary contradicts the examiner's interpretation, we are not persuaded that the reference discloses the limitations of "[a] compiler apparatus. . . ." Therefore, we reverse the rejection of claim 30 and of claims 31-36, which depend therefrom.

CONCLUSION

In summary, the rejection of claims 30-36 under § 102(e) is reversed.

REVERSED

PARSHOTAM S. LALL)
Administrative Patent Judge)
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)
)
) BOARD OF PATENT

JOSEPH L. DIXON)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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APPLICATION NO. 08/658,272

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APJ DIXON

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Prepared By: APJ BARRY

DRAFT SUBMITTED: 01 Oct 02

FINAL TYPED:

Team 3:

I typed all of this opinion.

Please proofread spelling, cites, and quotes. Mark your proposed changes on the opinion, but **do NOT change matters of form or style. I will include the diskette with the signed copy so that you can make all changes before mailing.**

For additional reference provided, please prepare PTO 892 and include copy of references

Thanks,

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Judge Barry