

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(2) is not binding precedent of the Board.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. 14

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID H. ALBRIGHT
and STEVE ZEVAN

Appeal No. 1998-0946
Application 08/365,269

ON BRIEF

Before KRASS, FLEMING, and BARRY, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of
claims 1 through 73, all of the claims pending in the
application.

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The invention pertains to updating computer programs as remote locations. More specifically, a customer at a remote location from a central site can request a software service from a software maintenance facility at the central site and receive therefrom updated, executable software through a local software interface front-end that permits the remote customer to specify a range of optional service incorporation instructions, including service research, requesting service, applying service, providing fixes, and installing serviced products or fixes at the remote location.

Representative independent claim 1 is reproduced as follows:

1. A method of applying service to a computer program that is to be executed at a remote location connected to a central computer site of a computer network, the method comprising the steps of:

interactively receiving a request for a computer program service from a customer at a remote location interface with optional service incorporation instructions of the remote location customer;

providing the received request for service over the computer network to a service facility at the central computer site;

determining the components of the requested service at the central computer site; and

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providing the results of the requested service over the computer network back to the customer at the remote location interface.

The examiner relies on the following references:

Kirouac et al. (Kirouac)	5,155,847	Oct. 13, 1992
Cox et al. (Cox)	5,361,358	Nov. 1, 1994

Claims 1 through 73 stand rejected under 35 U.S.C. § 103 as unpatentable over Kirouac in view of Cox.

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

OPINION

At the outset, we note that, in accordance with appellants' grouping of the claims at page 6 of the brief, all claims stand or fall together.

We reverse.

Taking claim 1 as exemplary, Kirouac clearly teaches a method of applying service to a computer program that is to be executed at a remote location connected to a central computer site of a computer network. The customer requests a computer program service and the request is provided over the computer network to a "service facility" at the central computer site. That request is an update of software. The components of the

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requested service are determined, i.e., all that is necessary for the requested update. The results of the requested service are then provided over the network back to the customer at the remote location, i.e., the updated version of the software is sent back to the customer.

However, claim 1, as does each of the independent claims, requires that the request is received "with optional service incorporation instructions of the remote location customer." Kirouac provides for no such "optional service incorporation instructions." At the central computer site in Kirouac, software patch version numbers are compared and the requester is provided with the most recent patch version available. The customer is not permitted to include "optional service incorporation instructions," as claimed.

The examiner recognizes this deficiency and relies on Cox for the teaching of such "optional service incorporation instructions" pointing to Figure 3 of Cox where "Install", "Configure", "Remove", "Exit" and "Help" buttons are shown. The examiner states [answer-page 5] that these buttons comprise the claimed "optional service incorporation instructions" and that it would have been obvious to combine

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Cox with Kirouac because the placement of these teaching of Cox "into the networked remote-central computer environment of Kirouac would successfully allow a user to interactively update applications on remote computers over a computer network using knowledge generally available in the art" [answer-page 6].

While appellants argue that Cox is not combinable with Kirouac because Cox is concerned not with application updates but, rather, with permitting an application on a first operating system in a machine to run under another operating system on the same machine, we do not think Cox is so far removed from the subject matter of Kirouac so as to make them non-combinable. They both relate to updates of applications, generally speaking, and the artisan skilled in this art would have been expected to be familiar with the systems of both Kirouac and Cox. The problem, in our view, is that even if combined, the claimed subject matter is not reached.

One may consider, as the examiner apparently did, the claimed phrase, "optional service incorporation instructions," to be so broad as to read on the buttons 300, 302, 304, 306 and 308 of Cox since these buttons clearly give the user

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"options." However, in view of the meaning given to that phrase in the instant specification [pages 3-4 and 13] and reiterated by appellants in the remarks accompanying the amendment of January 10, 1997 [Paper No. 7], at which time this phrase was added to the claims, we interpret the claimed phrase "optional service incorporation instructions" to mean that the customer specifies a range of optional instructions including "service research, requesting service, applying service, providing fixes, and installing serviced products or fixes at the remote location." [page 5 of the amendment or page 4 of the specification].

Since neither Kirouac nor Cox discloses or suggests any optional service incorporation instructions including these specific options, we will not sustain the rejection of claims 1 through 73 under 35 U.S.C. § 103.

The examiner's decision is reversed.

REVERSED

Errol A. Krass)
Administrative Patent Judge)
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	Michael R. Fleming)	BOARD OF
PATENT)	
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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