

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION
Petitioners,

v.

CLOUDING IP, LLC
Patent Owner.

Case IPR2013-00099 (JL)
Patent 7,065,637

Before JAMESON LEE, JONI Y. CHANG, and MICHAEL W. KIM,
Administrative Patent Judges.

CHANG, *Administrative Patent Judge.*

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Oracle Corporation (“Oracle”) filed a petition requesting an *inter partes* review of claims 1-4 and 6 of U.S. Patent 7,065,637 (Ex. 1001, “the ’637 patent”). (Paper 5, “Pet.”) In response, Clouding IP, LLC (“Clouding”) filed a patent owner preliminary response. (Paper 9, “Prel. Resp.”) We have jurisdiction under 35 U.S.C. § 314.

The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a) which provides as follows:

THRESHOLD -- The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

Upon consideration of the petition and patent owner preliminary response, we determine that the information presented in the petition establishes that there is a reasonable likelihood that Oracle would prevail with respect to claims 1-4 and 6 of the ’637 patent. Accordingly, pursuant to 35 U.S.C. § 314, we authorize an *inter partes* review to be instituted as to claims 1-4 and 6 of the ’637 patent.

A. Related Proceedings

Oracle indicates that the ’637 patent is involved in co-pending litigation captioned *Clouding IP, LLC v. Oracle Corp.*, Case No. 1:12-cv-00642 (D.Del.). (Pet. 3.) Additionally, Clouding informs the Board that U.S. Patent Application 12/946,448 is a pending continuation of the application which issued as the ’637 patent. (Prel. Resp. 5.)

B. The '637 Patent

The '637 patent relates to an interactive system for computer system architects to design and create a computing environment dynamically. (Ex. 1001, Abs., 1:17-23, 2:66-3:1.) In particular, the '637 patent discloses an interactive system that permits computer system architects to design a computing environment by allocating resources (e.g., hardware, software, or communication components) and specifying how the resources are to be used. (Ex. 1001, Abs., 4:17-19.)

Figure 1 of the '637 patent depicts a block diagram of a system for configuring a computing environment, and is reproduced as follows:

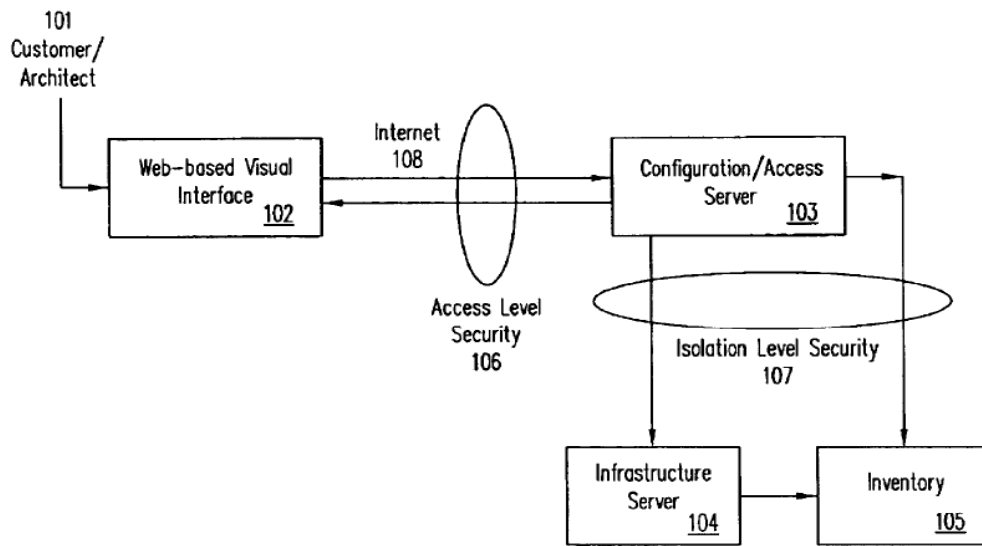


Figure 1 of the '637 patent illustrates a block diagram of a system for configuring a computing environment.

As shown above, a customer (e.g., a computer system architect) 101 uses the web-based visual interface 102 and the Internet 108 to interact with server system 103 for allocating resources. (Ex. 1001, 5:13-35.) In response to the customer's request, the server 103 allocates resources based on the customer's requirements

and the availability of resources in the inventory 105. (*Id.*) The access level security layer 106 and isolation level security layer 107 ensure that customer 101 can access the server and resources, without any other customer being aware of the information passed between the interface 102 and the server 103, such as the specific configuration or computing environment used by customer 101. (*Id.*)

C. Illustrative Claim

Of the challenged claims, claim 1 is the sole independent claim. Claims 2-4 and 6 directly or indirectly depend from claim 1. For purposes of this decision, Claim 1 is illustrative of the claimed subject matter of the '637 patent, and is reproduced as follows (emphasis added):

1. A system for providing configurable resources to create a computing environment, the system comprising[:]
 - a configurable communication link;
 - a plurality of hardware devices coupled to the communication link;
 - a plurality of software programs executable by the hardware devices, the software programs comprising at least one of operating system software and application software, wherein the computing environment comprises the communication link, at least one of the hardware devices and at least one of the software programs; and
 - a visual construction of the computing environment via a user interface, the user interface coupled to a display screen and to an input device for generating signals in response to interactions of a user, wherein
 - the user interface is configured to accept a signal which enables the user to *request a copy [of] a device configuration*,
 - the system is configured to *make the copy of the device*

configuration and save the copy of the device configuration in storage,

the user interface is further configured to accept a signal which enables the user to instantiate a device from a stored configuration, and

the system is further configured to instantiate the device from the stored configuration.

D. Prior Art Relied Upon

Oracle relies upon the following prior art references:

Verissimo	U.S. Patent 5,841,654	Nov. 24, 1998	(Ex. 1006)
Aziz	U.S. Patent 6,779,016	Aug. 17, 2004	(Ex. 1005)
Patterson	U.S. Patent 7,093,005	Aug. 15, 2006	(Ex. 1003)

“Cluster X Getting Started Guide Version 2.0 The First True Cluster Application and Configuration Management Solution for Microsoft Windows NT” Copyright 1998-1999 NuView, Inc. (“ClusterX,” Ex. 1007)

E. The Asserted Grounds

Oracle alleges that the challenged claims are unpatentable based on the following grounds:

1. Claims 1-4 and 6 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Patterson;
2. Claims 1-4 and 6 are unpatentable under 35 U.S.C. § 103(a) over Aziz and Verissimo; and
3. Claims 1-4 and 6 are unpatentable under 35 U.S.C. § 103(a) over Aziz and ClusterX.

II. ANALYSIS

A. Claim Construction

As a first step in our analysis for determining whether to institute a review, we determine the meaning of the claims. In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b). In that regard, we determine the scope of the claims not solely on the basis of the claim language, but also by giving claims their broadest reasonable interpretation consistent with the specification and in light of the specification as it would be understood by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Further, an inventor is entitled to be his or her own lexicographer of patent claim terms by providing a definition of the term in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We find it necessary to construe the claim term “resources.” Further, the parties identify the claim terms “visual construction” and “configuration” for which claim construction is sought. (Pet. 18-20; Prel. Resp. 4-5.) For this decision, we will construe each of these claim terms in turn.

1. “Resources” (Claim 1)

The claim term “resources” appears in the preamble of claim 1, which recites “[a] system for providing configurable *resources* to create a computing environment.”

We begin our analysis by reviewing the specification of the ’637 patent.

See Phillips v. AWH Corp., 415 F.3d 1303, 1317 (Fed. Cir. 2005) (en banc) (The specification is the single best guide to the meaning of a claim term.). Notably, the specification provides the following (Ex. 1001, 4:15-30, emphasis added):

The present invention allows fast, efficient selection and configuration of processing networks. The processing network is referred to as a system including “resources.” *A system resource is any hardware, software or communication components in the system.* For example, discrete *hardware devices* include processing platforms such as computers or processors, mobile/laptop computers, embedded computing devices, hand-held computers, personal digital assistants, point-of-sale terminals, smart-card devices, storage devices, data transmission and routing hardware etc., without limitation. *Software*, or any other form of instruction, is executed by processors in the system and is a type of resource. Finally, *communication resources* are also part of the system such as a digital network’s hardware, the network configuration and topology, and network control as provided by software or hardware.

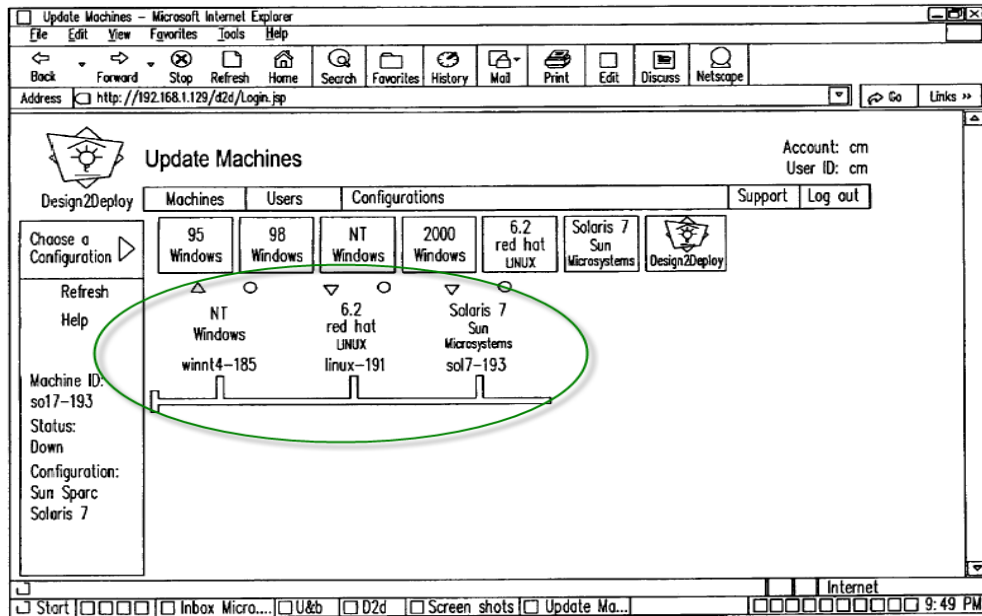
We recognize that the specification of the ’637 patent defines the claim term “resources” as “any hardware, software or communication components in the system” with reasonable clarity. *Paulsen*, 30 F.3d at 1480. That definition is also consistent with the other claim language, such as “wherein the computing environment comprises the communication link, at least one of the hardware devices and at least one of the software programs” as recited in claim 1. We therefore adopt that definition as our claim construction for the claim term “resources.”

2. “*Visual Construction*” (Claim 1)

Claim 1 recites “a *visual construction* of the computing environment via a user interface.” Essentially, the claim term “visual construction” is referring to a visual representation of a computing environment being created by a user.

Oracle asserts that the term “visual construction” should be interpreted as including “both textual and graphical representations of the network” (emphasis added). (Pet. 18, citing Ex. 1001, 7:29-31, Fig. 11; Ex. 1009, ¶ 35.) According to Clouding, however, the claim term “visual construction” should be interpreted as including “textual and/or graphical representation of a network” (emphasis in the original). (Prel. Resp. 4, citing Ex. 1001, Figs 5, 7, and 11.) The parties’ proposed interpretations and contentions provide an illuminating context as to how one of ordinary skill in the art would have understood the claim term in light of the specification.

We discern no special definition in the specification of the ’637 patent for this claim term. In fact, the specification does not use the claim term “visual construction” or “construction” anywhere. Nevertheless, the parties direct our attention to certain figures of the ’637 patent that are said to be examples of a visual construction. More precisely, the parties agree that Figure 11 of the ’637 patent depicts a visual construction that includes both textual and graphical representations of a network. (Pet. 18; Prel. Resp. 4.) Figure 11 of the ’637 patent is reproduced as follows (emphasis added):



Web Page 8
FIG. 11

Figure 11 of the '637 patent illustrates a web-page user interface that provides a visual representation of a computing environment.

As depicted in the above figure, the web-page user interface displays a list of resources (e.g., “95 Windows”), and icons representing the computing environment (highlighted with a green oval), including the resources that have been allocated by the user. (Ex. 1001, 6:49-7:32.) Although that example in Figure 11 of the '637 patent shows both textual representations (e.g., “NT Windows winnt4-185”) and graphical representations (e.g., the communication connections), the claim language is not so limiting.

As ordinarily understood, the word “visual” means “producing mental images” and the word “construction” means the process of making or forming

something by combining or arranging of parts or elements.¹ We observe that either a textual representation or a graphical representation could produce a mental image of a computing environment. As such, limiting the claim to require both textual and graphical representations would be importing the limitation from the specification into the claim improperly. *In re Zletz*, 893 F.2d 319, 321 (Fed.Cir. 1989). (Limitations are not to be read into the claims from the specification.).

In light of the specification of the '637 patent and the claimed subject matter, we construe the claim term “visual construction” to mean “a representation of the combination of hardware, software, and communication components,” and the representation may include at least one of the following: (1) a textual representation; and (2) a graphical representation.

3. “*Configuration*” (*Claims 1 and 4*)

Clouding agrees with Oracle that the claim term “configuration” should be construed as including “any software or hardware related settings.” (Pet. 19, citing Ex. 1001, 5:1-12 & Ex. 1009, ¶ 35; Prel. Resp. 4.) However, a review of the specification reflects that the claim term “configuration” is not limited to software and hardware components, but also includes communication components. (*See e.g.*, Ex. 1001, 4:15-30, reproduced above.)

We further determine that the phrase “related settings” in the parties’ proposed interpretation is vague. The claim term “configuration” ordinarily means

¹ *See e.g.*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/> (last visited Apr. 22, 2013).

“relative arrangement of parts or elements.”² In the context of the claimed subject matter and the specification of the ’637 patent, we construe the claim term “configuration” to mean “an arrangement of software, hardware, and communication components.”

B. Claims 1-4 and 6 – Anticipated by Patterson

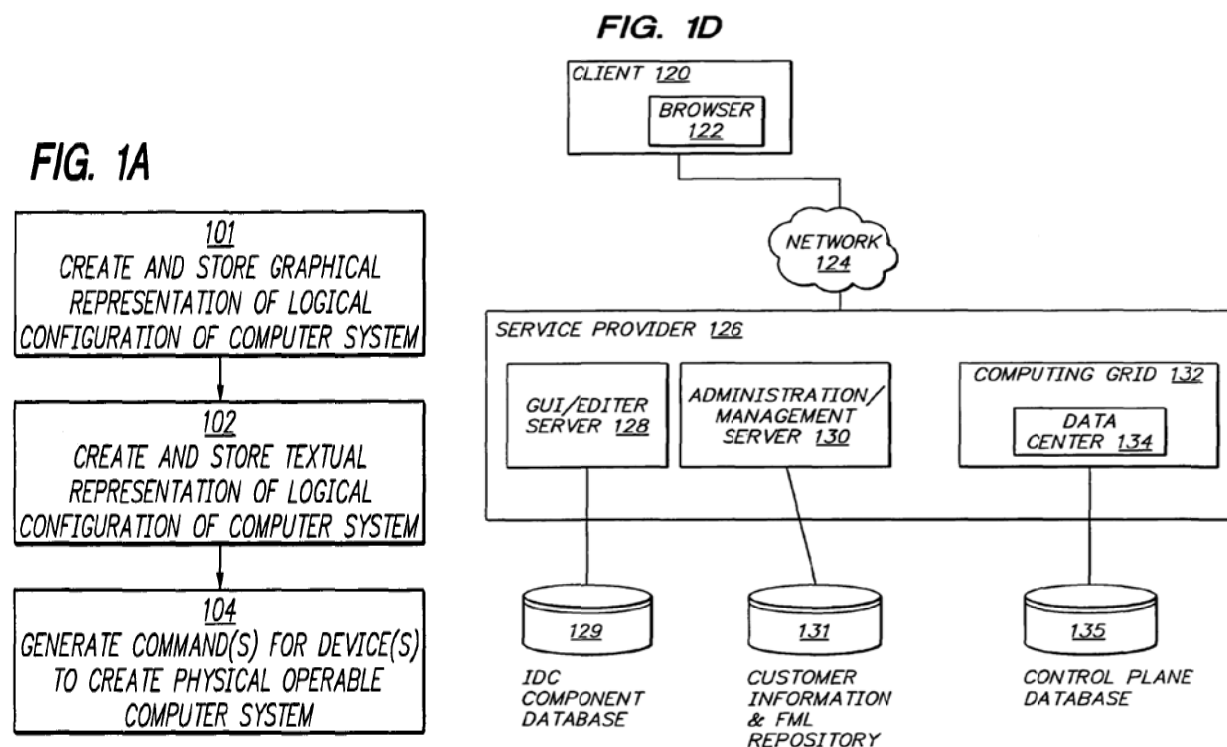
Oracle asserts that claims 1-4 and 6 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Patterson. (Pet. 21-29.) To support its assertion, Oracle provides detailed explanations as to how each claim limitation is met by Patterson, including claim charts and a declaration of Dr. Benjamin B. Bederson³ (“Dr. Bederson”). (Pet. 21-29; Ex. 1009.) In its preliminary response, Clouding presents no argument as to this ground of unpatentability.

Patterson discloses a system that enables a user to create and deploy a networked computer system by creating a graphical representation of the logical configuration of the networked computer system. (Ex. 1003, Abs.; 6:43-55.) The networked computer system is created based on a user selection of graphic icons that represent computing elements, network elements, and interconnections. (*Id.*)

² See e.g., MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/> (last visited Apr. 22, 2013).

³ Dr. Bederson holds a Ph.D. in computer science from New York University and has more than 25 years of experience in the computer science and human-computer interaction field. (Ex. 1009, ¶¶ 1-11.) At the time of his declaration, Dr. Bederson was employed by the University of Maryland as a Professor in the Computer Science Department and the Institute of Advanced Computer Studies. (*Id.*) We conclude that Dr. Bederson is qualified to testify as to the understanding of one skill in the art.

Figures 1A and 1D of Patterson depict a method and system for creating a networked computer system, and are reproduced as follows:



Figures 1A and 1D of Patterson illustrate a method and system for designing and creating a networked computer system.

As shown in Figure 1A of Patterson, a graphical representation of a logical configuration of a computer system is created and stored (101). (Ex. 1003, 7:41-43.) A textual representation of the logical configuration of the computer system is generated based on the graphical representation (102). (Ex. 1003, 7:51-56.) Finally, commands are generated based on the textual representation and executed so that the networked computer system is created and activated by interconnecting computing elements logically (104). (Ex. 1003, 7:56-64.)

As represented in Figure 1 D of Patterson, the system for creating a networked computer system includes a client 120 that executes a browser 122 and communicates with service provider 126 through a network 124. (Ex. 1001, 9:19-26.) The service provider 126 has a computing grid 132 that has a large plurality of processor and storage elements. (Ex. 1001, 9:28-42.) With the appropriate instructions, service provider 126 can create and deploy one or more data centers 134 using elements of the computing grid 132. (*Id.*) The service provider 126 also offers a graphical user interface editor server 28, and an administration management server 130, which interact with browser 122 to provide data center definition, management, reconfiguration. (*Id.*)

Figure 3A of Patterson depicts a user interface, and is reproduced as follows:

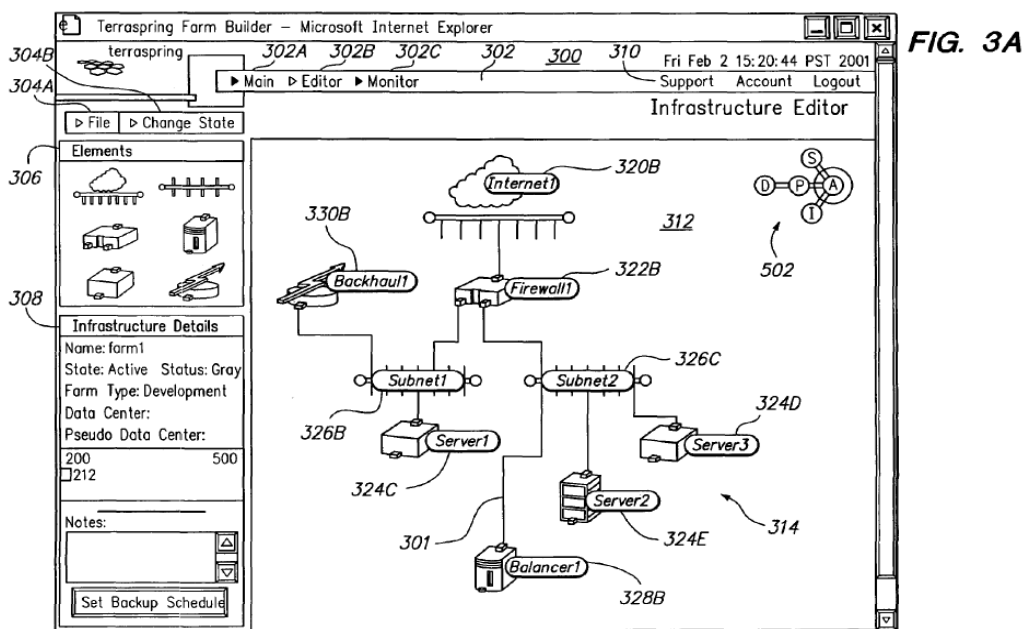


Figure 3A of Patterson illustrates a user interface that shows graphical representation of the networked computer system.

As depicted in Figure 3A, Patterson's software editor application provides a user interface that has icons representing elements or nodes of a computer system so that a user can drop the icons into a workspace, connect the icons with lines representing network connections, configure one or more parameter values associated with the nodes, and submit the completed logical representation to a service provider for review and validation. (Ex. 1003, 7:43-50; 21:37-43.)

Although Patterson's actual filing date is later than the actual filing date of the '637 patent, Patterson qualifies as prior art under 35 U.S.C. § 102(e) based on its effective filing date. Patterson claims the benefit under 35 U.S.C. § 119(e) to U.S. Patent Provisional Application No. 60/212,925 ("the '925 provisional application," Ex. 1004) filed on June 20, 2000, which is prior to the effective filing date of the '637 patent (August 24, 2000). In its petition, Oracle provides detailed explanations as to how each claim limitation is met by each of Patterson and the '925 provisional application. (Pet. 22-29.)

Upon review of Oracle's analysis and supporting evidence, we determine that Oracle's assertion regarding the anticipatory ground of unpatentability has merit. On this record, Oracle has demonstrated that there is a reasonable likelihood that it would prevail with respect to claims 1-4 and 6 on the ground that these claims are anticipated by Patterson.

C. Claims 1-4 and 6 – Unpatentable Over Aziz in view of Verissimo

Oracle asserts that claims 1-4 and 6 are unpatentable under 35 U.S.C. § 103(a) over Aziz in view of Verissimo. (Pet. 30-41.) In particular, Oracle

alleges that the combination of the cited prior art references describes all of the claim limitations and provides a rationale for combining the references. (*Id.*)

Clouding opposes and argues that the combination of Aziz and Verissimo fails to describe the claim limitation “the user interface is configured to accept a signal which enables the user to *request a copy [of] a device configuration*, the system is configured to *make the copy of the device configuration* and *save the copy of the device configuration in storage*” as recited in claim 1 (with emphasis added). (Prel. Resp. 6.) We do not agree.

Oracle relies upon Aziz for disclosing all of the claim limitations of claim 1, except the disputed claim limitation. (Pet. 30-41.) As noted by Clouding, Oracle cites Verissimo for the disputed claim limitation. (Prel. Resp. 6; Pet. 35.) Verissimo discloses a system for configuring a process control system. (Ex. 1006, Abs.) As described by Verissimo, the configuration process includes a design phase and a downloading phase. (Ex. 1006, 7:33-34.) Using a user interface, a user may design a software representation of the process control system by selecting representations of the various field mounted devices to be included in the actual control system. (Ex. 1006, Abs., 8:16-20; Figure 6A.)

Figure 5B of Verissimo, reproduced below, depicts a flow diagram of a file command subroutine for configuring a system.

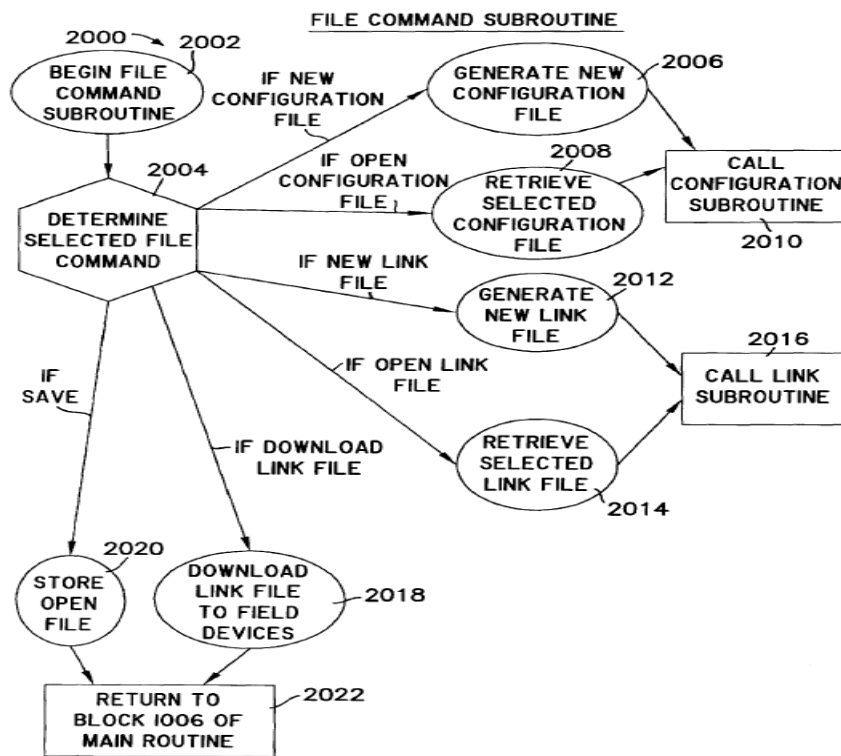


FIG. 5B

Figure 5B of Verissimo illustrates a flow diagram for configuring a system.

As shown above, a user may select to create a new configuration file (2006) or to open an existing configuration file (2008). (Ex. 1006, 9:3-14.) If the *user chooses to open an existing configuration file*, the selected file is retrieved from memory. (*Id.*, emphasis added.) Once the user has completed the process of selecting and identifying the field mounted devices and the function blocks to be included in the system, the user may *select to save the completed configuration file in memory* (2020). (Ex. 1006, 8:46-50; 9:30-32; 11:62-12:2, emphasis added.) And when the design phase is completed, the user can initiate the *downloading of the configuration and link files to the Fieldbus system from the master computer*

through the interface device, using the Download command from the File command menu. (Ex. 1006, 14:65-15:6, emphasis added.)

Given those disclosures of Verissimo, we are not persuaded by Clouding's arguments. Rather, we determine that Oracle has made a threshold showing that Verissimo describes the disputed claim limitation as recited in claim 1.

Moreover, Clouding fails to provide adequate explanation or credible evidence as to why Verissimo does not meet that limitation. Clouding's contention regarding Oracle's reliance on Dr. Bederson's testimony to "fill in the gaps" is inapposite because Verissimo describes the disputed claim limitation as discussed above. (Prel. Resp. 6-9.) As stated previously, we conclude that Dr. Bederson is qualified to testify as to the understanding of one skill in the art. Contrary to Clouding's contention, Dr. Bederson's testimony provides a credible rationale for combining Aziz and Verissimo. (Prel. Resp. 7, citing to Pet. 35 and Ex. 1009, ¶ 23.) For instance, Dr. Bederson testifies (Ex. 1009, ¶¶ 23-24, emphasis added):

Once the user has completed the process of selecting and identifying the field mounted devices and function blocks to be included in the Fieldbus system to be configured, the Fieldbus Network can be viewed via the window 10 and the user can save the completed configuration file by selecting the Save command from the File command menu. [Ex. 1006, 11:62-12:2] Of course, as would be obvious to one of ordinary skill in the art at the time of the invention, a configuration file could be saved under a new filename thereby creating a copy of the configuration file.

I believe that *it is reasonable and entirely expected for a person of ordinary skill in this area to combine the above-noted system configurator of Verissimo with the virtual provisioning console and VSF creation techniques of Aziz.* When combined in this manner, the virtual provisioning console could provide a VSF system configurator

GUI enabling the visual creation of the VSF. Accordingly, the system configurator GUI could be used to specify the number of tiers, the number and types of computing elements in a particular tier, the hardware and software platform used for each element, and things such as what kind of Web server, application server, or database server software should be preconfigured on these computing elements. *The configured VSF configuration could then be viewed or saved for later use and/or modification by the customer. I believe that it would be reasonable and expected for a person of ordinary skill to combine these references for a variety of reasons.*

On this record, we determine Dr. Bederson's testimony to be credible that it articulates an adequate rationale with technical reasoning as to why a person of ordinary skill in the art would have combined the teachings of Aziz and Verissimo to reach the subject matter of claim 1.

We have reviewed Oracle's analysis and supporting evidence, and determine that Oracle's assertion as to the unpatentability of the challenged claims based on Aziz and Verissimo is persuasive. Accordingly, Oracle has demonstrated that there is a reasonable likelihood that it would prevail with respect to claims 1-4 and 6 based on the ground that these claims are unpatentable over Aziz and Verissimo.

D. Other Asserted Grounds

Oracle also asserts that claims 1-4 and 6 are unpatentable under 35 U.S.C. § 103(a) over Aziz and ClusterX. (Pet. 42-55.) That asserted ground is denied as redundant in light of the determination that there is a reasonable likelihood that the challenged claims are unpatentable based on the grounds of unpatentability on which we institute an *inter partes* review. See 37 C.F.R. § 42.108(a).

III. CONCLUSION

For the forgoing reasons, we determine that the information presented in the petition establishes that there is a reasonable likelihood that Oracle would prevail with respect to claims 1-4 and 6 of the '637 patent.

IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. § 314, an *inter partes* review is hereby instituted as to claims 1-4 and 6 of the '637 patent for the following grounds:

1. Claims 1-4 and 6 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Patterson; and
2. Claims 1-4 and 6 are unpatentable under 35 U.S.C. § 103(a) over Aziz and Verissimo;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial is commencing on the entry date of this decision; and

FURTHER ORDERED that an initial conference call with the Board is scheduled for 2:00 PM Eastern Time on May 16, 2013; the parties are directed to the Office Trial Practice Guide⁴ for guidance in preparing for the initial conference call, and should come prepared to discuss any proposed changes to the Scheduling

⁴ *Office Patent Trial Practice Guide*, 77 *Fed. Reg.* 48756, 48765-66 (Aug. 14, 2012).

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Order entered herewith and any motions the parties anticipate filing during the trial.

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