APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/002,652	01/05/2011	Norman P. Brown	82595322	2608

22879   7590   09/23/2016
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EXAMINER
LI, SIDNEY

ART UNIT	PAPER NUMBER
2136	

NOTIFICATION DATE	DELIVERY MODE
09/23/2016	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte NORMAN P. BROWN

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Appeal 2015-004840
Application 13/002,652
Technology Center 2100

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Before CAROLYN D. THOMAS, JEFFREY S. SMITH, and
TERRENCE W. McMILLIN, *Administrative Patent Judges.*

SMITH, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–15. The rejection of claims 16–20 has been withdrawn. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Representative Claim

1.   A method for updating a thin client operating system (OS) image, comprising:

writing a service OS from a network device to memory of a thin client device, the service OS being written over a first portion of an old OS image, the first portion including a portion of a current OS of the thin client device;

rebooting the thin client device using the service OS;

subsequent to rebooting the thin client device and using the service OS, writing a large part of a new OS image from the network to the memory of the thin client in a series of portions, the large part of the new OS image being written over a second portion of the old OS image without writing over the service OS in the first portion; and

writing a final small part of the new OS image over the service OS in the first portion.

Prior Art

Frazer	US 2005/0055595 A1	Mar. 10, 2005
Saliou	US 2005/0228978 A1	Oct. 13, 2005
Skan	US 7,698,698 B2	Apr. 13, 2010

Examiner's Rejections

Claims 1, 4–6, 8, 9, 11–13, and 15 stand rejected under 35 U.S.C. § 102(e) as anticipated by Skan.

Claims 2, 3, and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Skan and Saliou.

Claims 7 and 10 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Skan and Frazer.

ANALYSIS

Section 102 rejection of claims 1, 4–6, 8, 9, 11–13, and 15

Claim 1 recites "writing a service OS from a network device to memory of a thin client device, the service OS being written over a first portion of an old OS image, the first portion including a portion of a current OS of the thin client device."

The Examiner finds the update agent of Skan, which is part of the minimal core image that is received, is written in the memory locations of the core operating system of the device. Ans. 12 (citing Skan, col. 7, ll. 15–40; Fig. 2). According to the Examiner, column 7 and Figure 2 of Skan disclose the update agent is in the core operating system, therefore, it was written over a portion of an old OS image. *Id*. Appellant contends the update agent of Skan is not written over the core OS image because the update agent already exists on the core OS image. Reply Br. 5–6.

We agree with Appellant. Skan discloses a download agent that receives an update package, transferred over-the-air from a remote server to a mobile device, and stores the update package in flash. Col. 6, l. 64 to col. 7, l. 4. The update agent accesses and decodes the update package and applies the decoded update instructions to a firmware image stored in flash, to convert the original image into a new image. Col. 7, ll. 8–40; Fig. 2.

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Although the update agent decodes the update package, and applies the decoded update instructions to firmware stored in the flash to convert an original image into a new image, the update agent itself is not written over the original image in the firmware. Rather, the decoded update instructions are written over the original image by the update agent. Skan, col. 7, ll. 8–40; Fig. 2. However, the Examiner does not rely on the decoded update instructions that are written over the old image to describe the claimed "service OS being written over a first portion of an old OS image." Instead, the Examiner relies on the update agent itself (Final Act. 3–4; Ans. 12), which is not written over the old image.

We do not sustain the rejection of independent claim 1 under 35 U.S.C. § 102. Claims 4–6, 8, 9, 11–13, and 15 either contain or depend from a claim containing a limitation similar to that found in claim 1 for which the rejection fails.

Section 103 rejections of claims 2, 3, 7, 10, and 14

The Examiner has not persuasively explained how the additional references cited in the 103 rejections teach or suggest "writing a service OS from a network device to memory of a thin client device, the service OS being written over a first portion of an old OS image, the first portion including a portion of a current OS of the thin client device," as required by independent claims 1, 9, and 13. Accordingly, we do not sustain the rejections of dependent claims 2, 3, 7, 10, and 14 under 35 U.S.C. § 103.

DECISION

The rejection of claims 1, 4–6, 8, 9, 11–13, and 15 under 35 U.S.C. § 102(e) as anticipated by Skan is reversed.

The rejection of claims 2, 3, and 14 under 35 U.S.C. § 103(a) as unpatentable over Skan and Saliou is reversed.

The rejection of claims 7 and 10 under 35 U.S.C. § 103(a) as unpatentable over Skan and Frazer is reversed.

<u>REVERSED</u>