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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JUXTACOMM TECHNOLOGIES, INC.,
Appellant and Patent Owner

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1
Technology Center 3900

Before HOWARD B. BLANKENSHIP, JUSTIN T. ARBES, and
GLENN J. PERRY, *Administrative Patent Judges*.

Opinion for the Board filed by ARBES, *Administrative Patent Judge*

Opinion Dissenting filed by *Administrative Patent Judge* BLANKENSHIP

ARBES, *Administrative Patent Judge*.

DECISION ON APPEAL

JuxtaComm Technologies, Inc., the owner of Patent 6,195,662 B1, the patent under reexamination (hereinafter the “‘662 patent”), appeals under 35 U.S.C. §§ 134(b) and 306 (2002) from a final rejection of claims 1-11 and 14-19. An oral hearing was conducted on October 3, 2012, and a transcript of the hearing (“Transcript”) was made of record on December 10, 2012. We have jurisdiction under 35 U.S.C. §§ 134(b) and 306 (2002).¹

We reverse.

STATEMENT OF THE CASE

This reexamination proceeding arose from a request for *ex parte* reexamination of claims 1-11 and 14-19 of the ‘662 patent filed by SAS Institute Inc. on October 6, 2010. The ‘662 patent previously was the subject of Reexamination Control No. 90/010,526. In that *ex parte* reexamination, claim 13 was cancelled and the patentability of claims 1-12 and 14-19 was confirmed. *See Ex Parte* Reexamination Certificate issued July 27, 2010.²

¹ Our decision will make reference to Patent Owner’s Appeal Brief (“App. Br.,” filed December 9, 2011) and Reply Brief (“Reply Br.,” filed June 15, 2012), and the Examiner’s Answer (“Ans.,” mailed April 19, 2012) and Final Rejection (“Final Rej.,” mailed May 12, 2011).

² The ‘662 patent has been asserted in a number of litigations. App. Br. 1-2. In one of the cases, *JuxtaComm-Texas Software, LLC v. Axway, Inc., et al.*, E.D. Tex. Case No. 6:10-cv-00011-LED, the district court granted summary judgment of invalidity of independent claims 1 and 17 of the ‘662 patent under 35 U.S.C. § 112, second paragraph, based on the “script processor” limitation recited in the claims. *See* Order filed with an Information

Footnote continued on next page.

The '662 patent issued on February 27, 2001 based on Application 09/105,299, filed June 26, 1998. The '662 patent claims priority to Provisional Application 60/051,052, filed June 27, 1998. The '662 patent relates to "importing, transforming and exporting data between distributed heterogeneous computer systems and in particular to a system of script processing utilizing metadata to control data transformation within the system and data movement into and out of the system" (col. 1, ll. 13-18).

Claims 1-11 and 14-19 have not been amended from the original patent. Claim 13 was cancelled in Reexamination Control No. 90/010,526. Claim 12 is not subject to reexamination. Claim 1 is exemplary of the claims on appeal:

1. A distribution system for transforming and exchanging data between heterogeneous computer systems, comprising:
 - a) a systems interface for defining logical import and export data interfaces, data transformation rule sets and scripts;
 - b) a metadata database for storing said logical import and export data interfaces, data transformation rule sets and scripts;
 - c) a script processor for utilizing metadata from the metadata database to control data transformation within said systems interface and movement of said data into and out of said distribution system; and

Disclosure Statement in this reexamination on July 12, 2012. That decision is currently on appeal to the Federal Circuit. Transcript 12:11-14:4. The district court's decision, and the 35 U.S.C. § 112 issue raised therein, have no impact on this appeal. *See id.*; 37 C.F.R. § 1.552 (consideration of 35 U.S.C. § 112 issues in an *ex parte* reexamination proceeding is limited to "subject matter added or deleted in the reexamination proceeding").

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

d) a rule set processor responsive to said script processor for manipulating a data bag for storing imported data and a data bag for storing export data.

Claims App'x, App. Br. 29.

The prior art relied upon by the Examiner in rejecting the claims on appeal is Conceptual Software, Inc., “DBMS/COPY PLUS: The Tool for Software Connectivity,” Version 2.0 (Feb. 1, 1990) (“DBMS Copy Plus”). The Examiner rejected claims 1-11 and 14-19 under 35 U.S.C. § 102(b) as being anticipated by DBMS Copy Plus. Ans. 4-11.

PRINCIPLES OF LAW

“During reexamination, as with original examination, the PTO must give claims their broadest reasonable construction consistent with the specification. . . . Therefore, we look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation.” *In re ICON Health and Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”).

“Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision. ‘Where an inventor chooses to be his own lexicographer and to give terms uncommon meanings, he must set out his uncommon definition in some manner within the patent disclosure’ so as to give one of ordinary skill in the art notice of the change.” *In re Paulsen*, 30

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

F.3d 1475, 1480 (Fed. Cir. 1994) (citation omitted).

“Anticipation requires that every limitation of the claim in issue be disclosed, either expressly or under principles of inherency, in a single prior art reference.” *Corning Glass Works v. Sumitomo Elec. U.S.A., Inc.*, 868 F.2d 1251, 1255-56 (Fed. Cir. 1989).

ANALYSIS

The principal issue in this appeal is whether DBMS Copy Plus discloses “data bags.” Independent claims 1 and 17 recite “a rule set processor responsive to said script processor for manipulating a data bag for storing imported data and a data bag for storing export data.” Dependent claims 14-16, which depend from cancelled independent claim 13, recite “loading . . . data into an import data bag” and “convert[ing] the data to a desired format in an export data bag” by following any one or more of six recited steps, including “formatting data from a data bag into another data bag of a different type, using a defined rule set.”

The Examiner interpreted “data bag” to mean something that “contains both the data to be manipulated and the data structure definitions, in a generic format.” Ans. 11. Patent Owner proposed a narrower interpretation in its Appeal Brief, but acknowledged at the oral hearing that it is “not contesting” the Examiner’s claim interpretation for purposes of this appeal. Transcript 10:15-22. We agree with the Examiner’s interpretation, as the term “data bag” is not a term of art and is specifically defined in the ’662 patent. *See* ’662 patent, col. 2, ll. 36-39 (“A generic format data bag contains both the data to be manipulated and the data structure definitions, in a generic format. The present invention will use the title ‘data bag’ to

indicate a generic format data bag.”); col. 4, ll. 11-15 (“Data bags 43 are used in the present invention for the storage and transformation of external data. A data bag contains both the definition of the data contained within the data bag and the actual generic format data.”).

The question arises, however, as to what is meant by “data structure definitions.” Figure 11 of the ‘662 patent shown below depicts an exemplary import data bag 111 comprising data definition collection 112 and data group collection 113:

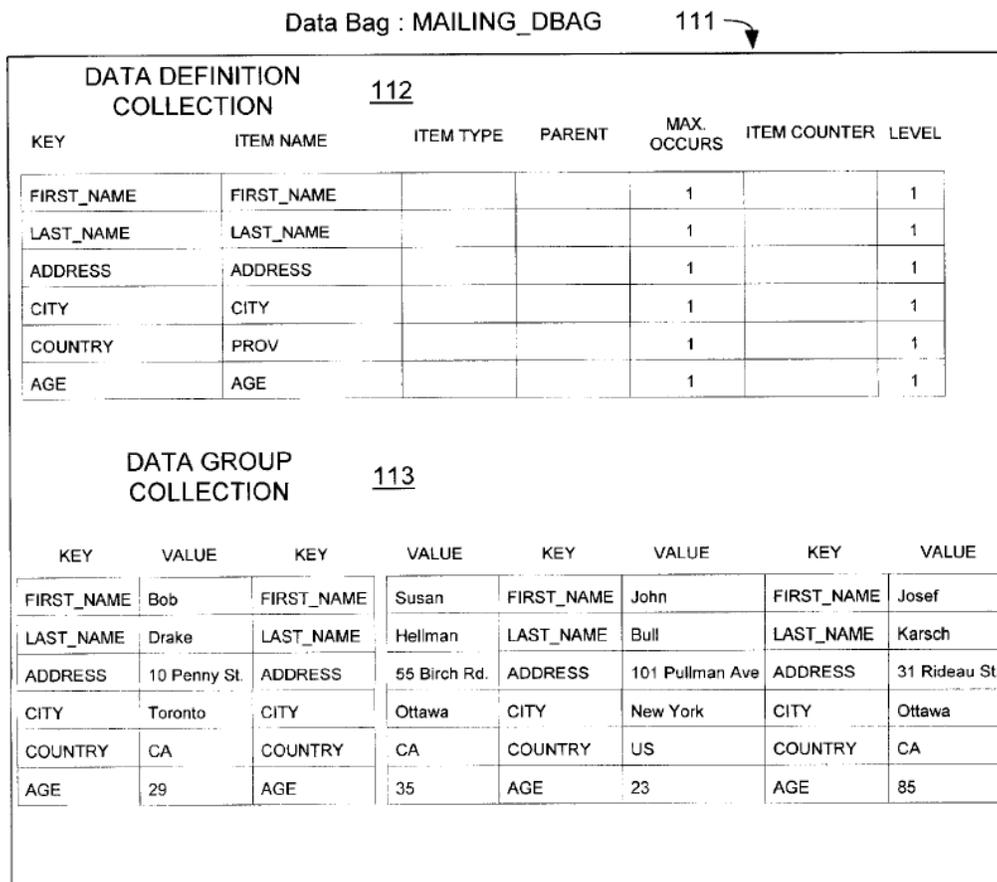


FIGURE 11

Figure 12 depicts a corresponding export data bag 121 having slightly different data and definitions for the data. The patent explains that “[a]ll the

element definitions for a data bag are stored within the data definition collection,” and “[e]ach row of data in a data bag is stored as one data group in the data group collection.” *Id.*, col. 5, ll. 1-5. “The data definition collection 112 specifies the key name used for locating fields in the data group collection 113 and specifies the data type for a field value associated with each key.” *Id.*, col. 7, ll. 57-60. For example, data definition collection 112 includes properties (ITEM NAME, ITEM TYPE, PARENT, MAX OCCURS, ITEM COUNTER, and LEVEL) for a certain field of data, such as FIRST_NAME. Data group collection 113 stores the actual data having that field, such as “Bob,” “Susan,” “John,” or “Josef.” In that manner, the data structure definitions represent how the data in the data bag is structured. The disclosed system then uses the definitions to load import data into an import data bag and transform it into an export data bag for export. *Id.*, col. 5, ll. 2-27. We interpret “data bag” in the claims to mean something that contains both data to be manipulated and data structure definitions for that data (i.e., representations of the actual structure of the data) in a generic format.

Turning now to the substance of the rejection, the Examiner appears to cite two different elements of DBMS Copy Plus as the required data structure definitions, each of which Patent Owner disputes. First, the Examiner finds that “rows imported [from the input data source] into memory” in DBMS Copy Plus are a data bag for storing imported data, and “a ‘record’ (which is a data structure) reasonably reads on a ‘definition of data.’” Ans. 6, 32-33. As Patent Owner points out, however, the Examiner’s finding ignores the distinction between the data in the data bag and the data structure definitions in the data bag. The ‘662 patent defines a

“data bag” as containing both, and indicates that they are different elements with different functions. *See* ‘662 patent, col. 2, ll. 36-39 (“A generic format data bag contains *both* the data to be manipulated and the data structure definitions, in a generic format.”) (emphasis added); col. 5, ll. 1-5; Fig. 11 (data definition collection 112 and data group collection 113). Moreover, as explained above, data structure definitions are representations of the actual structure of the data, not the data itself. The Examiner has not pointed to anything beyond the imported rows or records (i.e., the data itself) that could be read as a data structure definition. Further, the Examiner focuses on the rows imported into memory in DBMS Copy Plus and does not account for the other claim requirement of a “data bag for storing export data.” We agree with Patent Owner that the rows imported into memory in DBMS Copy Plus are not a “data bag” because they do not contain data structure definitions.

Second, the Examiner finds that the input and output data sources in DBMS Copy Plus are data bags, and the “pseudo extensions” for the data sources are data structure definitions. Ans. 13-14, 20. The Examiner cites pages 8-9 of DBMS Copy Plus, which disclose:

The user can make changes to the output file by using the DBMS/COPY Plus statements in what is called a paragraph. For example,

```
compute;  
in= employee.rxd out= employee.db;  
newsal = salary * 1.1;  
drop depart;  
run;
```

This sample paragraph reads in a Reflex file called *employee* and writes a Paradox file. It will calculate a new variable, *newsal*, as the amount of the salary (already stored in the salary variable in the input file) after a 10% raise. This is an example of the Assignment Statement. The Paradox file will not contain the variable called *depart*. This is an example of the Drop Statement.

Ans. 13. In the example code above, DBMS Copy Plus takes in data from a file with the .rxd extension, allows the user to make changes, and outputs a file with the .db extension. See DBMS Copy Plus, pp. 8-9, 58 (the *in=* and *out=* operators are used to tell the system “which database files will be read from and to”). Pseudo extensions, such as .rxd and .db, are “unique set[s] of characters placed in the same position as a DOS file extension.” *Id.*, pp. 143-47 (listing all of the pseudo extensions supported by DBMS Copy Plus, including .rxd, .db, and .xls). According to the Examiner, the *employee.rxd* and *employee.db* files are data bags and their .rxd and .db pseudo extensions are data structure definitions. See Ans. 13-14, 20.

We agree with Patent Owner that the pseudo extensions described in DBMS Copy Plus are not data structure definitions. To use a well-known example, the .xls extension tells DBMS Copy Plus what type of file (i.e., a Microsoft Excel spreadsheet) is being accessed, but says nothing about the actual structure of the data stored in that file. For example, the extension would not indicate that an Excel file stores employee data in rows each having a 20-character text field for the employee’s name, a 40-character alphanumeric field for the employee’s address, a 10-digit numeric field for the employee’s phone number, and a 5-digit unique numeric field for the employee’s ID. Indeed, two Excel files could have their data structured entirely differently – one might contain numerical data showing a

company's revenues and expenses, while another contains textual data showing names and addresses of the company's employees – but their extensions would be the same. *See* Reply Br. 11-12. Pseudo extensions therefore are not representations of the actual structure of the data as the claims require.

Further, DBMS Copy Plus discloses that the function of a pseudo extension is to “tell[] DBMS/COPY exactly what software package is associated with that particular file,” such as Microsoft Excel for a .xls file, so that the appropriate drivers can be used to access the file. DBMS Copy Plus, pp. 49, 143-47. This corresponds not to the data structure definitions feature of the claims, but rather to the “logical import and export data interfaces,” as the Examiner recognizes. Specifically, the Examiner mapped the drivers in DBMS Copy Plus to the claimed interfaces and found that pseudo extensions are used to “identify the proper interfaces during data transforming and exchanging operations.” Ans. 5, 8-9, 27. This is similar to how filename extensions are used in the '662 patent, where they are part of the connection information used to define the “logical import and export data interfaces.” For example, a target filename CITY.CSV is used in step 75 of Figure 7 to define an export data connection, but there is no indication that the filename or extension is used in steps 73 and 76 where the import and export data bags are created. *See* '662 patent, col. 6, l. 59-col. 7, l. 3. A file extension or pseudo extension merely allows a file to be accessed; it does not tell the system how the underlying data in the file is structured.

Finally, we note that a pseudo extension is simply a small number of characters and is only useful to DBMS Copy Plus based on information outside of the pseudo extension itself. Because DBMS Copy Plus supports

various types of files, the software necessarily has as part of its programming reference information (e.g., drivers) so that when it encounters a file with a supported pseudo extension, it knows how to access and manipulate the file. *See* DBMS Copy Plus, pp. 143-47, 155 (a “Cannot Load Input Driver” error is generated when “DBMS/COPY Plus supports the software system specified by the pseudo extension, but the support for that system has not been installed on this machine.”). By contrast, data structure definitions themselves represent the actual structure of the data and are contained in the data bag itself, not in some other location. *See* ‘662 patent, col. 2, ll. 36-39; col. 4, ll. 11-15; col. 7, l. 55-col. 8, l. 14. Again, the pseudo extension of a file is not a representation of the actual structure of the data stored in the file.

A rejection based on anticipation, which is the only rejection before us, requires that each and every feature of the claims be disclosed in the applied prior art. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). On this record, we are persuaded that the Examiner erred in finding that DBMS Copy Plus discloses “data bags” containing data structure definitions, as required by claims 1-11 and 14-19, and therefore need not address Patent Owner’s remaining arguments regarding other aspects of the rejection. *See* App. Br. 22-28.

CONCLUSION

We conclude that the Examiner incorrectly determined that claims 1-11 and 14-19 are anticipated by DBMS Copy Plus.

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

DECISION

For the above reasons, the rejection of claims 1-11 and 14-19 as anticipated by DBMS Copy Plus is reversed.

REVERSED

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

Blankenship, *Administrative Patent Judge*, dissenting.

I. “Data Bag”

On September 19, 2012, the U.S. District Court for the Eastern District of Texas entered a final judgment holding that claims 1 and 17 of the '662 patent, the only remaining independent claims, are invalid pursuant to 35 U.S.C. § 112, second paragraph. *Juxtacomm-Texas Software, LLC v. Axway, Inc.*, No. 6:10-CV-11 (E.D. Tex.). According to information provided by Appellant and confirmed at the oral hearing, that judgment has been appealed to the U.S. Court of Appeals for the Federal Circuit.

The District Court’s Order, entered July 5, 2012, granted the Defendant’s Motion for Summary Judgment of Invalidity on the basis that the recitation of utilizing metadata from a metadata database to control data transformation “within said systems interface” rendered the claims indefinite under 35 U.S.C. § 112, second paragraph. While the question of where “data transformation” occurs is not at issue in this proceeding, disposition of this case requires consideration of related ambiguous language in the claims.

Appellant argues that the '662 patent’s “data bags” distinguish over the applied prior art. There is an initial problem with that argument, however, because Appellant does not claim a “data bag.” The claims call for a “rule set processor” that is “for manipulating” a data bag for storing imported data and a data bag for storing export data. The claims do not positively set forth the element upon which Appellant bases patentability. The “data bags” appear to represent recitations that further define (or limit) the functionality of the “rule set processor,” but are not elements that are actually required in the combinations set forth by claim 1 and claim 17.

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

Upon initial reading, i.e., starting with the plain language of the claims, the claims appear to recite software capable of doing something to a container for storing data and to another container for storing data.

The “something” that the software is capable of doing is the crux of the matter. According to Appellant, the rule set processor for “manipulating” data bags as claimed is described at column 4, lines 45 through 48 of the '662 patent. App. Br. 3, “Summary of Claimed Subject Matter.” The Specification provides:

The transformation/exchange system **13** [Fig. 1] also contains a rule processor **36** that is invoked by the script processor **37** to *transform* one data bag into another data bag based on a rule. Rules will be described below.

Spec. 4:45-48 (emphasis added).

However, the patent suggests that “manipulating” is not the same as “transforming.” For example, dependent claim 9, presumably narrower than base claim 1, recites that the rule processor is invoked “to *transform* the import data bag into the export data bag based on predefined data transformation rules” (emphasis added). The patent elsewhere appears to teach there is some difference between “manipulating” and “transforming.” For example, the Abstract purports a system and method for the “manipulating and transforming” of data, with metadata definitions created to “manipulate generic format data,” and further purports that data is “manipulated within the system using script control commands and data is transformed within the system using rule sets that act upon data bags.”

The '662 patent’s only express description of “manipulating” a data bag appears to be at column 8, lines 48 through 60, which refers to one rule

of a rule set, the single rule manipulating data within a data bag (Fig. 17), as opposed to rules for “transforming” a data bag into another data bag (e.g., col. 6, ll. 26-31).

The '662 patent thus appears to refer to “manipulating” data *per se* but “transforming” data bags from one form to another. Patent claims 1 and 17 appear to recite a rule set processor that possesses, at a minimum, a rule sufficient to “manipulate” data held by data bags, but not necessarily rules sufficient to “transform” a data bag for storing imported data into a data bag for storing export data.

Assuming *arguendo* that the “data bags” described by the patent are structural elements -- that is, more than mere data -- the inventions of claim 1 and claim 17 appear to require no more of the rule set processor than that it be capable of manipulating data from the data bags, as opposed to transforming “structure” from one form to another. In the system of claim 1 and the “computer readable memory” of claim 17, the software is not dependent on where the data to be manipulated comes from; the “manipulation” is on the data contained in the data bags, but independent of the “structure” of the data bags, as illustrated by Figure 17 of the '662 patent. Because the capability of “manipulating” the data is the same regardless of the source of the data or where the data may be going after the “manipulation,” the “data bags” of the claims represent mere data or sources and repositories of mere data, as opposed to elements that serve to modify the structure or function of the claimed “system” or “computer readable memory.” As such, the “data bags” as claimed represent no more than non-functional descriptive material, which is not entitled to patentable weight in the analysis of the claims vis-à-vis the prior art. *See Ex parte Nehls*, 88

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

USPQ2d 1883, 1887-90 (BPAI 2008) (precedential) (discussing non-functional descriptive material).

Of course, I could be wrong. But “[i]t is the applicants’ burden to precisely define the invention, not the PTO’s.” *In re Morris*, 127 F.3d 1048, 1056 (Fed. Cir. 1997); *see also* 35 U.S.C. § 112, ¶ 2 (“The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.”). I could be wrong in the claim interpretation because of the ‘662 patent’s ambiguity with respect to what “manipulating” a data bag, at a minimum, requires in the context of claim 1 and claim 17. On the other hand, the “manipulating” might cover an operation such as moving a data bag from one memory location to another, which again would result in the finding that the “data bags” represent non-functional descriptive material, not entitled to patentable weight. The program step of moving the “data bag” would be the same regardless of the content or the internal “structure” of the “data bag,” and the same regardless of what the chunk of data might be called.

II. “Data Structure Definition”

In any event, Appellant contends that DBMS Copy Plus fails to disclose “data bags” because the Examiner erred in finding that the filename “pseudo-extensions” in the reference are “data structure definitions.” Reply Br. 5-8, 11. Appellant acknowledges that a pseudo-extension may indicate that a file is in a particular format (e.g., Excel spreadsheet format), but submits that the pseudo-extension is not a data structure definition because it does not describe “*the data within*” the file. *Id.* at 11.

However, Appellant does not allege that the term “data structure definition” has any particular meaning that is recognized in the pertinent art. Nor does Appellant allege that the '662 patent sets forth any express definition for the term. Although an inventor is free to define the specific terms used to describe the invention, “this must be done with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

To act as its own lexicographer, a patentee must “clearly set forth a definition of the disputed claim term” other than its plain and ordinary meaning. It is not enough for a patentee to simply disclose a single embodiment or use a word in the same manner in all embodiments, the patentee must “clearly express an intent” to redefine the term.

Thorner v. Sony Computer Ent. Am. LLC, 669 F.3d 1362, 1365 (Fed. Cir. 2012) (citations omitted).

For the meaning of “data structure definition,” Appellant refers us, for reasons unknown, to the “exemplary” embodiment of Figures 11 and 12 in the patent. Reply Br. 14-15. The first problem is the fact that *the patent does not use the term “data structure definition” to describe the embodiment of Figures 11 and 12*. The patent, instead, refers to “data definitions” (e.g., col. 5, ll. 8-16), which appears to be a term more commensurate with Appellant’s arguments.³ If the “data structure

³ In my view, the Board should not and cannot redraft the '662 patent’s written description to be consistent with Appellant’s arguments. Our role is to evaluate arguments in view of the evidence, not change the evidence to match the arguments. Further, we could not change “data structure” definition to “data” definition if the words carried the weight of an actual

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definitions” of column 2 (lines 36 through 38) of the patent were intended to refer to the “data definitions” of Figures 11 and 12 and to nothing else, the column 2 wording represents a drafting mistake. Patentability should not be predicated on a mistake.

Second, even if the patent did use the term in controversy to describe the “exemplary” embodiment, our reviewing court has repeatedly warned against confining the claims to specific embodiments described in the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1323 (Fed. Cir. 2005) (en banc). It is improper to “import limitations into claims from examples or embodiments appearing only in a patent’s written description, even when a specification describes very specific embodiments of the invention or even describes only a single embodiment, unless the specification makes clear that ‘the patentee ... intends for the claims and the embodiments in the specification to be strictly coextensive.’” *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1335 (Fed. Cir. 2005) (quoting *Phillips v. AWH Corp.*, 415 F.3d at 1323). The '662 patent does not indicate that the patentee intended for the claims and the embodiments in the Specification to be coextensive, but states that “[t]he scope of the invention is set forth in the following claims.” '662 patent, col. 8, ll. 66-67.

claim term. Even in proceedings where the claims cannot be amended and the presumption of validity applies, our reviewing court has repeatedly and consistently recognized that “courts may not redraft claims, whether to make them operable or to sustain their validity.” *Chef Am., Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1374 (Fed. Cir. 2004) (citations omitted). “[I]n accord with our settled practice we construe the claim as written, not as the patentees wish they had written it.” *Id.*

Our reviewing court has also held, in proceedings where the “broadest reasonable interpretation” rule does not apply, that “[e]ven when guidance is not provided in explicit definitional format, the specification may define claim terms by implication such that the meaning may be found in or ascertained by a reading of the patent documents.” *Irdeto Access, Inc. v. Echostar Satellite Corp.*, 383 F.3d 1295, 1300 (Fed. Cir. 2004) (internal quotation marks and citations omitted). However, in this proceeding Appellant could have amended the claims consistent with the allegations of what the claims require, to the extent supported by the disclosure, and thus obviated any need for us to divine the meaning of claim terms “by implication.” Because applicants may amend claims to narrow their scope, “a broad construction during prosecution creates no unfairness to the applicant or patentee.” *In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007) (citation omitted). More important, however, “data structure definition” is not a *claim* term, but a term that the '662 patent disclosure fails to define, or at best ambiguously defines without the required “reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d at 1480.

Appellant cites *In re Suitco Surface, Inc.*, 603 F.3d 1255 (Fed. Cir. 2010), and *In re NTP, Inc.*, 654 F.3d 1279 (Fed. Cir. 2011), as cases where our reviewing court held that the Board improperly applied the standard for “broadest reasonable interpretation.” App. Br. 8-9. However, both cases dealt with the interpretation of *claim* terms, unlike the instant case where the breadth of the term “data structure definition” is disputed. The '662 patent claims do not contain the term in controversy.

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

Further, in *Suitco Surface* our reviewing court held that the *express language of the claims* required a “material for finishing the top surface of the floor,” such that an interpretation that allows the finishing material to fall anywhere above the surface being finished, regardless of whether it actually “finishes” the surface, represented error. *Suitco Surface*, 603 F.3d at 1260. In *NTP*, our reviewing court held that the Board erred in interpreting the term “electronic mail” based on clear requirements *of the claim language itself*, a definition of the term as understood by a person of ordinary skill in the art in the patent’s specification, and expert testimony concerning the meaning of the term to the person of ordinary skill in the art. *See NTP*, 654 F.3d at 1289-90. The Court also determined that interpreting an “electronic mail system” as not requiring a “plurality of processors” was contrary to the *language of the claims themselves*. *Id.* at 1290. In this case, in contradistinction: (1) there is no express claim requirement that a “data structure definition” refers (only) to “the data within” the file -- in fact, the claims do not even contain the terms “data structure definition” or “data within”; (2) there is no express definition in the '662 patent for the term “data structure definition”; and (3) there is no expert testimony with respect to what the term “data structure definition” might mean to one of ordinary skill in the art at the time of invention.

In another decision, subsequent to Appellant’s briefs in this appeal, our reviewing court held that the Board erred in interpreting the term “electrochemical sensor” as failing to preclude external cables and wires to connect the sensor to its control unit, based in part on inconsistency with *the language of the claims* and with disparaging remarks in the specification with respect to external cables and wires required by prior art sensors. *In re*

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

Abbott Diabetes Care, Inc., 696 F.3d 1142, 1149 (Fed. Cir. 2012). The Court also held that it was error to interpret a term of degree *in the claims* -- “substantially” fixed -- as allowing movement beyond that described in the specification. *Id.* at 1151. In this case: (1) the claims do not contain the term “data structure definition”; and (2) the '662 patent does not contain disparaging remarks about prior art “data structure definitions” that define data structures but not “the data within” the data structures.

We are required to give claim language its broadest reasonable interpretation consistent with the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Morris*, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989); *In re Yamamoto*, 740 F.2d 1569, 1571-72 (Fed. Cir. 1984). In this reexamination proceeding, Appellant had the opportunity (and duty) to amend the claims to avoid ambiguity and to more precisely convey the meaning that Appellant would like the claims to have. “An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.” *Zletz*, 893 F.2d at 322.

Appellant has failed to demonstrate that the Examiner erred by rejecting an overly restrictive reading for a term that is undefined, or ambiguously defined, in the patent disclosure. Therefore, I respectfully dissent from the decision to reverse the rejection of claims 1-11 and 14-19.

Appeal 2012-010050
Reexamination Control No. 90/011,267
Patent 6,195,662 B1

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