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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/286,446	11/23/2005	Walter G. Bright	112076-152424	8181
25943	7590	02/21/2013	EXAMINER	
Schwabe Williamson & Wyatt PACWEST CENTER, SUITE 1900 1211 SW FIFTH AVENUE PORTLAND, OR 97204			HAILU, TADESSE	
			ART UNIT	PAPER NUMBER
			2173	
			MAIL DATE	DELIVERY MODE
			02/21/2013	PAPER

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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* WALTER G. BRIGHT

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Appeal 2013-003725  
Application 11/286,446  
Technology Center 2100

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Before DEBRA K. STEPHENS, JUSTIN BUSCH, and MIRIAM L.  
QUINN, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) (2002) from a final rejection of claims 1, 4-8, 11-16, 19-23, 26-30, 33-38, and 41-45. We have jurisdiction under 35 U.S.C. § 6(b). Claims 2, 3, 9, 10, 17, 18, 24, 25, 31, 32, 39, and 40 have been cancelled.

We AFFIRM.

### *Introduction*

According to Appellant, the invention relates to parsing a main document and referenced frame documents to be rendered by a browser for a display page, to identify where text and graphics objected are to be located (Abstract).

## STATEMENT OF THE CASE

### *Exemplary Claim*

Claim 1 is an exemplary claim and is reproduced below:

1. A method for controlling an order in which objects are rendered on a display page by a browser, comprising

requesting, by a computing device, a main document corresponding to the display page from a network server, said main document comprising code defining a layout of internal objects and external objects to be rendered in the display page, wherein the internal objects are included in the main document and the external objects are referenced by the main document[, said external objects including] and include any frame documents referenced in the main document;

parsing, by the computing device, said code of the main document and any frame documents referenced by the main

document to identify locations where said internal and external objects are to be rendered [on ]in the display page;

identifying, by the computing device, a location of a cursor relative to the display page; identifying and selecting, by the computing device, [an ]a to-be-rendered internal or external object nearest the location of the cursor;

rendering in the display page, and not in an external popup page, by the computing device, the internal/external object that is identified to be nearest the location of the cursor before rendering remaining internal and external objects; and

rendering thereafter, by the computing device, [other ]the remaining internal and external objects to complete rendering of the display page.

*References*

Allen	US 5,918,239	Jun. 29, 1999
Bates	US 6,585,776 B1	Jul. 1, 2003

*Rejections*

(1) Claims 1, 8, 16, 23, 30, 38, and 45 stand rejected under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement.

(2) Claims 1, 8, 16, 23, 30, 38, and 45 stand rejected under 35 U.S.C. § 251 as being based upon new matter added to the patent for which reissue is sought.

(3) Claims 1, 4-8, 11-16, 19-23, 26-30, 33-38, and 41-45 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Allen and Bates.

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii)(2011).

### PRINCIPLES OF LAW

“Negative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation.” *Santarus, Inc. v. Par Pharmaceutical Inc.*, 694 F.3d 1344 (Fed Cir. 2012). An express intent to confer on the claim language the novel meaning imparted by the negative limitation is required, such as an express disclaimer or independent lexicography in the written description that provides support for the negative limitation. *Omega Engineering, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1323 (Fed. Cir. 2003) (citations omitted).

### ISSUE 1

*35 U.S.C. § 112, first paragraph: Claims 1, 8, 16, 23, 30, 38, and 45 -  
Written Description Requirement*

Appellant argues the Specification contains support that demonstrates that the inventor was in possession of the claimed invention (App. Br. 12-13). Specifically, Appellant points to column 10, line 66 to column 11, line

30 of the Specification as describing “rendering in the display page, *and not in an external popup page*” (emphasis ours) as recited in claim 1 (*id.*).

*Issue 1:* Has the Examiner erred in finding the invention fails to comply with the written description requirement?

### ANALYSIS

“To satisfy the written description requirement, ‘the applicant does not have to utilize any particular form of disclosure to describe the subject matter claimed, but the description must clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.’” *Carnegie Mellon Univ. v. Hoffmann-La Roche Inc.*, 541 F.3d 1115, 1122 (Fed. Cir. 2008) (quoting *In re Alton*, 76 F.3d 1168, 1172 (Fed. Cir. 1996)). “In other words, the applicant must ‘convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention,’ and demonstrate that by disclosure in the specification of the patent.” *Id.* (quoting *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64 (Fed. Cir. 1991)).

*Ariad Pharm., Inc. v. Eli Lilly and Co.*, 560 F.3d 1366, 1371-72 (Fed. Cir. 2009) (en banc).

Here, we find Appellant has not clearly conveyed rendering in the display page, not in an external popup page. Although Appellant discusses rendering in a display page (col. 10, l. 66 to col. 11, l. 30), Appellant does not specify that rendering is *not* in an external popup page. Nor does Appellant describe a reason to exclude rendering in an external popup page. As such, we find Appellant has not conveyed with reasonable clarity to those skilled in the art that they were in possession of the invention.

Accordingly, the Examiner did not err in finding the invention as recited in claim 1, and commensurately recited in claims 8, 16, 23, 30, 38, and 45, fails to comply with the written description requirement. Therefore, the Examiner did not err in rejecting claims 1, 8, 16, 23, 30, 38, and 45 under 35 U.S.C. §112, first paragraph.

## ISSUE 2

*35 U.S.C. § 251: Claims 1, 8, 16, 23, 30, 38, and 45 –  
New Matter*

Appellant argues the rejected claims do not recite new matter by reciting “rendering in the display page, and not in an external popup page,” as the Specification contains support for this recitation (App. Br. 13).

*Issue 2: Has the Examiner erred in maintaining the limitation “rendering in the display page, and not in an external popup page” recites new matter not supported by the prior patent for which the reissue is sought (U.S. 6,657,647)?*

## ANALYSIS

Appellant has not identified any portion of the Specification or Drawings that excludes rendering in an external popup page from rendering in the display page. Thus, we conclude there is no basis in the Appellant’s Specification for adding the negative limitation.

Accordingly, the Examiner did not err in finding “rendering in the display page, and not in an external popup page” constitutes new matter not supported by the prior patent. Therefore, the Examiner did not err in

rejecting claims 1, 8, 16, 23, 30, 38, and 45 under 35 U.S.C. § 251 as being based upon new matter added to the patent for which reissue is sought.

### ISSUE 3

*35 U.S.C. § 103(a): claims 1, 4-8, 11-16, 19-23, 26-30, 33-38, and 41-45*

Appellant asserts the claimed invention is not obvious over Allen and Bates because the references, taken alone or in combination, do not teach or suggest “rendering in the display page, and not in an external popup page . . . the internal/external object that is identified to be nearest the location of the cursor before rendering remaining internal and external objects,” as recited in claim 1 (App. Br. 14-16). Specifically, Appellant contends the “internal hypertext links” are merely links that cause a browser to jump between sections of a webpage (App. Br. 15). According to Appellant, Bates teaches internal navigation within a webpage using a link to an internal anchor – not that an HTML snippet may need to be rendered before the link can be properly used (*id.*).

*Issue 3:* Has the Examiner erred in finding the combination of Allen and Bates teaches or suggests “rendering in the display page, and not in an external popup page, by the computing device, the internal/external object that is identified to be nearest the location of the cursor before rendering remaining internal and external objects,” as recited in claim 1?

## ANALYSIS

We agree with the Examiner's findings and conclusions and adopt them as our own (Ans. 4-6). The Examiner finds Bates discloses that an internal/external hyperlink object when rendered produces further information about the selected hyperlink (Ans. 5). The Examiner further finds that when an internal or external hypertext link is selected further or detail information is rendered (*id.*). Further, the Examiner finds Bates teaches placing the cursor proximate to internal hypertext link yields or renders further detail information in the display page (which is not indicated as an external popup page) (*id.*).

We agree with the Examiner that based on these findings, the combination of Allen and Bates teaches or at least suggests "rendering in the display page, and not in an external popup page, by the computing device, the internal/external object that is identified to be nearest the location of the cursor before rendering remaining internal and external objects," as recited in independent claim 1 and commensurately recited in independent claims 8, 16, 23, 30, 38, and 45. Dependent claims 4-7, 11-15, 19-22, 26-29, 33-37, and 41-44, not separately argued, fall with their respective independent claims. Therefore, the Examiner did not err in rejecting claims 1, 4-8, 11-16, 19-23, 26-30, 33-38, and 41-45 under 35 U.S.C. § 103(a) for obviousness over Allen and Bates.

DECISION

The Examiner's rejection of claims 1, 8, 16, 23, 30, 38, and 45 under 35 U.S.C. § 112, first paragraph for failure to comply with the written description requirement is affirmed.

The Examiner's rejection of claims 1, 8, 16, 23, 30, 38, and 45 under 35 U.S.C. § 251 as being based upon new matter added to the patent for which reissue is sought is affirmed.

The Examiner's rejection of claims 1, 4-8, 11-16, 19-23, 26-30, 33-38, and 41-45 under 35 U.S.C. § 103(a) as being unpatentable over Allen and Bates is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED

ELD