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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* MICHAEL MULLER

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Appeal 2015-004131  
Application 12/651,248<sup>1</sup>  
Technology Center 2100

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Before ST. JOHN COURTENAY III, THU A. DANG, and  
LARRY J. HUME, *Administrative Patent Judges*.

HUME, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on Appellant's Request for Rehearing of our  
Decision on Appeal mailed August 2, 2016.

Appellant's request is denied.

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<sup>1</sup> According to Appellant, the real party in interest is IBM Corp. App. Br. 2.

## BACKGROUND<sup>2</sup>

Appellant has filed a paper under 37 C.F.R. § 41.52 requesting we reconsider our Decision affirming the Examiner's rejection of claims 1–20 under § 103(a) as being obvious over the combination of Gallo and Marvit. Request 2–6.

We reconsider our Decision in light of Appellant's Request, but decline to change the decision for the reasons provided, *infra*.

## APPELLANT'S ARGUMENTS

(1) Appellant contends:

As can be seen, the Board stated that the Examiner referred to the specification of a zoom level for the cells (plural) being displayed. Appellants believe such a conclusion of fact to be clearly erroneously in error in so far as Examiner showed only a specification of a zoom level for a single, individual cell of a grid-not the grid entirely as claimed by Appellants. Indeed, Appellants stated as much at page 7 of the Appeal Brief and pages 3 and 4 of the Reply Brief.

Request 5–6.

(2) Appellant further contends:

The Board additionally establishes a second and final finding of fact that the claim term "event" is to be broadly construed to include the "hitting of an enter key". But, Appellants' point was less directed to the notion of an event in general and more to the

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<sup>2</sup> Our Decision on Rehearing relies upon Appellant's Appeal Brief ("App. Br.," filed Sept. 2, 2014); Reply Brief ("Reply Br.," filed Feb. 17, 2015); Examiner's Answer ("Ans.," mailed Dec. 22, 2014); Final Office Action ("Final Act.," mailed Apr. 2, 2014); our Decision on Appeal ("Decision" mailed Aug. 2, 2016); and the original Specification ("Spec.," filed Dec. 31, 2009).

notion that the event received (hitting an enter key) must be directed to the entire grid-not a single cell in the grid.

Request 6.

## RESPONSE TO ARGUMENTS

We have only considered those timely arguments actually made by Appellant in deciding this Request. Arguments which Appellant could have timely made but chose not to make in Request or in the prior Appeal and Reply Briefs have not been considered and are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We have not overlooked or misapprehended Appellant's arguments in our Decision. As a matter of claim construction, we adopt a broad but reasonable interpretation of the recited "zooming operation on the grid of the multiple different cells." Claim 1.<sup>3</sup> In particular, we note Appellant does not point to or otherwise present evidence of a definition of a "zooming" operation that would preclude the Examiner's broader interpretation of the

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<sup>3</sup> "In the patentability context, claims are to be given their broadest reasonable interpretations . . . limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citations omitted). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants, Inc. v. Medzam, Ltd.*, 133 F.3d 1473, 1477 (Fed. Cir. 1998); *see also Helmsderfer v. Bobrick Washroom Equip., Inc.*, 527 F.3d 1379, 1381 (Fed. Cir. 2008) ("A patentee may act as its own lexicographer and assign to a term a unique definition that is different from its ordinary and customary meaning; however, a patentee must clearly express that intent in the written description."). Absent an express intent to impart a novel meaning to a claim term, the words take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 (Fed. Cir. 2003) (citation omitted).

zooming operation, or that a person with skill in the art would attribute a different meaning to this term.

In our Decision, we found Gallo's layouts, associated with the cellularized environment, and specifying a zoom level for the displayed cells, along with cell locations and default values for cells, teach or at least suggest disputed limitations "performing the zooming operation on the grid of the multiple different cells" and "direct[ing] a zooming operation on the grid of the multiple different cells." Decision 4–5.

We are not persuaded by Appellant's arguments that Gallo's teachings are limited to a single cell and not to multiple cells.<sup>4</sup> Request 4–6. We

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<sup>4</sup> To the extent that Gallo's teachings could *arguendo* be limited to a single cell (as urged by Appellant), we find extending the teaching of Gallo to "performing the zooming operation on the grid of the *multiple cells*" (claim 1) would have merely been a "predictable use of prior art elements according to their established functions." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007). Thus, claiming a mere plurality of prior art elements is not an unobvious distinction over the prior art of record, because using plural elements would have produced a predictable result under § 103. "A mere duplication of parts is not invention." *In re Marcum*, 47 F.2d 377, 378 (CCPA 1931) (citing *Topliff v. Topliff*, 145 U.S. 156, 163 (1892)). *See also Dunbar v. Myers*, 94 U.S. 187, 195 (1876) ("for most purposes the machine will operate as well and as successfully with one deflecting plate as with two. Two deflecting plates may be better than one . . ."); *In re Abrahamsen*, 53 F.2d 893, 894 (CCPA 1931) ("It is true that in the patent cited, there was but one detachable blade. However, the use of two such blades would readily suggest itself to the mechanic. It is a mere duplication of parts, and this has been uniformly held to be not patentable.") (citations omitted); *In re Harza*, 274 F.2d 669, 671 (CCPA 1960) ("It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced."). Thus, we conclude "performing the zooming operation on the grid of the *multiple* different cells," as recited in claim 1, is not an unobvious distinction over the prior art of record, absent some showing of secondary considerations, such as unexpected results. *See*

agree with the Examiner's finding that Gallo's groups of cells disclose the "grid of the multiple different cells," as recited in claim 1. Ans. 3, citing Gallo ¶ 10. We also agree with the Examiner's finding that Gallo's events and user actions teach or at least suggest "a zooming operation on the grid the multiple different cells." *Id.* We agree with the Examiner because Gallo's user actions, including zooming, are performed in a cellular environment, on groups of cells, where cells are dynamically changing as a result of user actions. Ans. 3–5, Gallo ¶¶ 121, 122. We find Gallo's user actions, including zooming, on a cellularized environment teach or at least suggest<sup>5</sup> the disputed limitation "zooming operation on the grid of the multiple different cells," as recited in claim 1.

Accordingly, based on the findings above, on this record, we are not persuaded of error in the Examiner's reliance on the combination of Gallo and Marvit to teach or suggest the contested limitations of claim 1, nor do we find error in the Examiner's resulting legal conclusion of obviousness.

### CONCLUSION

We have considered all of the arguments raised by Appellants in the Request. However, Appellant has not persuasively shown that we misapprehended or overlooked any of their arguments, or that our Decision should otherwise be modified. reversed. For the aforementioned reasons, Appellant's contentions have not persuaded us of error in our Decision.

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*also* MPEP 2144.04(VI)(B)("REVERSAL, DUPLICATION, OR REARRANGEMENT OF PARTS").

<sup>5</sup> "[T]he question under 35 U.S.C. § 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made." *Merck & Co., Inc. v. Biocraft Laboratories, Inc.*, 874 F. 2d 804, 807–808 (Fed. Cir. 1989).

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DECISION

Accordingly, while we have granted Appellant's Request to the extent that we have reconsidered our Decision, that request is denied with respect to making any changes therein. 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).

REQUEST FOR REHEARING DENIED