



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/358,397	01/25/2012	Sterling Crockett	335225.01	4460

69316                      7590                      11/02/2016  
MICROSOFT CORPORATION  
ONE MICROSOFT WAY  
REDMOND, WA 98052

EXAMINER
----------

NGUYEN, VAN KIM T

ART UNIT	PAPER NUMBER
----------	--------------

2456

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

11/02/2016

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usdoCKET@microsoft.com  
chriochs@microsoft.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* STERLING CROCKETT, ARYE GITTELMAN,  
DILLON NUGENT, and KFIR AMI-AD

---

Appeal 2015-004206  
Application 13/358,397  
Technology Center 2400

---

Before JOSEPH L. DIXON, THU A. DANG, and  
SCOTT B. HOWARD, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

## I. STATEMENT OF THE CASE

Appellants have filed a Request for Rehearing under 37 C.F.R. § 41.52 (hereinafter “Request”) on September 26, 2016 for reconsideration of our affirmance of the Examiner’s rejections of the claims under 35 U.S.C. § 103(a) (Request 1) in a Decision mailed August 2, 2016 (hereinafter “Decision”).

The Decision affirmed the Examiner’s 35 U.S.C. § 103(a) rejections of claims 1, 4–12, 14–16, and 18 over Wang, RickTeck, Artishdad, and Harris; claim 2 over Wang, RickTeck, Artishdad, Harris, and Hahn; claims 3, 13, 19, and 20 over Wang, RickTeck, Artishdad, Harris, Hahn, and Dingler; and claim 17 over Wang, RickTeck, Artishdad, Harris, and Zibershstein.

We have reconsidered our Decision regarding the Examiner’s rejection of the claims in light of Appellants’ comments in the Request (Request 2–9). We grant the Rehearing Request to the extent that we consider Appellants’ arguments *infra*, but DENY the request to modify our Decision. As noted *infra*, we are still of the view that the invention set forth in the claims would have been *obvious* in view of the teachings and *suggestions* of the combination of the references under 35 U.S.C. § 103(a). We incorporate our earlier Decision herein by reference. *See* 37 C.F.R. § 41.52(a)(1).

## II. ISSUE

The issue we address on this Request is whether Appellants have identified that the Board misapplied the relevant law or misapprehended Appellants’ arguments set forth in the Appeal Brief in finding no error with the Examiner’s reliance on RickTeck for teaching or *at least suggesting*

“beginning to download the non-secure content anonymously prior to or simultaneously with an authentication process for secure content” (claim 1, emphasis added).

### III. ANALYSIS

In the Request, Appellants contend the cited paragraph of RickTeck “does not mention authentication for secure content” (Request 2). In particular, Appellants contend “this paragraph refers to downloading content, and then refers to a mixed-mode page with secure and non-secure content” and then “presenting a dialog that is ‘about viewing unsecure content,’ not about an authentication process for secure content” (*id.*). However, we note that this issue (i.e., authentication for secure content) was unaddressed by Appellants in the Appeal Brief (App. Br. 4–5). That is, in the Appeal Brief, other than repeating the claim language, Appellants merely contended “RickTeck teaches against the claim by disclosing that secure content is displayed on the web page prior to a pop-up dialog box prompting display of non-secure content is provided to a user,” and thus, “the secure content is downloaded prior to the non-secure content on the web page” (App. Br. 5).

This argument is deemed an untimely argument for Appellants to discuss for the first time in a Request for Rehearing matters that could have been raised in the Appeal Brief. As the Board has found, “[t]he failure to raise all issues and arguments diligently, in a timely fashion, has consequences,” and thus, such newly-raised arguments are technically waived. *Ex parte Borden*, 93 USPQ2d 1473, 1475 (BPAI 2010) (informative decision). *Cf. Kaufman Company v. Lantech, Inc.*, 807 F.2d 970, 973 (Fed. Cir. 1986) and *McBride v. Merrell Dow and Pharms., Inc.*,

800 F.2d 1208, 1211 (D.C. Cir. 1986). *See also* 37 C.F.R. §41.52 (a)(1): Rehearing . . . “Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section . . . .”

Nevertheless, although such newly-raised arguments presented in the Request are technically waived, we also note that the arguments are unpersuasive. As set forth in our Decision, “we give the claims their broadest reasonable interpretation consistent with the Specification” (App. Br. 6, *citing In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Although Appellants contend RickTeck “does not mention authentication for secure content” because “presenting a dialog that is ‘about viewing unsecure content,’ not about an authentication process for secure content” (Request 2), we note Appellants have not identified a clear definition for “authentication for secure content” as claimed. That is, Appellants do not point to any clear definition in the Specification nor the claims that preclude a process for presenting a dialog for determining whether to view secure content with or without unsecure content to also be an authentication process for secure content.

In our Decision, we found:

RickTeck discloses pulling (downloading) content directly over http, leading to a “mixed-mode” page (FF 1). Afterward, the user is presented with a dialog box about viewing secure content with or without non-secure content, and then the user can choose whether to display the non-secure item (thus viewing both secure and non-secure content) or not view the non-secure item (*viewing only secure content*)(FF 2).

(Decision 6–7, emphasis added).

Thus, in the Decision, we agreed with the Examiner’s finding “the contents (secure content and non-secured content) are pulled directly over http (downloaded) prior to or simultaneously with an authentication process for secure content associated with the web page” (*id.*). That is, we agreed with the Examiner that RickTeck discloses and suggests pulling (downloading) content directly over http, leading to a “mixed-mode” page *before* the user is presented with a dialog box with the *option for viewing secure content* with or without non-secure content (*id.*). In other words, in RickTeck, after downloading both secure and non-secure content, the user is provided with the option to determine/authenticate secure content.

Furthermore, although Appellants contend RickTeck “does not *mention* authentication for secure content” (Request 2), as we pointed out in our Decision, the test for obviousness is not what a reference specifically mentions, but what the combined teachings *would have suggested* to one of *ordinary skill in the art*. (Decision 8, *citing In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986)). The skilled artisan is “a person of ordinary creativity, not an automaton.” (Decision 8, *citing KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 21 (2007)).

Here, we were unconvinced of error in the Examiner’s finding that RickTeck at least suggests that authentication for secure content is performed *after* or simultaneously with downloading of all (both secure and non-secure) content. That is, we found RickTeck discloses downloading of all (both secure and non-secure) content first, without authentication, and thus, at least suggests that authentication for secure content is performed afterwards. Based on the record before us, we found no error in the

Appeal 2015-004206  
Application 13/358,397

Examiner's rejection of independent claim 1 over Wang, RickTeck, Artishdad, and Harris (Decision 8).

#### IV. CONCLUSION AND DECISION

We have considered the arguments raised by Appellants in the Request for Rehearing. Appellants have not identified that the Board has misapplied the relevant law or misapprehended Appellants' arguments. For the aforementioned reasons, we decline to change or otherwise modify our Decision affirming the Examiner's §103 rejections of claims 1–20.

REHEARING DENIED