



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.
13/194,824	07/29/2011	JIAN LI	060963-5519-US	1685
82750	7590	11/23/2016	EXAMINER	
Morgan, Lewis & Bockius LLP / Google 1400 Page Mill Road Palo Alto, CA 94304-1124			BYCER, ERIC J	
			ART UNIT	PAPER NUMBER
			2173	
			NOTIFICATION DATE	DELIVERY MODE
			11/23/2016	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):

padocketingdepartment@morganlewis.com
vskliba@morganlewis.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JIAN LI and ADAM R. de BOOR

Appeal 2015-006359
Application 13/194,824
Technology Center 2100

Before JOHN A. EVANS, JENNIFER L. McKEOWN, and
SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–22, which constitute all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

The claimed invention relates to “drag and drop downloading of content” referenced by displayed elements in a web page. Abstract. Claims

¹ Appellants identify Google Inc. as the real party in interest. App. Br. 4.

1, 13, and 18 are independent. Claim 1 is illustrative of the invention and the subject matter of the appeal, and reads as follows (disputed limitations in italics):

1. A method comprising:

at a computer system having one or more processors and memory storing one or more programs executed by the one or more processors:

rendering a web page using a browser application;

wherein the web page includes a displayed web page element referencing content stored at a host external to the computer system; and

wherein rendering the web page includes modifying the displayed web page element to *add one or more distinct download attributes* to the displayed element;

displaying a browser application user interface, including the rendered web page; and

responding to a drag and drop of the displayed web page element to a displayed drop location corresponding to a target application at the computer system and distinct from the browser application by:

executing content downloading instructions of the browser application so as to download the referenced content from the host to the target application in accordance with the download attributes.

App. Br. 28 (Claims App.).

The Rejections on Appeal

Claims 1–9 and 11–22 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gangadharan (US 2003/0132967 A1; pub. July 17, 2003) and Sharp, “Native Drag and Drop,” July 9, 2009 <http://html5doctor.com/native-drag-and-drop/> (retrieved Oct. 2, 2013). Final Act. 4–19.

Claim 10 stands rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gangadharan, Sharp, and Song et al. (US 2010/0175011 A1; pub. July 8, 2010) (“Song”). Final Act. 17–19.

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On this record, we are not persuaded the Examiner erred. We adopt as our own the findings and reasons set forth in the rejections from which this appeal is taken and in the Examiner’s Answer, and highlight the following for emphasis.

Claims 1–9 and 11–22

Appellants argue all claims other than claim 10 as a group, and choose claim 1 as representative of the group. App. Br. 12; *see* 37 C.F.R. § 41.37(c)(iv). Appellants contend the Examiner erred in multiple respects in rejecting claim 1. We address each argument in turn.

Appellants first argue the Examiner erred in finding the prior art teaches “executing content downloading instructions of the browser application so as to download the referenced content from the host to the target application in accordance with the download attributes.” App. Br. 13–17; Reply Br. 5–8. Specifically, Appellants contend Sharp “does not discuss ‘executing content downloading instructions,’” and Gangadharan does not teach executing such instructions “in accordance with the download attributes.” App. Br. 13. This argument is unpersuasive, because the Examiner relies on the *combination* of references as teaching the disputed

limitation. *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Namely, the Examiner finds *Gangadharan* teaches executing content downloading instructions, Ans. 24; Final Act. 6–7 (citing *Gangadharan* ¶¶ 29, 46, 52, Fig. 2.), while *Sharp* teaches downloading “in accordance with download attributes.” Ans. 24; Final Act. 7 (citing *Sharp* 1–4). Appellants’ highlighting of the alleged deficiencies of *Sharp* and *Gangadharan* individually, therefore, does not demonstrate error. *See In re Keller*, 642 F.2d at 426 (“one cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references”).

Appellants next argue the Examiner erred in finding *Sharp* teaches “download attributes” (which appears in the “rendering the web page” limitation, as well as the “executing content” limitation discussed above). App. Br. 15. Appellants assert the “Examiner is conflating ‘drag and drop’ attributes as discussed in *Sharp* with [Appellants’] claimed ‘download attributes.’” *Id.* We disagree.

As the Examiner finds, *Sharp* teaches adding “event listeners” to elements to allow for drag and drop, using “setData()” to describe the element being dragged, and using “dataTransfer()” to control the transfer of the data defined by setData(). Ans. 25; Final Act. 7 (citing *Sharp* 1–4). *Sharp* further teaches using the “native drag and drop” aspects built into the HTML 5.0 specification, in order to attach download attributes to a displayed element, allowing it to be dragged and dropped both within a web page *and from a web page to a non-browser target*. Ans. 25; *see also* Final Act. 6–7 (citing *Gangadharan* ¶ 29). Although the “drag and drop” elements taught in the prior art are not labeled “download attributes,” obviousness,

like anticipation, is not “an *ipsissimis verbis* test.” *Cf. In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (citations omitted). We, like the Examiner, find one of ordinary skill in the art would understand the teaching of “drag and drop” (at least in some embodiments in the prior art) to include downloading. Ans. 25 (citing “event” listeners and “drag and drop” elements).

Appellants also argue the Examiner erred because, according to Appellants, Gangadharan is not operable and therefore “provides no relevant teachings as to how a drag and drop action is to cause files to be transferred from a website or web server to a web enabled device.” App. Br. 22. The Examiner responds that downloading of files from a web site as referenced in Gangadharan was “well established in the art at the time of Gangadharan’s invention,” and that in any event, Gangadharan teaches the algorithm “describing the process for file transfer using drag and drop operations.” Ans. 29 (citing Gangadharan ¶ 29, Fig. 2).

The prior art cited in the Examiner’s obviousness rejection, including Gangadharan, is entitled to a presumption of operability. *See In re Sasse*, 629 F.2d 675, 681 (CCPA 1980); *see also*, M.P.E.P. § 2121, Prior Art; General Level of Operability Required to Make a *Prima Facie* Case, Ninth Ed. (November 2015). Appellants bear the burden of rebutting this presumption, by a preponderance of evidence. *Id.* On the record before us, Appellants have not done so. Rather, Appellants’ support for their inoperability argument consists wholly of attorney argument regarding quoted passages in Gangadharan. App. Br. 22–23. Attorney arguments and conclusory statements are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d

699, 705 (Fed. Cir. 1984). Appellants direct us to no other evidence, such as declarations, data, or other factual evidence. *See In re Payne*, 606 F.2d 303, 315 (CCPA 1979). Accordingly, we find Appellants have not met their burden on the issue of operability, and we find no error.

For the foregoing reasons, Appellants have not demonstrated the Examiner erred in rejecting the claims, and we sustain the rejection of independent claims 1–9 and 11–22 under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gangadharan and Sharp.

Claim 10

Appellants argue claim 10 separately, asserting the Examiner erred in finding the prior art teaches “in accordance with a determination that the second displayed web page element does not have download attributes, *copying the second displayed web page element to the target application without copying the respective content referenced by the second web page element.*” App. Br. 23–27 (emphasis added); Reply Br. 14–17. The Examiner finds this limitation taught in Song. Ans. 30–33; Final Act. 20–21. We are not persuaded the Examiner erred.

As the Examiner finds, Song teaches a Document Object Model (DOM) node inspected to determine whether there is external content associated with the node (such as a larger image (external content) associated with a thumbnail (node)). Ans. 32 (citing Song ¶¶ 63–66). Song further teaches various alternative embodiments in which, based on the aforementioned inspection, the content of the DOM node is either transferred alone or with its associated external content. *Id.* 33. Accordingly, in the Song embodiment teaching content of the DOM node

Appeal 2015-006359
Application 13/194,824

transferred alone, the “web page element” (DOM node) is copied “without copying the respective content referenced by” the web page element, as recited in claim 10. Ans. 32.

We, therefore, we sustain the rejection of claim 10 under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Gangadharan, Sharp, and Song.

DECISION

We affirm the Examiner’s decision to reject claims 1–22.

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). *See* 37 C.F.R. § 41.50(f).

AFFIRMED