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Jordan IP Law, LLC c/o CPA Global 900 2nd Avenue South, Suite 600 Minneapolis, MN 55402			RUSSELL, RICHARD M	
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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* LARRY E. WICKSTROM

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Appeal 2015-006810  
Application 13/337,787<sup>1</sup>  
Technology Center 2600

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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 APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–28. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> According to Appellant, the real party in interest is Intel Corp. App. Br. 3.

STATEMENT OF THE CASE<sup>2</sup>

*The Invention*

Appellant's disclosed and claimed invention relates to "interactive display of very large files using B plus trees and stabilized subsampling."  
Title.

*Exemplary Claim*

Claim 1, reproduced below, is representative of the subject matter on appeal (*emphasis* added to contested limitation):

1. A computer implemented method comprising:
  - receiving a set of data;
  - parsing the set of data;
  - populating a B plus tree with the parsed set of data;*
  - receiving a display request associated with the set of data;
  - identifying one or more visibility parameters based on the display request, wherein the one or more visibility parameters include one or more of a visibility region and a number of visible pixels;
  - using a hierarchical sampling scheme to identify one or more sample points in the *B plus tree* based on the one or more visibility parameters;
  - using the one or more sample points to obtain sample data from the *B plus tree*; and
  - automatically generating a display response based on the sample data.

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<sup>2</sup> Our decision relies upon Appellant's Appeal Brief ("App. Br.," filed Jan. 13, 2015 ); Reply Brief ("Reply Br.," filed July 13, 2015 ); Examiner's Answer ("Ans.," mailed May 13, 2015 ); Final Office Action ("Final Act.," mailed May 14, 2014 ); and the original Specification ("Spec.," filed Dec. 27, 2011 ).

*Prior Art*

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Pichumani et al. ("Pichumani") US 8,005,992 B1 Aug. 23, 2011

*Rejection on Appeal*

Claims 1–28 stand rejected under 35 U.S.C. §102(e) as being anticipated by Pichumani. Final Act. 6.

ISSUE

Appellant argues (App. Br. 10–16, Reply Br. 5–8) the Examiner's rejection of claims 1, 5, 3 and 21 under 35 USC 102(e) as being anticipated by Pichumani is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art discloses a "computer implemented method" that includes, *inter alia*, the step of "populating a B plus tree with the parsed set of data," as recited in claim 1, and as commensurately recited in each of independent claims 5, 13 and 21?

ANALYSIS

We agree with the particular arguments advanced by Appellant with respect to independent claims 1, 5, 13 and 21 for the specific reasons discussed below. We highlight and address specific findings and arguments regarding claim 1 for emphasis below.

Appellant contends Pichumani "does not expressly or inherently teach a B plus tree. In contrast, Pichumani expressly and repeatedly teaches a different, less specific type of tree; namely, a B tree." App. Br. 10.

Appellant further contends "a genus still does not inherently disclose all species within that broad category." App. Br. 12, *see also* 13–14.

Appellant further argues:

Accordingly, there are many different types of B trees and one of ordinary skill in the art would not necessarily envision a B plus tree when encountered with a B tree. Indeed, a mere invitation (if any) to investigate other types of B trees is not an inherent disclosure and a disclosure of a B tree amounts to, at most, probabilities or possibilities that cannot establish inherency.

App. Br. 12.

Appellant also presents evidence, as indicated in the Appellant's Appeal Brief (Section X. "Evidence Appendix"), providing descriptions of the terms of art: B tree and B plus tree, describing the differences between a B tree and a B plus tree, noting that "In a B plus tree, in contrast to a B tree, all records are stored at the leaf level of the tree; only keys are stored in interior nodes." App. Br. 12–13.

Appellant further argues the Examiner's cited sections of Pichumani do not disclose B plus trees, nor the B plus-specific term "leaf level," but instead describes structure consistent with a conventional B tree. App. Br. 15.

We agree with Appellant's contentions regarding the argued differences between a B tree and the contested limitation of a "B plus tree." In particular, we find persuasive Appellant's argument that the B tree genus

does not inherently disclose the B plus tree species. *See Perricone v. Medicis Pharmaceutical Corp.*, 432 F.3d 1368, 1377 (Fed. Cir. 2005) ("disclosure of a broad genus does not necessarily specifically disclose a species within that genus.")(internal citation omitted). We also find persuasive that Pichumani's "appropriate level" and "sample nodes" do not disclose the B plus specific "leaf level," as recited in independent claims 5 and 13. App. Br. 15.

We agree with Appellant that Pichumani fails to disclose the disputed step, particularly the "B plus tree" limitation as recited in the independent claims 1, 5, 13 and 21. We find this contested limitation is not expressly or inherently described, under § 102, by the B tree as found by the Examiner.<sup>3</sup> Final Act. 7–8.

Therefore, based upon the findings above, on this record, and for essentially the same reasons argued by Appellant, we are persuaded of error in the Examiner's reliance on the disclosure of the cited prior art to disclose the disputed limitation of independent claim 1, and independent claims 5, 13 and 21 which recite the contested limitation in commensurate form.

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<sup>3</sup> Because a rejection under §103 is not before us on appeal, we do not reach and express no opinion as to whether claim 1 might be obvious over the teachings and suggestions of the Pichumani reference, considered alone, or considered in combination with one or more additional references. In the event of further prosecution, we invite the Examiner's attention to Appellant's proffered evidence, and leave it to the Examiner to determine whether these claims should instead be rejected under 35 U.S.C. § 103(a) as being obvious over Pichumani, considered together with Appellant's evidence, and/or in combination with one or more additional references. While the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See Manual of Patent Examining Procedure (MPEP) § 1213.02.*

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Accordingly, we find error in the Examiner's resulting finding of anticipation and do not sustain the Examiner's anticipation rejection of independent claims 1, 5, 13 and 21, and dependent claims 2–4, 6–12, 14–20 and 22–28, which depend therefrom and stand therewith.

#### CONCLUSION

The Examiner erred with respect to the anticipation rejection of claims 1–28 under 35 U.S.C. § 102(e) over the cited prior art of record, and we do not sustain the rejection.

#### DECISION

We reverse the Examiner's decision rejecting claims 1–28.

REVERSED