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TERRILE, CANNATTI, CHAMBERS & HOLLAND, LLP			KESSLER, GREGORY AARON	
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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* KEVIN KETTLER, YUANG-CHANG LO, and  
SHREE A. DANDEKAR

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Appeal 2015-007677  
Application 12/354,446<sup>1</sup>  
Technology Center 2100

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Before DEBRA K. STEPHENS, AMBER L. HAGY, and  
MICHAEL J. ENGLE, *Administrative Patent Judges*.

ENGLE, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 2, 4–8, and 10–12, which are all of the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

*Technology*

The application relates to “facilitating [the] sale of a virtualized information handling system.” Abstract.

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<sup>1</sup> Appellants state the real party in interest is Dell Products L.P. Br. 1.

*Representative Claim*

Claim 1 is representative and reproduced below with the claim terms at issue emphasized:

1. *A method for delivering pre-packaged software solutions to a consumer electronics type information handling system comprising:*

*configuring a virtual appliance according to user input, the configuring including customizing the virtual appliance based upon user selections;*

*providing a virtual appliance memory device, the virtual appliance memory device comprising the virtual appliance stored on the virtual appliance memory device, the virtual appliance comprising an application, the application corresponding to a pre-packaged software solution;*

*enabling installation of the virtual appliance onto a virtual machine host via the virtual appliance memory device; and*

*enabling hosting of the application via the virtual appliance so as to facilitate delivery of pre-packaged software solutions to a consumer electronics type information handling system; and wherein*

*the virtual appliance memory device is uniquely linked to a user of the consumer electronics type information handling system;*

*when the customer accesses the virtual machine, the virtual machine communicates with a backend service provider, the backend service provider authenticating the service and activating the virtual machine, the service provider enforcing policies to force periodic measurement of executables to ensure the virtual machine is up to date, and upon revocation of the application, the backend service provider being able to remote revoke access to the application.*

*Rejections*

Claims 1, 4, 5, 7, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Gebhart et al. (US 2009/0210869 A1; Aug. 20, 2009) (“Gebhart ’869”), Gebhart et al. (US 2009/0217263 A1;

Aug. 27, 2009) (“Gebhart ’263”), Doyle et al. (US 2009/0060187 A1; Mar. 5, 2009), and Ferris et al. (US 8,239,509 B2; Aug. 7, 2012). Final Act. 2–3.

Claims 2, 6, 8, and 12 stand rejected under 35 U.S.C. § 103(a) as obvious over the combination of Gebhart ’869, Gebhart ’263, Doyle, Ferris, and Lam et al. (US 2008/0215796 A1; Sept. 4, 2008). Final Act. 7.

#### ANALYSIS

Appellants contend that “none of Gebhart [’869], Gebhart[ ’263], Doyle nor Ferris, taken alone or in combination, disclose or suggest” various terms found in claim 1. Br. 3–4. More specifically, Appellants identify the rejection, briefly describe each reference, and assert none of the references teach the disputed recitations, without any explanation as to why the cited references do not teach or suggest the recitation.

The Examiner has set forth with specificity a prima facie case of how the prior art teaches or suggests each element and how the respective combinations render the claims obvious. Final Act. 3–6; Ans. 10–12. Yet Appellants have not addressed any of the citations or explanations of the Examiner. Appellants’ mere assertion that the prior art does not teach particular elements, with no meaningful explanation, is unpersuasive. *In re Jung*, 637 F.3d 1356, 1365 (Fed. Cir. 2011). The Federal Circuit has found the rules “require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.” *In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011); 37 C.F.R. § 41.37(c)(1)(iv) (“A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.”).

As the Federal Circuit has said, “[i]t is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art.” *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991).

Accordingly, we sustain the Examiner’s rejection of claim 1, and claims 2, 4–8, and 10–12, which Appellants argue are patentable for similar reasons. *See* Br. 4; 37 C.F.R. § 41.37(c)(1)(iv).

#### DECISION

For the reasons above, we affirm the Examiner’s decision rejecting claims 1, 2, 4–8, and 10–12.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED