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EXAMINER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RAJESHWAR VISHWANATH PATIL,
RAMESH BABU MANDAVA, SAYANTAN SATPATI,
LU CHEN, LAX SHARMA, and RAMESH DARA

Appeal 2016-000370
Application 13/599,864
Technology Center 2100

Before: BRUCE R. WINSOR, AMBER L. HAGY, and JOHN R. KENNY,
Administrative Patent Judges.

KENNY, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from a rejection of claims 1–18. Final Act. 1; App. Br. 11. We have jurisdiction under 35 U.S.C. § 6(b).
We AFFIRM.

CLAIMED INVENTION

The claimed invention relates to methods, systems, and computer program products for testing software. Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implemented method comprising:

at a server computer hosting a software-testing portal having a repository of software tests, with each software test addressable via a URL, receiving an HTTP request from a client application via one of a REST-ful and REST-like interface specifying a URL corresponding with a software test; and

responsive to receiving the HTTP request, invoking the software test to perform one or more of a test of a software application and service.

REFERENCES

Mathur	US 2011/0131001 A1	June 2, 2011
Glaser	US 2012/0059919 A1	Mar. 8, 2012
Gaudette	US 8,819,493 B1	Aug. 26, 2014

REJECTIONS

Claims 1–4 and 10–13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Mathur and Gaudette. Final Act. 2–4.

Claims 5–9 and 14–18 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Mathur, Gaudette, and Glaser. Final Act. 4–5.

ANALYSIS

Claims 1–4 and 10–13

The Examiner finds that Mathur teaches all of limitations of claim 1 except having the recited request come from a client application. Final Act. 2–3. The Examiner finds that Gaudette teaches or suggests providing requests from such applications. *Id.*; Ans. 6–7. According to the Examiner, the combination of Mathur and Gaudette teaches or suggests all limitations of claim 1. Final Act 2–3.

Appellants argue that the combination of Mathur and Gaudette does not teach or suggest two limitations. App. Br. 9–10. First, Appellants argue the combination fails to teach or suggest “receiving an HTTP request from a client application via one of a REST-ful and REST-like interface specifying a URL corresponding with a software test.” App. Br. 9; Reply Br. 4–6. Appellants’ reason is that Mathur does not teach an HTTP request coming from a client application and Gaudette does not teach or suggest an HTTP request specifying a URL corresponding with a software test. App. Br. 9; Reply Br. 4–6. We are not persuaded by this argument because it attacks Mathur and Gaudette individually when the rejection is based on their combination. *In re Mouttet*, 686 F.3d 1322, 1332–1333 (Fed. Cir. 2012) (citing *In re Keller*, 642 F.2d 413, 425–26 (CCPA 1981)).

Here, the Examiner does not rely on Mathur as teaching an HTTP request coming from a client application or on Gaudette as teaching an HTTP request specifying a URL. Final Act. 2–3; Ans. 6–8. As discussed, the Examiner relies on Mathur with its system under test as teaching all the limitations of claim 1, excluding have a request come from a client application. Final Act. 2–3; Ans. 6–8. The Examiner relied on Gaudette as

teaching having a client application in a system under test and suggesting having the client application request the test. Final Act. 2–3; Ans. 6–8. Appellants have presented no persuasive arguments why those combined teachings fail to teach or suggest the disputed limitation. App. Br. 9.

In the Reply Brief, Appellants argue that Mathur and Gaudette fail to teach or suggest the disputed limitation because one of ordinary skill in the art *could* combine Mathur’s system with Gaudette’s client application without utilizing Gaudette’s client application to perform an HTTP request. Reply Br. 5–6. We will not consider this argument because Appellants present no good cause, and no good cause is apparent, for waiting for the Reply Brief to have raised it. 37 C.F.R. § 41.41(b)(2); *see also Optivus Tech., Inc. v. Ion Beam Applications S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (argument raised for the first time in the reply brief that could have been raised in the opening brief is waived). By waiting until the Reply Brief to present this argument, Appellants have denied us the opportunity to receive a response from the Examiner. *See Ex parte Borden*, 93 USPQ2d 1473, 1475 (BPAI 2010) (informative) (“Rather than reviewing a record for error, the Board would be considering, in the first instance, findings of fact proposed by the Appellant[s], but not weighed by the Examiner against the other evidence of record.”) Even if we were to consider the argument, however, we would find it unpersuasive. The Examiner did not rely upon inherency to support the rejection, and obviousness, in general, does not require that every way of combining the involved teachings satisfy the claim. Rather, obviousness is determined by what the combined teachings suggest to, not require of, one of ordinary skill in the art. *Mouffet*, 686 F.3d at 1332–1333.

Appellants also argue that the combination of Mathur and Gaudette fails to teach or suggest “responsive to receiving the HTTP request, invoking the software test to perform one or more of a test of a software application and service.” App. Br. 9–10; Reply Br. 7–8. Appellants’ reasoning is that Mathur and Gaudette cannot teach responding to the recited HTTP request by invoking a software test because they do not teach or suggest the recited HTTP request. App. Br. 9–10; Reply Br. 7–8. We are unpersuaded by this argument because, as discussed above, we are unpersuaded by Appellants’ argument that Mathur and Gaudette fail to teach or suggest the recited HTTP request.

Accordingly, we sustain the rejection of claim 1 and of claims 2–4 and 10–13, not separately argued. App. Br. 10.

Claims 5–9 and 14–18

Appellants present the same arguments for claims 5–9 and 14–18 as for claims 1 and 10. Accordingly, we sustain the rejections of claims 5–9 and 14–18.

For our affirmance of all claims, we adopt the Examiner’s findings and rationales set forth in the Final Action and the Answer.

If there is any further prosecution, the Examiner may want to consider whether the term “REST-like,” recited in the claims but not defined in the Specification, is indefinite.

DECISION

We affirm the rejections of claims 1–18.

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Application 13/599,864

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).

AFFIRMED