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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* SANG-JUN AHN<sup>1</sup>

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Appeal 2016-000404  
Application 13/219,114  
Technology Center 2400

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Before JOHNNY A. KUMAR, LARRY J. HUME, and  
TERRENCE W. MCMILLIN, *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 1–11. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> According to Appellant, the real party in interest is Samsung Electronics Co., Ltd. App. Br. 1.

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

*The Invention*

Appellants' disclosed and claimed inventions "relate[] generally to the implementation of a three dimensional stereoscopic image, and more particularly to a method and an apparatus for implementing a three-dimensional stereoscopic web page." Spec. 1, ll. 13–15 ("Field of the Invention").

*Exemplary Claim*

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

1. A method for implementing a three-dimensional web page, the method comprising:

[L1] *determining whether a content for display is a web page;*

[L2] *distinguishing a text area displaying text and a multimedia area displaying multimedia information, in a source code document for the web page when the content is the web page;*

generating a depth map for the content based on tags included in the text area; and

generating a three-dimensional stereoscopic image of the web page by using the depth map.

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<sup>2</sup> Our decision relies upon Appellant's Appeal Brief ("App. Br.," filed May 4, 2015); Reply Brief ("Reply Br.," filed Sept. 22, 2015); Examiner's Answer ("Ans.," mailed July 22, 2015); Final Office Action ("Final Act.," mailed Dec. 23, 2014); and the original Specification ("Spec.," filed Aug. 26, 2011).

*Prior Art*

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

Berestov et al. ("Berestov")	US 2004/0100489 A1	May 27, 2004
Kanzaki	US 2007/0277102 A1	Nov. 29, 2007
Izzat et al. ("Izzat")	US 2010/0238267 A1	Sept. 23, 2010

*Rejections on Appeal*

R1. Claims 1, 2, 5–7, 10, and 11 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Kanzaki and Berestov. Final Act. 4; Ans. 2.

R2. Claims 3, 4, 8, and 9 stand rejected under 35 U.S.C. § 103(a) as being obvious over the combination of Kanzaki, Berestov, and Izzat. Final Act. 6; Ans. 4.

CLAIM GROUPING

Based on Appellant's arguments (App. Br. 3–8), we decide the appeal of obviousness Rejection R1 of claims 1, 2, 5–7, 10, and 11 on the basis of representative claim 1.

Remaining claims 3, 4, 8, and 9 in Rejection R2, not argued separately, stand or fall with the respective independent claim from which they depend.<sup>3</sup>

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<sup>3</sup> "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv).

## ISSUE

Appellant argues (App. Br. 3–7; Reply Br. 1–5) the Examiner's rejection of claim 1 under 35 U.S.C. § 103(a) as being obvious over the combination of Kanzaki and Berestov is in error. These contentions present us with the following issue:

Did the Examiner err in finding the cited prior art combination teaches or suggests a "method for implementing a three-dimensional web page" that includes, *inter alia*, limitations L1 and L2, as recited in claim 1?

## ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. We do not consider arguments that Appellants could have made but chose not to make in the Briefs, and we deem any such arguments waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellant's arguments with respect to claims 1–11, and we incorporate herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellant's arguments. We incorporate such findings, reasons, and rebuttals herein by reference unless otherwise noted. However, we highlight and address specific findings and arguments regarding claim 1 for emphasis as follows.

### *Limitation L1 – "Determining" Step*

Appellant contends, "Kanzaki and Berestov fail to disclose or fairly suggest determining whether a content for display is a web page, as recited

in Claim 1," and "none of the Abstract, paragraphs [0008] or [0026], or any other part of Kanzaki discloses determining whether a content for display is a web page, as recited in Claim 1." App. Br. 4. Further, "[t]he other parts of Kanzaki are also deficient, and Berestov fails to cure this defect of Kanzaki . . . [such that] the rejection of Claim 1 must be withdrawn." App. Br. 5.

Because the Examiner rejects the claims as obvious over the combined teachings of Kanzaki and Berestov, the test for obviousness is not what the references show individually but what the combined teachings would have suggested to one of ordinary skill in the art. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

In response to Appellant's contentions, the Examiner cites the Abstract and paragraphs 8 and 26 of Kanzaki as teaching or suggesting limitation L1, i.e., "determining whether a content for display is a web page." We agree with the Examiner's findings. We agree because, not only does the *Title* of Kanzaki ("TECHNIQUE FOR CHANGING THE DISPLAY OF WEB PAGES AS TIME PASSES") appear to contradict Appellant's argument that there is no teaching or suggestion in Kanzaki of determining whether display content is a web page, the Abstract further teaches: "A display device for displaying a web page is provided, which displays each of the contents contained in a web page so that users can recognize whether the content is new or not."<sup>4</sup> We therefore find Kanzaki teaches or at least suggests the

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<sup>4</sup> We note the Examiner's Answer had a typographical error in referring twice, incorrectly, to the Kanzaki reference as "Katayama," (Ans. 5 and 6), which Appellant acknowledged. *See* Reply Br. 3. In light of Appellant's acknowledgement of the likelihood of a typographical error, we view this error to be harmless error, particularly in further consideration of the Examiner's correct analysis in the Final Rejection. *See* Final Act. 2 and 4–5.

recited "determining" step L1. See Kanzaki ¶¶ 6, 22, 25, 26, and 28, Abstract.<sup>5</sup>

*Limitation L2 – "Distinguishing" Step*

With respect to the recited "distinguishing" step L2, Appellant contends, "none of paragraphs [0006], [0022], [0023], [0025] or [0028] of Kanzaki discloses *distinguishing a text area displaying text and a multimedia area displaying multimedia information, in a source code document for the web page when the content is the web page*." App. Br. 5. Appellant further contends, "[n]either the tree structure display that schematically shows a plurality of web pages nor the other parts of paragraph [0006] of Kanzaki discloses *distinguishing a text area displaying text and a multimedia area displaying multimedia information in a source code document for the web page when the content is the web page*, as recited in Claim 1." App. Br. 6.

We disagree with Appellant's contentions, which only acknowledge a portion of the Examiner's findings (e.g., Kanzaki ¶ 6), and apparently ignore other citations (e.g., Kanzaki ¶¶ 22, 23), which teach:

[0022] FIG. 2 shows an example of a web page contained in the page database 25. *This web page is a tagged text in which each of contents to be displayed is written in association with tags that indicate additional information of the contents.* For example, web pages may be written in languages, such as HTML (hyper text markup language). More specifically, this web page includes five contents.

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<sup>5</sup> Although not dispositive to our Decision, we also note the secondary reference to Berestov also teaches or suggests limitation L1. For example, see Berestov, Abstract.

[0023] Firstly, this web page contains content 200 at the sixth line. *The content 200 is a text saying "THIS PICTURE IS . . . ". The content 200 is written in association with tags 210. The tags 210 are those for specifying each element in a page that uses a table structure. These tags 210 cause the content 200 to be displayed at the first line of the page using the table structure. . . .*

Kanzaki ¶¶ 22–23 (emphasis added).

Therefore, we agree with the Examiner's finding that the combination of Kanzaki and Berestov teaches or suggests contested limitation L2, as recited in claim 1.

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's reliance on the combined teachings and suggestions of the cited prior art combination to teach or suggest the disputed limitations L1 and L2 of claim 1, nor do we find error in the Examiner's resulting legal conclusion of obviousness. Therefore, we sustain the Examiner's obviousness rejection of independent claim 1, and grouped claims 2, 5–7, 10, and 11 which fall therewith. *See Claim Grouping, supra.*

*§ 103(a) Rejection R2 of Claims 3, 4, 8, and 9*

In view of the lack of any substantive or separate arguments directed to the obviousness Rejection R2 of claims 3, 4, 8, and 9 under § 103 (*see* App. Br. 8), we sustain the Examiner's rejection of these claims. We deem arguments not made waived.<sup>6</sup>

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<sup>6</sup> Appellants merely argue, "[c]laims 2–5 and 7–11 are patentable at least by virtue of their respective dependency from independent Claims 1 and 6. App. Br. 8.

REPLY BRIEF

To the extent Appellants may advance new arguments in the Reply Brief (Reply Br. 1–5) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

CONCLUSION

The Examiner did not err with respect to obviousness Rejections R1 and R2 of claims 1–11 under 35 U.S.C. § 103(a) over the cited prior art combinations of record, and we sustain the rejections.

DECISION

We affirm the Examiner's decision rejecting claims 1–11.

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