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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/649,711	12/30/2009	Amy H. Dewar	CAM920090053US1_050	6040
51835	7590	12/12/2016	EXAMINER	
IBM Lotus & Rational SW c/o Schmeiser, Olsen & Watts LLP 33 Boston Post Road West Suite 410 Marlborough, MA 01752			HASTY, NICHOLAS	
			ART UNIT	PAPER NUMBER
			2178	
			MAIL DATE	DELIVERY MODE
			12/12/2016	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* AMY H. DEWAR, NICHOLAS E. POORE,  
ROBERT C. LEAH, and PETER C. YIM

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Appeal 2016-001027  
Application 12/649,711  
Technology Center 2100

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Before CAROLYN D. THOMAS, JOSEPH P. LENTIVECH, and  
AARON W. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

Appellants<sup>1</sup> appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1–7, 9–15, and 17–22, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

## THE INVENTION

The application “relates to methods and apparatus for defining screen reader functions within online electronic documents.” (Spec. ¶ 1.) Claim 1, reproduced below, is exemplary:

1. A computer program product for facilitating screen readers of online electronic documents, the computer program product comprising:

a computer readable storage medium having computer readable program code embodied therewith, the computer readable program code comprising:

computer readable program code configured to generate a structured electronic document including markup language code and scripting language code whose execution is triggered by an occurrence of an event associated with execution of the markup language code, the execution of the scripting language code producing a web presentation unrecognized by a screen reader software program;

computer readable program code configured to define a mapping of one or more functions of the screen reader software program to one or more functions performed by the scripting language code that produces the unrecognized web presentation when the scripting language code is executed in response to the occurrence of the event; and

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<sup>1</sup> Appellants identify International Business Machines Corporation as the real party in interest. (*See* App. Br. 3.)

computer readable program code configured to incorporate the mapping of functions within the structured electronic document when the structured electronic document is initially generated, before the structured electronic document is posted on a web server and made available for subsequent downloading and display.

#### THE REFERENCES AND THE REJECTIONS

Claims 1–7, 9–15, and 17–22 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dietl et al. (US 2006/0150075 A1; published July 6, 2006), Takagi et al. (US 2006/0095252 A1; published May 4, 2006), and Kanevsky et al. (US 6,665,642 B2; issued Dec. 16, 2003). (*See* Final Act. 2–7.)

#### ANALYSIS

##### ***Claim 1, 9, and 17***

Regarding claims 1, 9, and 17, the Examiner finds the combination of Dietl, Takagi, and Kenevsky teaches or suggests “incorporat[ing] the mapping of functions within the structured electronic document when the structured electronic document is initially generated, before the structured electronic document is posted on a web server and made available for subsequent downloading and display,” as recited in claim 1 and similarly recited in claims 9 and 17.<sup>2</sup> (Ans. 2.) In particular, the Examiner cites Takagi’s paragraphs 52 and 67–68 as teaching or suggesting a “mapping function incorporated into [a] structured document to create [an] edited

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<sup>2</sup> In claims 9 and 17, the mapping of functions is in a “configuration file” that is incorporated into the structured electronic document.

structured document by webpage creator before posting document on a webserver.” (*Id.*)

Appellants argue the cited paragraphs do not teach or suggest the subject limitation because “[p]aragraph [0052] discusses sorting and generating speech nodes,” “paragraph [0067] discusses creating an edited document,” and “[i]n paragraph [0068] the edited document (not an initially generated document) is thereafter inputted into the browsing process section 38.” (Reply Br. 4, brackets in original.)

We find Appellants’ arguments unpersuasive because the Examiner relies on these portions of Takagi solely to teach editing a structured document prior to posting, and the cited passages do teach or suggest modification of a document that (necessarily) takes place prior to its posting/downloading/display. Appellants’ focus on the term “initially” is not persuasive of error because we conclude that “initially generated” is broad enough to include all activity prior to the posting, where the Specification does not require otherwise.

For these reasons, we affirm the rejections of claims 1, 9, and 17.

***Claims 2 and 10***

For claims 2 and 10, Appellants argue that cited paragraph 37 of Dietl does not describe or suggest “the functionality map . . . specifying text to be read aloud” because “this paragraph teaches that the web page can include audible order data that defines an order for audible navigation of a page.” (App. Br. 14.) We agree, as we fail to see how “audible order information [that] includes a tab or keyboard sequence, by which of the paths between page elements based on tab or keyboard navigation are uniquely defined”

(Dietl ¶ 37) teaches or suggests “specifying text to be read aloud” and, therefore, decline to sustain the rejection of claims 2 and 10.

***Claims 3, 11, and 18***

Regarding claims 3, 11, and 18, Appellants argue that cited paragraph 40 of Dietl does not describe or suggest “wherein the mapping of functions points to text in the markup language code to be read aloud by the screen reader software program” because it “describes the audible output of data obtained from the placeholder manager” where the Examiner “did not identify the placeholder manager as ‘the mapping of functions’ or ‘configuration file.’” (App. Br. 15.)

We conclude the Examiner has not adequately explained the basis for this rejection, as he does not describe how the cited material “points to text in the markup language code to be read aloud” and, therefore, we do not sustain the rejections of claims 3, 11, and 18.

***Claims 4, 5, 12, 13, and 19***

Appellants argue with respect to claims 4, 12, and 19 that cited paragraph 43 of Dietl does not describe or suggest “a ‘mapping of functions’ or ‘configuration file’ that maps a focus function of the screen reader software program to an HTML element produced in response to execution of the scripting language code.” (App. Br. 16.) The Examiner responds as follows: “Dietl et al. para[0043]-[0044], maps order in which objects change focus.” (Ans. 4.)

We find the Examiner has not adequately explained the basis for this rejection, as he does not explain how the cited material “maps a focus function of the screen reader software program to an HTML element.” The reference explains that “the CSF [client-frame-work] knows which

UIElement is to receive focus when the user presses the tab key” and that “every UIElement knows what information is to be read by the screen reader when a particular UIElement event occurs,” but we fail to see how this shows a mapping to “a focus function of the screen reader software program.” We thus do not sustain the rejections of claims 4, 12, and 19 and, for the same reason, we do not sustain the rejections of claims 5 and 13, which respectively depend from, and therefore include all of the limitations of, claims 4 and 12.

***Claim 15***

Appellants argue with respect to claim 15 that “[w]hile [cited paragraph 40 of Dietl] describes the markup as being parsed, it says nothing about the functionality map (i.e., the appellant’s claimed ‘configuration file’ according to the Office’s characterization) as being parsed at load time of the structured electronic document.” (App. Br. 17.) In response, the Examiner refers to paragraphs 32 and 40 of Dietl. (*See* Ans. 4.)

We agree that paragraphs 32 and 40 are silent regarding parsing of a functionality map at the load time of a structured document and, therefore, do not sustain the rejection of claim 15.

***Claims 7, 14, and 20***

For claims 7, 14, and 20, Appellants argue that cited paragraph 20 of Dietl “makes no mention of the functionality table” and, “[m]oreover, Dietl describes the functionality map as a functionality table (FIG. 3, paragraph [0030]), and does not describe or suggest that the functionality table itself can be an XML file.” (App. Br. 18.) Given Dietl’s teachings that browsers can manipulate XML documents, however, we agree with the Examiner that

it would have been obvious to render a configuration file as an XML file and, therefore, sustain the rejection of claims 7, 14, and 20.

***Claims 21 and 22***

In finally rejecting claims 21 and 22, the Examiner cites “Brown et al. col5 ln20-29.” (Final Act. 7.) Appellants argue “[t]he Office . . . did not cite Brown as a ground for rejection.” (App. Br. 18) The Answer does not respond to Appellants’ argument. (*See* Ans. 5.)

Although the Examiner discusses Brown in the body of the rejection, the Examiner does not list this reference in the statement of the rejection, nor provide the citation. As here, discussing a reference in the body of the rejection without affirmatively listing it in the statement of rejection leads to confusion as to the true grounds of the rejection. Such a circumstance also greatly increases the chance than an applicant will overlook the unlisted reference and misunderstand the true evidentiary basis for the rejection. For these reasons, every reference discussed in the rejection must be listed in the statement of the rejection, providing the applicant appropriate notice of the evidence relied upon in the rejection. *See In re Hoch*, 428 F.2d 1341, 1342 n.3 (CCPA 1970) (“Where a reference is relied on to support a rejection, whether or not in a ‘minor capacity,’ there would appear to be no excuse for not positively including the reference in the statement of the rejection.”). To whatever extent Brown may be applicable to claims 21 and 22, we will not consider it because Brown is not part of the statement of rejection and may not properly be relied upon. *Id.* We thus do not sustain the rejections of claims 21 and 22.

DECISION

The rejections of claims 1, 6,<sup>3</sup> 7, 9, 14, 17, and 20 are affirmed.

The rejections of claims 2, 3, 4, 5, 10, 11, 12, 13, 15, 18, 19, 21, and 22 are reversed.

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-IN-PART

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<sup>3</sup> As Appellants offer no separate argument for claim 6, our decision on claim 1 is determinative as to the rejection of that claim.