UNITED STATES PATENT AND TRADEMARK OFFICE

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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 MICHAEL S. BERNSTEIN, BRENDAN MCKEON, MASAHIKO
KANEKO, and VIDHYA SRIRAM
————————

Appeal 2018-002809
Application 12/241,292
Technology Center 2400
————————

Before MAHSHID D. SAADAT, CARL L. SILVERMAN, and
ALEX S. YAP, *Administrative Patent Judges*.

SILVERMAN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 21–35 and 37–41, which constitute all pending
claims. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was
held on October 24, 2019.

We AFFIRM.

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[1] Throughout this Decision, we use the word "Appellant" to refer to "appli-
cant" as defined in 37 C.F.R. § 1.42(a) (2017). Appellant identifies
Microsoft, Inc. as the real party in interest. Appeal Br. 3.

STATEMENT OF THE CASE

The invention relates to a remote automation system that allows application accessibility information to be used remotely. Abstract; Spec. ¶ 5, Figs. 3–5. Claim 21, reproduced below, is exemplary of the subject matter on appeal (emphasis added):

21.   A method of configuring a device having a processor and *executing applications* to present *the applications* to users of *client computers*, the method comprising:

executing on the processor instructions that:
for respective user interface elements of a user interface of *respective applications* executing on the device, query *the application* for:

at least one presentation property of the user interface element, and

at least one event invokable on the user interface element; and responsive to receiving, from a *client computer* presenting a computing environment to the user, a request to present *a selected application* having a user interface comprising at least one user interface element:

for the respective user interface elements of the user interface of the selected application, send the at least one presentation property and the at least one event that is invokable on the user interface element to the *client computer*: and

responsive to receiving from the client computer a request to invoke an event on a selected user interface element of the user interface of the selected application, send to *the application* a request to invoke the event on the selected user interface element.

Appeal Br. 32 (Claims Appendix).

THE REJECTIONS

Claims 21–35 and 37–41 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Final Act. 2–3.

Claims 21–35 and 37–41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Engber et al. (US 7,448,042 B1; iss. Nov. 4, 2008) ("Engber") in view of AAPA (Applicant Admitted Prior Art as disclosed in as-filed background section of original disclosure). Final Act. 4–20.

ANALYSIS

The § 112 Rejections

Regarding independent claim 21, the Examiner refers to the recitations "executing applications . . . ," "the applications . . . ," and "respective applications . . ." and determines it is unclear if all recitations of "application" are referring to the same application or to a least two different applications. Final Act. 2–3. The Examiner also separately rejects claims 22–28 and 30–35 for lack of clarity. *Id.* at 3.

Appellant argues the term "respective" describes the relationship of the applications. Appeal Br. 22–23. In the Answer, the Examiner explains that Appellant's arguments does not address the lack of clarity. Ans. 3–4. In the Reply Brief, Appellant argues the Examiner's determination is conclusory and does not address Appellant's arguments. Reply Br. 4–7.

We are not persuaded by Appellant's arguments. "[A] claim is indefinite when it contains words or phrases whose meaning is unclear." *In re Packard*, 751 F.3d 1307, 1310 (Fed. Cir. 2014). The Examiner identified

a lack of clarity regarding "the applications" and Appellant has not persuasively shown error. Therefore, we sustain the rejection of claim 21, and the rejection of dependent claims 22–35.

Regarding independent claim 37, the Examiner refers to the recitation "upon receiving . . . information describing a user interface," and determines that the claim does not indicate what action is performed upon receiving the information. Final Act. 3. In the Appeal Brief, Appellant refers to the recitation "present, on the display . . ." as the action that is performed. Appeal Br. 23. In the Answer, the Examiner asserts that the "present" recitation does not clarify the action performed upon receiving the information. Ans. 3–4. In the Reply Brief, Appellant argues "at least one presentation property" and "at least one event" indicate what is being received and "present on the display" is the verb identifying the action performed. Reply Br. 8–9.

We are persuaded by Appellant's arguments because the claim sets forth the claimed subject matter with a reasonable degree of clarity and one of ordinary skill in the art would understand the claim with sufficient definiteness. Therefore, we do not sustain the rejection of claim 37, and dependent claims 38 and 40.

Dependent claim 39 is separately rejected for the recitation "the application" wherein the Examiner determines it is not clear if "the application" is the same application of claim 39, line 3, or claim 37, line 2, or some other application. Final Act. 3. The Examiner's determination is reasonable and not rebutted by Appellant. Therefore, we sustain the rejection of claim 39.

Regarding independent claim 41, Appellant argues the Examiner errs in determining the recited "user interface transmitter" cannot "query the application." Appeal Br. 24–25; Final Act. 3; Ans. 4; Reply Br. 10–12. We are persuaded by Appellant's arguments that the Examiner presents insufficient evidence that the use of the term "transmitter" excludes other functions, such as "querying applications" for the data to be sent.

Therefore, we do not sustain the rejection of claim 41.

The § 103 Rejections

The Examiner finds that Engber teaches the limitations of independent claim 21[2], except for the client computer, and relies on the teaching of the AAPA of the Specification, paragraph one, for the client computer. Appeal Br. 4–14. The Examiner finds

> [a]t the time of the invention it would have been obvious to one of ordinary skill in the art to modify the user interface teachings of the prior art of record with the user interface teachings of AAPA to realize the instant limitations. Since each individual element and its function are shown in the prior art, albeit shown in separate references, the difference between the claimed subject matter and the prior art rests not on any individual element or function but in the very combination itself[,] that is in the substitution of the client computer of the secondary reference(s) for the device of the primary reference. Thus, the simple substitution of one known element for another producing a predictable result renders the claim obvious. As a result, the combined teachings suggest the client computer of AAPA requesting to invoke specific events as well as exchanging information about invokable events on the user interface elements with the accessibility server of Engber.

Id. at 14.

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[2] Appellant groups claims 21, 37, and 41, all of which recite limitations commensurate in scope, together for argument, and we choose claim 21 as representative. 37 C.F.R. § 41.37(c)(iv).

Appellant argues that Engber provides techniques for allowing a first application to interact with a second application – particularly for the purpose of enabling accessibility applications, such as screen reader applications, to interact with an application, but nothing in Engber involves remoting the user interface from a first device to a second device. Appeal Br. 25. According to Appellant, the entirety of Engber involves a single device executing both applications, as well as the accessibility server and the accessibility client that serve as the interface therebetween. *Id.* Appellant argues the Specification Background provides a generic description of a conventional terminal services architecture; a discussion of an API for conventional screen reader application (which may include, e.g., the API provided in the Engber reference); and a discussion of technical limitations that exist in the use of an accessibility API in the context of a remote interface, but, the Background section suggests no solution to the problems of using an accessibility UI in the context of multiple devices communicating via a terminal services architecture. *Id.* at 29.

According to Appellant, "one of ordinary skill in the art would conclude that the scenario described in the Background section – *i.e.*, a terminal server device executing an application, and accessibility hardware or software presented on the terminal client device – cannot be used with an architecture such as provided in Engber, which presumes that the applications can communicate through an accessibility server/accessibility client API." *Id.* at 29. Appellant argues the Examiner applies hindsight by presuming that the problem identified only in the Background section may be solved using techniques that are presented only in the portions following the Background section. *Id.*

In the Answer, the Examiner explains

> Engber is relied upon to teach the claimed techniques in a client/server system (reads on the accessibility server receiving a request from the client accessibility program to display aspects of a server application on the client device, see Engber claim 10, 11, col. 5 lines 8–23, lines 40–49, col. 13 lines 12–23, col. 16 lines 39–57, col. 18 line 47 – col. 19 line 6) and AAPA is relied upon for explicit disclosure of distinct client and server devices in a similar system (see AAPA para 0001–0002 and see Engber col. 5 lines 54–65). The combined teachings motivate one of ordinary skill in the art to utilize the client/server teachings of Engber in the explicit client device and server device of AAPA motivated by implementing known in the art hardware to accomplish the explicit teachings found in Engber.

Ans. 4.

Regarding remoting the user interface from a first device to a second device, the Examiner notes that, although this language is not found in the claim,

> [t]he Examiner relies upon the combination of applied references to address this limitation. As a result, the prior art of record suggests remoting (reads on the accessibility server receiving a request from the client accessibility program to display aspects of a server application on the client device, see . . . , the user interface (reads on attributes of the user interface element, see Engber claims 1 and 10) from a first device (reads on a remote device, see AAPA para 0001) to a second device (reads on the users of the client assistive technology, see Engber col. 5 lines 8–53 and AAPA para 0001). Engber is relied upon to teach assistive technology to remote the user interface from a server to a client without any computer/network configuration limitation (see Engber col. 5 lines 54–65) and AAPA is relied upon to teach the specific generic language of a client device and server device in an assistive technology framework (see AAPA para 0001–0002).

Ans. 5.

Regarding Appellant's assertion that the entirety of Engber involves a
single device executing both applications, the Examiner finds

> Engber explicitly states the invention of Engber is not intended
> to be limited by any particular architecture or manner of
> interconnecting the computing components, and network
> computers and other data processing systems may also be used
> with the present invention (see Engber col. 5 lines 54–65). The
> Examiner asserts this disclosure in Engber would cause one of
> ordinary skill in the art to conclude that any computing/network-
> ing architecture would be applicable to Engber's disclosure. The
> Examiner further relies upon AAPA to specifically disclose
> generic language of a client device and server device in an
> assistive technology framework (see AAPA para 0001–0002).
> Accordingly, since each individual element and its function are
> shown in the prior art, albeit shown in separate references, the
> difference between the claimed subject matter and the prior art
> rests not on any individual element of function but in the very
> combination itself – that is in the substitution of the client device
> and server device in an assistive technology framework (see
> AAPA para 0001–0002) of the secondary reference for the
> client/server framework not intended to be limited by any
> particular architecture or manner of interconnecting the
> computing components, and network computers and other data
> processing (see Engber col. 5 lines 54–65) of the primary
> reference. Thus, the simple substitution of known element for
> another producing the predictable result of a networked client
> device and server device in an assistive technology framework
> renders the claim obvious.

Id. at 5–6.

Regarding Appellant's assertion that nothing in Engber suggests the
use of presented techniques between a first application executing on a
terminal server device and a second application executing on a terminal
client device,

> the Examiner . . . relies upon the combination of applied
> references to suggest this limitation (reads on the accessibility

> server receiving a request from the client accessibility program
> to display aspects of a server application on the client device, see
> Engber claim 10, 11, col. 5 lines 8–23, lines 40–49, col. 13 lines
> 12– 23, col. 16 lines 39–57, col. 18 line 47 – col. 19 line 6 and
> AAPA para 0001–0002).

Id. at 6.

Regarding hindsight, the Examiner explains the rejection "relies only on the portions of the background section that are clearly not Appellant's invention and merely detail the current state of the art at the time of the invention." *Id.* at 6–7.

In the Reply Brief, Appellant argues Engber and the present application are directed to different technical fields wherein Engber is "centrally directed to the interaction of a <u>client application</u> with a <u>target application</u>, via a <u>server application</u> that enables the interaction" and "the present disclosure is directed to techniques for <u>remoting a user interface</u> for <u>presentation to a user of a remote device</u>." Reply Br. 14.

Appellant argues the Answer conflates the distinct uses of the terms "client" and "server" in Engber and the present disclosure. *Id.* at 15. According to Appellant, the Engber server refers to a process on a device that provides a service on the same device, whereas the present disclosure involves a server computer that executes applications that are presented as remote interfaces on client computers. *Id.*

Appellant also argues the Answer presents no meaningful reply to the teaching-away aspects of the present disclosure. *Id.* at 16. According to Appellant, the Background section identifies problems in remote presentation, and only the Application identifies that the problems can be solved and the solutions. *Id.* 16–18. (citing Spec. ¶¶ 1, 14, 22, 32, 35, 36, 41).

Appellant argues the most straightforward combination of Engber and the Background portion of the present disclosure provides a different solution than that provided in claims 21, 37, and 41. *Id.* at 19–20. According to Appellant, if combined, "the techniques of Engber would operate within the server device to permit applications to interact, and the visual output of such interaction-as a bitmap, video stream, *etc.*-would be transmitted to the remote device for presentation." *Id.* at 19. Appellant argues this combination would exhibit all the deficiencies noted in the Background section. *Id.* at 19–20.

We are not persuaded by Appellant's arguments and agree, instead, with the findings and conclusion of the Examiner. Appellant does not persuasively rebut the Examiner's findings and conclusion that Engber teaches the claim 21 limitations, except for the use of a remote computer. Moreover, we agree with the Examiner's findings that Engber's teachings are not limited to a single system, and Engber does not teach away from the use of a remote computer. *See also*, Engber, Fig. 8, which describes requesting attributes and receiving attributes. Appellant's arguments regarding problems identified in the Background does not negate the Examiner's finding the combination of Engber's single system and the AAPA (Spec. ¶ 1) of remote systems. Appellant does not persuasively identify specific limitations in claim 1 that are not taught or suggested by the combination of Engber and the AAPA.

We note much of Appellant's arguments are unsupported by factual evidence. Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *In re De Blauwe*, 736 F.2d

699, 705 (Fed. Cir. 1984); *Ex parte Belinne*, Appeal 2009-004693, 2009 WL
2477843, at *3–4 (BPAI Aug. 10, 2009) (informative).

Appellant also argues an unreasonably narrow teaching of the Engber
and AAPA, and an overly demanding standard of obviousness. However,
we note

> [t]he test for obviousness is not whether the features of a sec-
> ondary reference may be bodily incorporated into the structure
> of the primary reference; nor is it that the claimed invention must
> be expressly suggested in any one or all of the references. Ra-
> ther, the test is what the combined teachings of the references
> would have suggested to those of ordinary skill in the art.

Keller, 642 F.2d 413, 425 (CCPA 1981).

Here, the Examiner provides sufficient evidence as required for
obviousness. As stated by the Supreme Court, the Examiner's obviousness
rejection must be based on:

> [S]ome articulated reasoning with some rational underpinning
> to support the legal conclusion of obviousness. . . . [H]owever,
> the analysis need not seek out precise teachings directed to the
> specific subject matter of the challenged claim, for a court can
> take account of the inferences and creative steps that a person
> of ordinary skill in the art would employ.

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007) (quoting *In re Kahn*,
441 F.3d 977, 988 (Fed. Cir. 2006)).

The Examiner's findings are reasonable because the skilled artisan
would "be able to fit the teachings of multiple patents together like pieces of
a puzzle" because the skilled artisan is "a person of ordinary creativity, not
an automaton." *KSR*, 550 U.S. at 420–21.

Based upon the teachings of the references and the fact that each
claimed element was well known in the art, we agree with the Examiner
because the combination of familiar elements according to known methods

is likely to be obvious when it does no more than yield predictable results.
Id. at 415–16. We note Appellant presents no persuasive arguments that the
results are unpredictable. Moreover, as discussed *supra*, the Examiner
additionally provided reasons why one of ordinary skill in the art would
combine the references in the manner suggested.

In view of the above, we sustain the rejection of claim 21, and
independent claims 37 and 41 as these claims are argued together with claim
21. We also sustain the rejection of dependent claims 22–35 and 38–40 as
these claims are not argued separately. *See* 37 C.F.R. § 41.37(c)(1)(iv

DECISION

Claims Rejected	Basis	Affirmed	Reversed
21–35, 37–41	35 U.S.C. § 112, second paragraph	21–35, 39	37, 38, 40 41
21–35, 37–41	35 U.S.C. § 103(a)	21–35, 37–41	
Overall Outcome		21–35 and 37–41	

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.
§ 1.136(a)(1)(iv).

AFFIRMED