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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* DAVID M. OGLE, BRYAN D. OSENBACH, and  
JEREMY B. SUSSMAN

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Appeal 2018-003804  
Application 12/818,639  
Technology Center 2100

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Before MAHSHID D. SAADAT, KRISTEN L. DROESCH, and  
KAMRAN JIVANI, *Administrative Patent Judges*.

JIVANI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the Examiner’s final rejection of claims 21–40, which are all the claims pending in the present patent application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> We use the word “Appellant” to refer to “Applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies International Business Machines Corporation as the real party in interest. App. Br. 1.

STATEMENT OF THE CASE

The present application relates to improving moderator control for managing delegates of an electronic communication session (e.g., collaborative meeting, conference call, Web conference, etc.). Spec. ¶ 1.

Claim 21 is illustrative (bracketed matter and emphasis added):

21. A computer-implemented method for moderating a real-time electronic communication session, comprising:

initiating the session between a plurality of client computers respectively associated with a plurality of participants;

[L1] *identifying, after the session has been initiated, that one of the plurality of participants is unable to participate in the session;*

identifying a characteristic of the one participant unable to participate;

[L2] *determining, based upon the characteristic, whether the one participant unable to participate, is needed for the session;*

[L3] *identifying, based upon a determination that the one participant unable to participate is needed for the session, a substitute participant; and*

substituting, after the session has been initiated and within the session, the substitute participant for the one participant unable to participate.

*Rejections*

1. Claims 26, 32, and 39 stand rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement.

2. Claims 21, 23, 24, 27, 29, 30, 33, 34, 36, 37, and 40 stand rejected under 35 U.S.C. § 103(a) over Lingafelt (US 2009/0063639 A1; publ. Mar. 5, 2009) and Bhogal (US 2009/0083105 A1; publ. Mar. 26, 2009).

3. Claims 22, 28, and 35 stand rejected under 35 U.S.C. § 103(a) over Lingafelt, Bhogal, and Castro (US 2006/0173936 A1; publ. Aug. 3, 2008).

4. Claims 25, 26, 31, 32, 38, and 39 stand rejected under 35 U.S.C. § 103(a) over Lingafelt, Bhogal, and Sarkar (US 2008/0109517 A1; publ. May 8, 2008).

#### ANALYSIS

##### *Rejections of claims 26, 32, and 39 under Section 112*

Dependent claims 26, 32, and 39 each recite in relevant part, wherein “the suitability score is based at least based upon a factor specific to the session.” App. Br. 20–21, 23. The Examiner finds this limitation lacks written description support. Final Act. 2.

Appellant contends originally filed claims 3 and 7 provide adequate support for the limitation at issue because they recite, respectively, “generating a suitability score indicating a level of suitability,” and “suitability is based on factors specific to the real time communication session.” App. Br. 8. According to Appellant, “claim 3 introduces the concept of a ‘suitability score’ that involves ‘suitability’ and claim 7 describes that ‘suitability’ is based upon factors specific to the real time communication session.” *Id.* at 9.

The Examiner responds that, “[r]ather than suggest that these were two descriptive elements describing the same thing, they were written as two separate claims, describing two separate concepts, using two different words (‘suitability’ vs. ‘suitability score’).” Ans. 12. Appellant replies that “the term ‘suitable’ is used in both claims 3 and 7 to describe a characteristic of the person (i.e., delegate) that will be used to substitute for the one participant.” Reply Br. 3.

We agree with Appellant. Originally filed claim 3 recites, “generating a suitability score indicating a level of suitability.” App. Br. 8. Thus, the originally filed specification discloses suitability as an attribute that can be quantified by generating a suitability score. Original claim 7 recites, “suitability is based on factors specific to the real time communication session.” *Id.* Reading these claims together to assess the scope of the invention possessed by Appellant at the time of filing, one of ordinary skill in the art reasonably would have understood that the suitability disclosed is both quantifiable in the form a “suitability score” and also can be “based on factors specific to the real time communication session.”

Accordingly, we reverse the Examiner’s rejection of claims 26, 32, and 39 under 35 U.S.C. § 112 as failing to comply with the written description requirement.

*Rejections of claims 21, 22, 24–28, 30–35, 37–40 over  
Lingafelt, Bhogal, and various other references*

In the Appeal Brief, Appellant advances arguments related to limitations L1–L3 of independent claim 21. App. Br. 10. In the Reply Brief, however, Appellant withdraws its arguments related to limitation L1. Reply Br. 4 (“Upon further review of the Examiner’s additional analysis, Appellants are not contesting that the applied prior art teaches the limitations

at issue.”). In light of Appellant’s withdrawal, we address below only Appellant’s remaining arguments (App. Br. 13–14), which are directed to limitations L2 and L3).

Limitation L2 recites, “determining, based upon the characteristic, whether the one participant unable to participate, is needed for the session.” Limitation L3 recites, “identifying, based upon a determination that the one participant unable to participate is needed for the session, a substitute participant.” App. Br. 19. Independent claims 27 and 34 recite commensurate limitations. *Id.* at 20, 22.

The Examiner finds that Bhogal teaches limitations L2 and L3. Final Act. 4–5 (citing Bhogal ¶ 22). In particular, the Examiner finds that Bhogal teaches that “[a]n invitee whose attendance at the meeting is required, can have a substitute determined when it is determined that the original required invitee cannot attend.” *Id.*

Appellant contends the Examiner errs because, “[t]he claimed invention contemplates that the identification of the characteristic, the determination that the participant is needed for the session based upon the characteristic, and the substituting of a substitute participant for the participant unable to participate occur after the session has been initiated.” App. Br. 14. According to Appellant, the cited teachings of Bhogal fail to meet limitations L2 and L3 because they “refer to operations the [sic] occur before the invitations are sent out, which necessarily occur before the session is initiated.” *Id.*

The Examiner responds to Appellant’s contention by reiterating that Bhogal is relied upon for teaching limitations L2 and L3, and that Lingafelt is relied upon in the rejection for teaching a determination made after the

session has been initiated. Ans. 14 (citing Lingafelt ¶¶ 27–28). On Reply, Appellant maintains its original arguments and assert, “[t]he Examiner’s newly-presented analysis fails to explain what the combination of Bhogal and Lingafelt teach with regard to the limitations at issue.” Reply Br. 6.

We are not persuaded by Appellant’s arguments because they are not responsive to the Examiner’s rejection and specific findings. Limitations L2 and L3 do not require that the claimed determining and identifying must occur after the session has been initiated, as Appellant contends. *See* App. Br. 14. Rather, these limitations depend ultimately on limitation L1 for its recitation of “after the session has been initiated.” *Id.* at 19.

The Examiner’s rejection as set forth in the Final Action clearly relies on Lingafelt as teaching or suggesting the timing recited in limitation L1. Final Act. 4 (citing Lingafelt ¶¶ 27–28). The rejection continues by combining these teachings from Lingafelt with teachings in Bhogal meeting limitations L2 and L3. *Id.* at 4–5 (citing Bhogal ¶ 22). The Examiner further articulates the following rationale for the cited combination:

It would have been obvious to one of ordinary skill in the art at the time of invention to combine Bhogal with Lingafelt. The background of Bhogal describes that meeting software is not particularly flexible in providing tools to ensure proper attendance at a meeting; Bhogal seeks to cure this deficiency in the prior art. Thus, combining Lingafelt with Bhogal provides the benefit of having proper meeting attendance in the IM collaborations of Lingafelt.

*Id.* at 5. Thus, contrary to Appellant’s argument, the Examiner’s analysis is not “new” but rather fully articulated in the Final Action.

Additionally, Appellant’s arguments reduce to an assertion that Bhogal’s teachings of identifying a substitute participant for a needed

participant who is unable to attend a session cannot be bodily incorporated into Lingafelt. “The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *In re Keller*, 642 F. 2d 413, 425 (CCPA 1981); *accord In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”). Contrary to Appellant’s arguments, the Examiner does not seek to bodily incorporate Bhogal’s identification into Lingafelt, but instead relies on specific teachings of each reference and combines them with an articulated rationale. Final Act. 4–5; *see also* Ans. 15 (“Lingafelt clearly teaches that business rules for invitees and substitute invitees can be invoked, and substitutes determined and invited, dynamically during a collaboration session, for the reasons given both in these arguments and the above rejection. Therefore, the rules described in Bhogal incorporated into that system can likewise be carried out to determine a substitute during a collaboration session.”). We note Appellant does not proffer persuasive evidence that the Examiner’s combination would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of independent claims 21, 27, and 34. As to dependent claims 22, 25, 26, 28, 31, 32, 35, 38, and 39, Appellant relies solely on its arguments related to independent claim 21. *See* App. Br. 10–18. Additionally, Appellant does not address dependent claims 30 and 40. *See generally* App. Br.; Reply Br.

Accordingly, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 22, 25, 26, 28, 30–32, 35, and 38–40, for the same reasons discussed above in the context of independent claims 21, 27, and 34.

*Rejection of claims 23, 29, and 36 over Lingafelt and Bhogal*

Dependent claim 23 recites, in relevant part, “wherein a single substitute participant is substituted for[] a plurality of participants unable to participate.” App. Br. 19. Claims 29 and 36 recite commensurate limitations. *Id.* at 21–22.

The Examiner relies on Lingafelt as teaching or suggesting this limitation. Final Act. 5 (citing Lingafelt ¶ 35). In particular, the Examiner finds Lingafelt “teaches that a group of people can be designated as a primary invitee, as if it were a single person, where subsequent steps of the invitation process are carried out thusly. Therefore, the steps of determining unavailability and inviting a backup, which can be a single person, can be carried out to invite a single person to attend instead of the group.” *Id.*

Appellant acknowledges that Lingafelt “teaches that ‘the backup invitee of steps 504 and 506 is being invited as a substitute for the primary invitee.’” App. Br. 16 (citing Lingafelt ¶ 42). Appellant contends, “this does not teach or suggest that a single substitute participant is substituted for a plurality of participants unable to participate, as claimed.” *Id.*

We are not persuaded by Appellant's arguments. As Appellant correctly recognizes, “[w]hat is being claimed is a single substitute participant is substituted for a plurality of participants.” Reply Br. 7. Appellant further correctly recognizes that Lingafelt teaches a backup invitee (i.e., the claimed single substitute participant) is being invited as a substitute for the primary invitee (i.e., a participant unable to participate).

App. Br. 16 (citing Lingafelt ¶ 42). Appellant fails to recognize, however, that Lingafelt teaches “an entity (e.g., person or group of people) . . . is also referred to herein as a primary invitee.” Lingafelt ¶ 35. Lingafelt continues:

If the entity in step 304 is a group of people, then the present invention treats the group of people to be invited as if it were a single person (i.e., the group has the characteristics of a single person and the steps of the subsequent invitation process of FIGS. 5A-5B are the same irrespective of whether the invitee is a single person or a group of people).

*Id.* Thus Lingafelt teaches a backup invitee (i.e., the claimed single substitute participant) is being invited as a substitute for the primary invitee, which can be an entity, including a group of people (i.e., the claimed plurality of participants unable to participate).

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claims 23, 29, and 36.

### CONCLUSION

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
26, 32, 39	112	Written Description		26, 32, 39
21, 23, 24, 27, 29, 30, 33, 34, 36, 37, 40	103(a)	Lingafelf, Bhogal	21, 23, 24, 27, 29, 30, 33, 34, 36, 37, 40	
22, 28, 35	103(a)	Lingafelf, Bhogal, Castro	22, 28, 35	
25, 26, 31, 32, 38, 39	103(a)	Lingafelf, Bhogal, Sarkar	25, 26, 31, 32, 38, 39	
<b>Overall Outcome</b>			21–40	

Appeal 2018-003804  
Application 12/818,639

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