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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
Row 1: 13/827,265, 03/14/2013, Kevin David James Grealish, 13768.2275, 2469
Row 2: 47973, 7590, 01/24/2019, WORKMAN NYDEGGER/MICROSOFT, 60 EAST SOUTH TEMPLE, SUITE 1000, SALT LAKE CITY, UT 84111, EXAMINER TRAN, TAN H
Row 3: ART UNIT 2141, PAPER NUMBER
Row 4: NOTIFICATION DATE 01/24/2019, DELIVERY MODE ELECTRONIC

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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* KEVIN DAVID JAMES GREALISH, RANDY JOE DODGEN,  
and OSCAR P. KOZLOWSKI

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Appeal 2018-004567  
Application 13/827,265<sup>1</sup>  
Technology Center 2100

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Before ELENi MANTIS MERCADER, JASON J. CHUNG, and  
JASON M. REPKO, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

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<sup>1</sup> According to Appellants, Microsoft Technology Licensing, LLC is the real party in interest. App. Br. 2.

## INVENTION

The invention is directed to updating graphical user interface elements. Abstract. Claim 1 is illustrative of the invention and is reproduced below:

1. A method of updating graphical user interface elements in a fashion that is able to handle data being added to the user interface, data being removed from the user interface, or data being modified in the user interface, the method comprising:

accessing a graphical user interface, the graphical user interface displaying an initial view comprising graphical elements;

for each of acts (1), (2), (3), (4), and (5), specified below, determining whether or not to perform each of acts (1), (2), (3), (4), and (5), by determining whether each of acts (1), (2), (3), (4), and (5) is applicable to a given view scenario, and

performing, in the order specified below, each of acts (1), (2), (3), (4), and (5) which have been determined to be applicable to the given view scenario:

(1) updating in the graphical user interface any pan elements that are outside of the initial view;

(2) animating any changes in axes of the graphical user interface to set the stage for data modifications;

(3) performing any data element animations in the graphical user interface, including any moves, any additions, any removals and any changes for all updates except those already added in when updating any pan elements that are outside of the initial view and pan element removals that will not be visible in a final view;

(4) animating any changes in the axes to the final view; and

(5) updating any remaining elements that are now out of view.

## REJECTIONS AT ISSUE<sup>2</sup>

Claims 1, 2, 5–9, 12–16, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Robertson (US 2008/0192056 A1; published Aug. 14, 2008) and Cai (US 2010/0073377 A1; published Mar. 25, 2010). Ans. 3–16.

Claims 3, 4, 10, 11, 17, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Robertson, Cai, and Boixel (US 2009/0096812 A1; published Apr. 16, 2009). Ans. 16–19.

## ANALYSIS

### A. *Claim Construction*

Claim construction is an issue of law that is left for a court or a tribunal. “[W]hen the district court reviews only evidence intrinsic to the patent (the patent claims and specifications, along with the patent’s prosecution history), the judge’s determination will amount solely to a determination of law.” *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015). “[T]he ultimate issue of the proper construction of a claim should be treated as a question of law.” *Id.* at 838.

We construe claim terms according to their broadest reasonable construction in light of the specification of the patent or application in which they appear. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). Consistent with the broadest reasonable construction, claim terms are generally given

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<sup>2</sup> We have decided the Appeal before us, however, in the event of further prosecution, the Examiner should evaluate whether claims 15–20 need to recite “non-transitory” in light of *Subject Matter Eligibility of Computer Readable Media*, 1351 Official Gazette Pat. Office 212 (Feb. 23, 2010).

their ordinary and customary meaning, as understood by a person of ordinary skill in the art, in the context of the entire specification. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Also, we must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (“[L]imitations are not to be read into the claims from the specification.”). However, a term may be defined in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

1. *Claim 1*

Claim 1, a method claim, recites several limitations stated in conditional language. In particular, claim 1 recites:

*determining whether or not to perform each of acts (1), (2), (3), (4), and (5), by determining whether each of acts (1), (2), (3), (4), and (5) is applicable to a given view scenario, and performing, in the order specified below, each of acts (1), (2), (3), (4), and (5) which have been determined to be applicable to the given view scenario:*

- (1) updating in the graphical user interface any pan elements that are outside of the initial view;
  - (2) animating any changes in axes of the graphical user interface to set the stage for data modifications;
  - (3) performing any data element animations in the graphical user interface, including any moves, any additions, any removals and any changes for all updates except those already added in when updating any pan elements that are outside of the initial view and pan element removals that will not be visible in a final view;
  - (4) animating any changes in the axes to the final view;
- and

(5) updating any remaining elements that are now out of view.

App. Br. 18 (Claims Appendix) (emphases added) (hereinafter “if A, then perform step X limitation of claim 1”).

Moreover, claim 1 also recites “*determining whether or not to perform each of acts (1), (2), (3), (4), and (5), by determining whether each of acts (1), (2), (3), (4), and (5) is applicable to a given view scenario*” (hereinafter “if not A, then perform step Y limitation of claim 1”). *Id.* (emphases added). Put another way, we interpret the “if not A, then perform step Y” limitation of claim 1 as not performing any of steps (1) through (5).

Claim 1 in the present case is similar to claim 1 in *Ex parte Schulhauser*, No. 2013-007847, 2016 WL 6277792 (PTAB Apr. 28, 2016) (precedential). In *Schulhauser*, the Board held that in method claim 1, **only one** of the following conditional limitations needed to be satisfied in the prior art to render the claim anticipated or obvious: (1) “triggering an alarm state if the electrocardiac signal data is not within the threshold electrocardiac criteria” and (2) “determining the current activity level of the subject from the activity level data if the electrocardiac signal data is within the threshold electrocardiac criteria.” *Id.* at \*1–5. To paraphrase, in *Schulhauser*, illustrative method claim 1 recited if A, then perform step X; if not A, then perform step Y. *Id.* We, therefore, conclude that it is appropriate to apply *Schulhauser* to the present case because: (1) claim 1 in *Schulhauser* is similar to claim 1 in the present case; and (2) *Schulhauser* is precedential.<sup>3</sup>

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<sup>3</sup> The same analysis might not apply if Appellants amended the method claims to the system claims. *Schulhauser*, 2016 WL 6277792 at \*6–8; *see also* MPEP § 2111.04 II (9th ed. Rev. 08.2017, Jan. 2018) (instructing

Moreover, even if the broadest reasonable construction in light of the Specification was not dictated by *Schulhauser*, which it is, construing claim 1 based on the Specification would have led to the same construction. According to Appellants, paragraphs 5, 33, and 41 through 43 of the Specification correspond to this limitation. App. Br. 3–4 (citing Spec. ¶¶ 5, 33, 41–43). These paragraphs discuss an example teaching of a logical path that uses only the “if A, then perform step X” limitation of claim 1. Spec. ¶¶ 5, 33, 41–43. In addition, there is no requirement in the Specification that after executing the “if A, then perform step X” limitation of claim 1, the path must loop back and execute the “if not A, then perform step Y” limitation of claim 1. *See* Spec. ¶¶ 5, 33, 41–43.

Therefore, as a matter of law, we conclude only one of: (1) the “if A, then perform step X” limitation of claim 1 and (2) the “if not A, then perform step Y” limitation of claim 1 needs to be satisfied in the prior art to render the claim anticipated or obvious.

## 2. *Independent Claims 8 and 15*

*Schulhauser* does not apply to independent claims 8 and 15 because they are not method claims. *See Schulhauser*, 2016 WL 6277792 at \*6–8; MPEP § 2111.04 II.

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Examiners that “[t]he system claim interpretation differs from a method claim interpretation because the claimed structure must be present in the system regardless of whether the condition is met and the function is actually performed.”).

*B. Obviousness Rejections*

*1. Claims 1–7*

The Examiner finds the combination of Robertson and Cai teaches the “if A, then perform step X” limitation of claim 1. Ans. 3–6; Final Act. 3–6. The Examiner finds it would have been obvious to a person having ordinary skill in the art at the time of the invention to combine Robertson and Cai because it provides smooth transition graph changes between different time frames to keep users’ focus. Ans. 6 (citing Cai ¶ 6); Final Act. 6.

Appellants argue the cited portions of Robertson does not teach updating a “pan element” that is outside of the initial view because Robertson merely teaches adding a bar element in a Bar Chart. App. Br. 11–12; Reply Br. 2. Appellants argue Robertson does not teach the limitation “performing any data element animations . . . except those already added in when updating any pan elements that are outside of the initial view and pan element removals that will not be visible in a final view” recited in claim 1 because although Robertson teaches animations, Robertson does not teach exclusions from animations. App. Br. 12 (citing Robertson ¶ 78); Reply Br. 3. Appellants argue Robertson does not teach the limitation “animating any changes in the axes to the final view” because Robertson merely teaches an animation that scales and aligns charts to fit along a common axes. App. Br. 12. Appellants also argue Cai does not teach the chronological order of steps 1 through 5 as required by claim 1. *Id.* at 15; Reply Br. 4–7. We disagree with Appellants.

As an initial matter, as stated *supra* in § A.1., we need not consider whether both (1) the “if A, then perform step X” limitation of claim 1 and (2) the “if not A, then perform step Y” limitation of claim 1 need to be



satisfied in the prior art to render the claim anticipated or obvious. It is sufficient for one of the conditions in the preceding sentence to be satisfied in the prior art to render the claim anticipated or obvious.

Furthermore, in the present case, the Examiner's findings that Robertson teaches the "if not A, then perform step Y" limitation of claim 1 (Ans. 3–6; Final Act. 3–6) are not rebutted by Appellants. Rather, Appellants' arguments pertain to the "if A, then perform step X" limitation of claim 1 (App. Br. 11–15; Reply Br. 2–7), which we need not consider because the Examiner finds Robertson teaches the "if not A, then perform step Y" limitation of claim 1 (Ans. 3–6; Final Act. 3–6).

Appellants do not argue separately dependent claims 2–7 with particularity, but assert the obviousness rejections of those claims should be withdrawn for at least the same reasons as argued in independent claim 1. App. Br. 16–17. Accordingly, we sustain the Examiner's obviousness rejections of: (1) independent claim 1; and (2) dependent claims 2–7.

We have only considered those arguments that Appellants actually raised in the Briefs. Arguments Appellants could have made, but chose not to make, in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## 2. *Claims 8–20*

The Examiner finds Robertson's bar elements correspond to the limitation "pan elements" recited in claims 8 and 15. Ans. 8, 12–13, 19 (citing Robertson ¶¶ 41–42, 44, 48–49); Final Act. 8, 12.

Appellants argue the cited portions of Robertson does not teach updating a "pan element" that is outside of the initial view because

Robertson merely teaches adding a bar element in a Bar Chart. App. Br. 11–12; Reply Br. 2. We agree with Appellants.

As an initial matter, the broadest *reasonable* interpretation differs from the broadest *possible* interpretation. *In re Smith Int'l, Inc.*, 871 F.3d 1375, 1383 (Fed. Cir. 2017); *see also* MPEP § 2111 (“The broadest reasonable interpretation does not mean the broadest possible interpretation. Rather, the meaning given to a claim term must be consistent with the ordinary and customary meaning of the term (unless the term has been given a special definition in the specification), and must be consistent with the use of the claim term in the specification and drawings.”). The correct inquiry in giving a claim term its broadest reasonable interpretation in light of the specification is “an interpretation that corresponds with what and how the inventor describes his invention in the specification, *i.e.*, an interpretation that is ‘consistent with the specification.’” *Smith*, 871 F.3d at 1382–83 (quoting *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997)). We are mindful, however, that limitations are not to be read into the claims from the Specification. *Van Geuns*, 988 F.2d at 1184.

In this case, although the Specification describes pan elements in the context of example embodiments (Spec. ¶¶ 27, 31), we conclude the broadest *reasonable* construction of “pan elements” implement some kind of a movement. Moreover, Robertson’s bar element does not teach the limitation “pan element” because Robertson’s bar element is not a scrolling bar; rather, Robertson’s bar element is a data set that is illustrated in a Bar Chart. Ans. 8, 12–13, 19 (citing Robertson ¶¶ 41–42, 44, 48–49); Final Act. 8, 12; *see also* Robertson, Fig. 6 (illustrating Bar Charts). That is, the cited

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portions of Robertson's bar element does not implement any panning or movement.

Accordingly, we do not sustain the Examiner's obviousness rejections of claims 8–20.

#### DECISION

We affirm the Examiner's decision rejecting claims 1–7 under 35 U.S.C. § 103(a).

We reverse the Examiner's decision rejecting claims 8–20 under 35 U.S.C. § 103(a).

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