UNITED STATES PATENT AND TRADEMARK OFFICE

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14/571,050	12/15/2014	Jonathan A. Jenkins	SEAZN.588A2C1	9362

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PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte JONATHAN A. JENKINS and PETER F. HILL
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Appeal 2018-004577
Application 14/571,050
Technology Center 2400
———————————

Before ST. JOHN COURTENAY III, JASON J. CHUNG, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals the Final Rejection
of claims 1–5, 7–16, and 18–22.[2] We have jurisdiction under 35 U.S.C.
§ 6(b).

We affirm.

INVENTION

The invention relates to providing network content to a client
computing device by one or more content providers in conjunction with a

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[1] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. According to Appellant, Amazon Technologies, Inc. is the
real party in interest. Appeal Br. 3.
[2] Claims 6 and 17 are cancelled. Appeal Br. 21, 23.

network computing provider. Abstract. Claim 1 is illustrative of the invention and is reproduced below:

> 1.   A computer-implemented method comprising:
> under control of a server system configured to act as an intermediary between client computing devices and content providers,
> executing a server-side browser application in communication with a separate client-side browser application executing remotely from the server system;
> receiving, from the client-side browser application, a request for a network resource, wherein the network resource comprises a markup file referencing one or more embedded resources separate from the markup file;
> providing, by the server-side browser application, the markup file to the client-side browser application, the markup file including references to the one or more embedded resources; and
> providing, by the server-side browser application, a first embedded resource of the one or more embedded resources to the client-side browser application without receiving a request from the client-side browser application for the first embedded resource.

REJECTIONS AT ISSUE

Claims 1–5, 7, 8, 10–16, and 18–22 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Cohen (US 7,082,476 B1; issued July 25, 2006) and Seed (US 2006/0015574 A1; published Jan. 19, 2006). Final Act. 6–17.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Cohen, Seed, and Bar-Caspi (US 2012/0084433 A1; filed Oct. 1, 2010). Final Act. 17.

ANALYSIS

The Examiner finds Cohen teaches client sessions involve requests for a web page that has numerous embedded URLs that reference other web pages or services, which the Examiner maps to the limitation "receiving, from the client-side browser application, a request for a network resource, wherein the network resource comprises a markup file referencing one or more embedded resources separate from the markup file" recited in claim 1. Final Act. 7, 11, 15 (citing Cohen, 1:60–64). The Examiner finds Seed teaches objects are retrieved from origin servers and stored over one or more parent servers before any end-users can access each such object as the object is stored on the parent servers, which the Examiner maps to the limitation "providing, by the server-side browser application, a first embedded resource of the one or more embedded resources to the client-side browser application without receiving a request from the client-side browser application for the first embedded resource" recited in claim 1. Final Act. 8, 11, 15 (citing Seed ¶ 32); Ans. 4 (citing Seed ¶¶ 12, 21, 29, 32). The Examiner finds it would have been obvious to a person having ordinary skill in the art at the time of the invention ("PHOSITA") to combine Cohen and Seed to provide users with a means for reducing the time to retrieval of network resources by replicating popular (most likely requested by users in the future) content to proxy servers. Final Act. 8, 11, 15.

Appellant argues Seed fails to cure the deficiencies of Cohen because Seed's "server" does not teach the claimed "client-side browser application" recited in claim 1. Appeal Br. 9–11, 15, 17 (citing Seed ¶¶ 10, 17, 21); Reply Br. 2–4. Appellant argues Seed fails to teach: (1) providing an embedded resource that is "separate from a markup file" of a requested

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object; and (2) providing the embedded resource "without receiving a request" from a client for the embedded resource. Appeal Br. 12, 15, 17. Appellant argues a PHOSITA could not combine the teachings of Cohen and Seed without using impermissible hindsight reconstruction. *Id.* at 12–13, 15–18 (citing Seed ¶¶ 20–21); Reply Br. 5–8. Appellant argues the Examiner fails to establish a prima facie case of obviousness. Appeal Br. 13–14, 16, 18; Reply Br. 9. We disagree with Appellant.

We disagree with Appellant's argument that Seed's "server" does not teach the claimed "client-side browser application." Appeal Br. 9–11, 15, 17; Reply Br. 2–4. Seed teaches that objects are retrieved (i.e., providing) from origin servers (server-side browser application) and stored over one or more parent servers (i.e., this at least suggests client-side browser application when combined with Cohen's client/server system) before (i.e., without client's request) any end-users can access each such object as the object is stored on the parent servers, which teaches the limitation "providing, by the server-side browser application, a first embedded resource of the one or more embedded resources to the client-side browser application without receiving a request from the client-side browser application for the first embedded resource" recited in claim 1. Seed ¶¶ 12, 21, 29, 32 (cited at Ans. 4).

We disagree with Appellant's argument that Seed fails to teach or suggest: (1) providing an embedded resource that is "separate from a markup file" of a requested object; and (2) providing the embedded resource "without receiving a request" from a client for the embedded resource. Appeal Br. 12, 15, 17. One cannot show nonobviousness "by attacking references individually" where the rejections are based on combinations of

references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425 (CCPA 1981)). In this case, the Examiner relies on Cohen to teach client sessions involve requests for a web page that has numerous embedded URLs that reference other web pages or services, which teaches the limitation "receiving, from the client-side browser application, a request for a network resource, wherein the network resource comprises a markup file referencing one or more embedded resources separate from the markup file" recited in claim 1. Cohen, 1:60–64 (cited at Final Act. 7). Moreover, Seed teaches providing the embedded resource "without receiving a request" from a client for the embedded resource as discussed in the preceding paragraph.

We disagree with Appellant's argument that a PHOSITA could not combine the teachings of Cohen and Seed without using impermissible hindsight reconstruction. Appeal Br. 12–13, 15–18; Reply Br. 5–8. Appellant has not provided persuasive evidence that combining the respective teachings of the references (as proffered by the Examiner – Final Act. 6–8; Ans. 4) would have been "uniquely challenging or difficult for one of ordinary skill in the art," or that such a combination would have "represented an unobvious step over the prior art." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Nor has Appellant provided any objective evidence of secondary considerations, which, as our reviewing court explains, "operates as a beneficial check on hindsight." *Cheese Sys., Inc. v. Tetra Pak Cheese & Powder Sys., Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

We disagree with Appellant's argument the Examiner fails to establish a prima facie case of obviousness. Appeal Br. 13–14, 16, 18;

Reply Br. 9. We find the Examiner has set forth sufficient "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *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)). In particular, we agree with the Examiner's finding that a person having ordinary skill in the art at the time of the invention would have combined Cohen and Seed to provide users with a means for reducing the time to retrieval of network resources by replicating popular (most likely requested by users in the future) content to proxy servers. Final Act. 8.

Appellant does not separately argue claims 2–5, 7–16, and 18–22 with particularity, but assert the rejections of those claims should be withdrawn for at least the same reasons as argued in independent claim 1. Appeal Br. 8–18. Accordingly, we sustain the Examiner's rejection of: (1) independent claims 1, 5, and 16; and (2) dependent claims 2–4, 7–15, and 18–22 under 35 U.S.C. § 103.[3]

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[3] Claim 1 recites the negative limitation: "without receiving a request from the client-side browser application for the first embedded resource." Claims 5 and 16 recite similar features. We note original claim 1 recites the negative limitation in similar form: "without receiving a request from the client-side browser application for the first referenced resource." In the event of further prosecution, we leave it to the Examiner to consider whether a rejection under 35 U.S.C. § 112, first paragraph, should be applied. Although "many original claims will satisfy the written description requirement," *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1349 (Fed. Cir. 2010) (en banc) (*compare* Appellant's original claim 1 *with* appealed claim 1), 37 C.F.R. §1.75(d)(1) requires: "the terms and phrases used in the claims *must find clear support or antecedent basis in the description* so that the meaning of the terms in the claims may be ascertainable *by reference to the description*." Emphases added. We have reviewed Appellant's proffered support in the Specification (¶¶ 29, 143, 152,

We have only considered those arguments that Appellant actually raised in the Briefs. Arguments Appellant 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).

CONCLUSION

In summary:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1–5, 7, 8, 10–16, 18–22	103	Cohen, Seed	1–5, 7, 8, 10–16, 18–22	
9	103	Cohen, Seed, Bar-Caspi	9	
Overall Outcome			1–5, 7–16, 18–22	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

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and Fig. 14B; *see* Appeal Br. 6) for the negative limitation recited in original claim 1, but we do not find a description of "a reason to exclude the relevant limitation." *Santarus, Inc. v. Par Pharm., Inc.*, 694 F.3d 1344, 1351 (Fed. Cir. 2012) ("Negative claim limitations are adequately supported when the specification describes a reason to exclude the relevant limitation. Such written description support need not rise to the level of disclaimer. In fact, it is possible for the patentee to support both the inclusion and exclusion of the same material"). *See also* MANUAL OF PATENTING EXAMINING PROCEDURE § 2173.05(i) (9th ed. rev. 08.2017 (Jan. 2018)) ("Any negative limitation or exclusionary proviso must have basis in the original disclosure . . . . The mere absence of a positive recitation is not basis for an exclusion"). Although the Board is authorized to reject claims under 37 C.F.R. 41.50(b), no inference should be drawn when the Board elects not to do so. *See* MANUAL OF PATENTING EXAMINING PROCEDURE § 1213.02.

AFFIRMED