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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 ALAN E. BOOTH and DONALD N. JONES
_____

Appeal 2018-008306
Application 14/095,438
Technology Center 2400
_____

Before JEFFREY S. SMITH, KARA L. SZPONDOWSKI, and
JOHN R. KENNY, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 37–54, constituting all of the claims
pending in the current application. We have jurisdiction under
35 U.S.C. § 6(b).

We AFFIRM.

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[1] We use the word "Appellant" to refer to "applicant" as defined in 37
C.F.R. § 1.42. Appellant identifies the real party in interest as IBM
Corporation. Appeal Br. 1.

STATEMENT OF THE CASE

Appellant's invention generally relates to centralized session management in an aggregated application environment. Spec. 4. Claim 37, reproduced below, is representative of the claimed subject matter:

37. A computer-implemented method performed by a server, comprising:

aggregating, within a host aggregation environment, a set of applications that are distinct from the host aggregation environment; monitoring for interactivity within the applications;

monitoring, separate from the monitoring for interactivity within the applications, for interactivity within the host aggregation environment itself; and

centrally keeping alive, upon a detection of interactivity within any one of the applications or the host aggregation environment, all of the applications.

REJECTIONS

Claims 37–54 stand rejected under 35 U.S.C. § 112(a) or 35 U.S.C. § 112 (pre-AIA), first paragraph, as failing to comply with the written description requirement.

Claims 37–54 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over the combination Nickerson et al. (US 2005/0108390 A1; published May 19, 2005) ("Nickerson") and Hayer et al. (US 7,941,544 B2; issued May 10, 2011) ("Hayer").

ANALYSIS

35 U.S.C. § 112 Rejections

The Examiner finds the limitation "a set of applications that are distinct from the host aggregation environment," as recited in independent claims 37, 43, and 49, lacks written description support in the Specification. Final Act. 3. The Examiner explains "Applicant[']s disclosure has clearly shown that the applications or portlets are included and part of the host aggregation or portal environment which is contrary to the recited claims." Final Act. 3; Ans. 5. Relying on a dictionary definition, the Examiner construes the term "distinct" to mean "separate," because Appellants do not provide an explicit definition of the term "distinct" in the Specification.[2]

Appellant argues "[a]s claimed, the applications are distinct from the host aggregation environment." Appeal Br. 8. Appellant provides several analogies, such as a house having chairs within it, a CD-ROM found within a desktop computer, and a computer application that executes within an operating system. Appeal Br. 8; *see also* Appeal Br. 11–12; Reply Br. 5. According to Appellant, "a portlet (i.e., an example of an application) is distinct from a portal (i.e., an example of a host aggregation environment)." Appeal Br. 8. Appellant cites to two articles (not submitted as exhibits) and argues that "those skilled in the art recognize that a portlet is not necessarily an integral part of a portal. Instead, a portal can be added to or removed from a portal. Moreover, the same portal can be added to a different portal

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[2] The Examiner provides a citation an online Merriam Webster dictionary definition of "distinct," as "distinguishable to the eye or mind as being discrete (see DISCRETE 1) or not the same: SEPARATE." Ans. 7 (citing https://www.merriam-webster.com/dictionary/distinct)).

and act the same." Appeal Br. 8. Appellant points to several passages from the Specification in support of its argument that "one having ordinary skill would . . . recognize that a portal is distinct from a portlet, as claimed." Appeal Br. 9. In particular, Appellant points to page 8, lines 5–8 of the Specification, which states:

> The agents 170 can be programmed to detect interactivity within the corresponding application 140 and can report the interactivity 180 to the centralized session management logic 200. Likewise, the centralized session management logic 200 can be programmed to detect interactivity 180 within the aggregation 120, itself.

Appellant argues "[a] proper reading of this passage requires that the detection of interactivity in the application 140 be different than the detection of interactivity in the portal 120. Accordingly, the application 140 must be distinct from the portal 120." Appeal Br. 9; *see also* Appeal Br. 10, 12. Appellant also points to page 9, lines 16–18 of the Specification, which states "Beginning in block 210, a selection of applications, for example, portlets, can be loaded in an aggregation of applications, for example a portal." Appellant argues "a portal is a standalone entity into which distinct portlets can be added." Appeal Br. 9.

Appellant further argues the Examiner fails "to appreciate the difference between 'separate' and 'distinct.'" Reply 2; *see also* Appeal Br. 11. According to Appellant, "the Examiner's analysis that refers to 'included and part of' is only relative to something that is 'separate.'" Reply Br. 2–3. Appellant contends that the word "distinct" essentially means "seen as not the same or not identical," but the term "separate" means "kept apart."

Reply Br. 3.[3] Appellant argues the Examiner has presented a narrow

construction of the term "distinct," that only describes certain examples of

what can be considered "distinct," namely, being separate. Reply Br. 4.

Appellant further argues the Examiner errs by construing the term "distinct"

the same as "separate" because claim 37 uses both terms, and the general

assumption is that different terms have different meanings. Reply Br. 4–5.

We do not find Appellant's arguments persuasive. To satisfy the

written description requirement under 35 U.S.C. § 112(a), the specification

must "reasonably convey[ ] to those skilled in the art that the inventor had

possession" of the claimed invention as of the filing date. *Ariad Pharms.,*

Inc. v. Eli Lilly & Co., 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc).

Although the Specification need not recite the claimed invention *in haec*

verba, it must do more than simply render the claimed invention obvious.

Id. at 1352. "One shows that one is 'in possession' of *the invention* by

describing *the invention*, with all its claimed limitations, ... by such

descriptive means ... that fully set forth the claimed invention." *Lockwood v.*

American Airlines Inc., 107 F.3d 1565, 1572 (Fed. Cir. 1997) (citation

omitted). In determining what "the claimed subject matter" is, we apply the

broadest reasonable interpretation of the claim that is consistent with

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[3] Appellant provides a citation to Dictionary.com's definition of "distinct," as "distinguished as not being the same; not identical; separate (sometimes followed by from)." Reply Br. 3 (citing https://www.dictionary.com/browse/distinct). Appellant also provides citations to Merriam Webster's and Dictionary.com's definitions of "separate." Reply Br. 3 (citing https://www.meriam.webster.com/dictionary/separate) and https://www.dictionary.com/browse/separate).

Appellant's Specification. *See In re American Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). We then perform "an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art," to determine whether it demonstrates possession of the claimed subject matter. *Ariad*, 598 F.3d at 1351.

Appellant's argument that a portal "is an example of a host aggregation environment" is not supported by the Specification. Appellant does not explicitly define a "host aggregation environment" in the Specification, nor does Appellant provide any evidence or citations to the Specification in support of the argument that the portal is a host aggregation environment. Appellant's Specification indicates that "[t]he host aggregation environment can include a portal environment, wherein each application can include a portlet and wherein the aggregation can be a portal." Spec. 5; *see also* Spec. 4 ("aggregating a set of applications in a host aggregation environment"); Spec. 5 ("each application in an aggregation in the host aggregation environment"); Spec. 7 ("the host environment can be a portal environment hosting a portal having a multiplicity of portlets," "aggregated application distribution system can include a host environment 150 such as a portal server hosting an application aggregation 120 such as a portal including one or more applications 140 as a set of portlets"); Spec. 8 ("application in the aggregation"); Spec. 9 ("a collection of applications, for example, portlets, can be loaded in an aggregation of applications, for example a portal"); Spec. Fig. 1. In other words, Appellant's Specification describes three different things: a host environment, an application aggregation, and one or more applications. In light of the disclosure in Appellant's Specification, the portal corresponds to

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the application aggregation, the portlet corresponds to the applications, and the portal environment corresponds to the host environment. The host aggregation environment, therefore, includes at least the application aggregation and the applications, or, both the portal and the portlets. *See* Spec. 4, 5, 7, 9, Fig. 1. Claims 37, 43, and 49 recite "a set of applications that are distinct from the host aggregation environment." Accordingly, Appellant's arguments and supporting citations to the Specification that the application (portlet) is distinct from the portal are not commensurate with the claim language.

The question before us whether there is sufficient written description to support that the applications (or portlets) that are included within or in the host aggregation environment (e.g., the portal environment, including the portal and portlets) are *distinct from* the host aggregation environment. Even assuming we agree with Appellant as to the appropriate meaning of "distinct from" as used in the claims, Appellant has not sufficiently identified where this limitation is supported in the Specification, or provided evidence that Appellant's disclosure demonstrates possession of the invention to one of ordinary skill in the art.

Accordingly, we are not persuaded the Examiner erred in rejecting claims 37–54 as lacking written description.

35 U.S.C. § 103 Rejections

Appellant argues that the Examiner's analysis is not based upon the new language in the claims, in particular, the language "a set of applications that are distinct from the host aggregation environment," as recited in independent claims 37, 43, and 49. Appeal Br. 15. In the Answer, the

Examiner points to Hayer, column 3, lines 43–67, "that application 1 and application 2 are distinct from the portal manager as it runs on its own computing system." Ans. 9–10. In Reply, Appellant argues "Hayer does not disclose an application 1 and application 2." Reply Br. 8.

We are not persuaded. Hayer describes a "portal manager 330 and several disparate applications." Hayer 3:46–47; *see also* Fig. 4, 2:17–18; 3:48–67; 4:40–45. Appellant has not provided sufficient argument as to why Hayer's disclosure, as identified by the Examiner, does not teach "a set of applications that are distinct from the host aggregation environment." *See* Appeal Br. 13.

Appellant also argues the Examiner errs with respect to the limitation "monitoring, separate from the monitoring for interactivity within the applications, for interactivity within the host aggregation environment itself," recited in independent claims 37, 43, and 49. Specifically, Appellant argues that "[t]he Board recognized a difference between separately monitoring for interactivity within the host aggregation environment versus monitoring for interactivity within the host aggregation environment itself," and argues that "[t]he Examiner's response . . . does not address this important distinction." Appeal Br. 17; *see also* Reply Br. 7–8.

Appellant has not addressed or argued why Hayer does not teach or suggest the disputed limitation. The Examiner relies on column 1, line 63 through column 2, line 10 of Hayer to teach or suggest this limitation. Final Act. 8. This portion of Hayer describes an embodiment where "a communication manager establishes communication sessions for several applications with a common external terminal . . . [and] may receive messages identifying terminal activity at one of the applications and may

signal to the other applications to keep their sessions active." Hayer, 2:4–10. Under the broadest reasonable interpretation in light of Appellant's Specification (e.g., Spec. 8, 10), we agree with the Examiner that Hayer's communication manager receiving messages identifying terminal activity at one of the applications within a common external terminal teaches or suggests separately monitoring for interactivity *within* the host aggregation environment *itself*. In other words, separate from any monitoring for interactivity within the applications (as described in Nickerson, *see* Final Act. 7), Hayer's communication manager monitors for interactivity within the host aggregation environment itself, which includes the portal manager and applications within a common external terminal, in that it receives messages identifying terminal activity at the various applications.

Accordingly, we are not persuaded the Examiner in rejecting claims 37–54 under 35 U.S.C. § 103(a).

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
	§ 112(a)	37–54	
	§ 103(a)	37–54	
Overall Outcome		37–54	

No time period for taking subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED