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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/628,901	09/27/2012	Ryan Smith	KAS-0212	3459
67208	7590	09/26/2019	EXAMINER	
Proactive Patents LLC 955 Garden Park Drive Ste 230 ALLEN, TX 75013			LI, LIANG Y	
			ART UNIT	PAPER NUMBER
			2143	
			NOTIFICATION DATE	DELIVERY MODE
			09/26/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte RYAN SMITH, CHAD GNIFFKE,
ROBERT WENDELL DAVIS, MARK THOMAS LINGEN,
and MARK JAMES SUTHERLAND

Appeal 2018-008777
Application 13/628,901
Technology Center 2100

Before IRVIN E. BRANCH, JOSEPH P. LENTIVECH, and
SCOTT RAEVSKY, *Administrative Patent Judges*.

RAEVSKY, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 4–6, 8, 11–13, 15, and 18–20, all the pending claims in the present application. *See* App. Br. 46–51 (Claims Appendix). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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 Kaseya Limited. Appeal Br. 2.

THE CLAIMED SUBJECT MATTER

Appellant's invention generally relates to providing a user application with a notification message. *See Spec., Abstract.* Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of providing a user application with a notification message, the method comprising:
 - receiving a notification message;
 - parsing at least one word from the notification message indicating a server status;
 - increasing an initial level of importance of the notification message to an elevated level of importance based on a filtering function that identifies the at least one word as requiring an elevated level of importance with regard to the server status, and wherein the elevated level of importance invokes a different type of notification than a notification associated with the initial level of importance;
 - identifying a predetermined category of a notification bar portion of the user application to display the notification message and using the parsed at least one word to select the predetermined category of the notification bar portion and at least one notification type used to display the notification message on the notification bar portion of the user application;
 - identifying the notification message as being assigned to the predetermined category based on one or more notification statements stored in a database and wherein the predetermined category comprises a category name and display icon which are subjectively related to content of the notification message and wherein the predetermined category is linked to one or more portions of the notification bar, based on the predetermined category, associating the notification message with the predetermined category of the notification bar portion associated with the elevated level of importance;
 - displaying a notification indicator on the notification bar according to the predetermined category of the notification bar portion and the at least one notification type that corresponds to the elevated level of importance;

maintaining the displaying of the notification indicator for a predetermined period of time and associating the notification indicator with a predetermined automated action to correct the server status; and

performing the automated action to the server after the predetermined period of time has lapsed absent a user selection operation being received.

REJECTIONS

The Examiner made the following rejections:

Claims 1, 4, 8, 11, 15, and 18 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Kekic (US 5,999,179, issued Dec. 7, 1999) and Zabbix (“Zabbix 1.8 manual,” 2010–2011²). Final Act. 2.

Claims 5, 6, 12, 13, 19, and 20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Kekic, Zabbix, and Horvitz (US 2004/0143636 A1, July 22, 2004). *Id.* at 4.

We review the appealed rejections for error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Appellant initially challenges the publication date of Zabbix as not being before the filing date of the present application (September 27, 2012). App. Br. 12–15; Reply Br. 2–4. Appellant asserts that in the Final Action, the Examiner admitted that Zabbix published May 4, 2016. App. Br. 12–13;

² We list the Examiner’s proffered dates of 2010 and 2011 (separate dates for different pages of Zabbix). Ans. 6. We address Appellant’s dispute of Zabbix’s publication date below. *See* App. Br. 12–15.

see Final Act. 2 (“Claims 1, 4, 8, 11, 15, 18 . . . are rejected . . . in view of Zabbix (‘Zabbix 1.8 manual,’ published 5/4/2016)”). Appellant also relies on the following screenshot from www.zabbix.com:

Previous Zabbix source releases

Package	Release	Date	Release Notes	Zabbix Manual	Download
Zabbix Sources	2.4.8	28 April, 2016			Download
Zabbix Sources	2.0.21	20 April, 2017			Download
Zabbix Sources	1.8.22	15 December, 2014			Download
Zabbix Sources	1.6.9	25 March, 2010			Download
Zabbix Sources	1.4.7	03 January, 2011			Download
Zabbix Sources	1.1.7	30 March, 2007			Download
Zabbix Sources	1.0	23 March, 2004			Download

App. Br. 13. According to Appellant, the above screenshot shows “the only reference to a date associated with a Zabbix 1.8 manual is December 15, 2014, which is also later than the filing date of the present application.” *Id.* Appellant further contends the only evidence the Examiner relies on for an earlier date is the form PTO-892’s listing of “22 Nov. 2009,” appended to the Final Action. *Id.* at 14. The form PTO-892 also includes a link to the Zabbix version 1.8 manual, but Appellant contends the website at the link does not support the Examiner’s proffered publication date. *Id.*

In the Answer, the Examiner cites new evidence supporting a publication date earlier than Appellant’s filing date. Ans. 6. This evidence includes, among other things, a link to archive.org showing a date of October 7, 2011 for “section 2.8.4 [of Zabbix] corresponding to p.12.” *Id.* The evidence also includes a link to the Zabbix manual on www.zabbix.com, which the Examiner asserts includes a date of February 25, 2010 for “section 7 corresponding to p.59.” *Id.* Of the evidence the Examiner cited, this evidence is most relevant because the Final Action relies on pages 12 and 59 of Zabbix. Final Act. 4.

On Reply, Appellant does not persuasively rebut the Examiner’s new evidence in the Answer but instead reiterates its arguments from the Appeal Brief. *See* Reply Br. 2–4 (“Appellant submits that regardless of the archive.org and WAYBACK MACHINE evidence provided by the Examiner . . .”). But arguments not made are waived. *See Frye*, 94 USPQ2d at 1075 (The Board “reviews . . . rejection[s] for error based upon the issues identified by appellant, and in light of the arguments and evidence produced thereon,” and treats arguments not made as waived.). Accordingly, Appellant does not persuade us of error in the Answer’s new findings.

Appellant next contends the combination of Kekic and Zabbix fails to teach or suggest claim 1’s “parsing at least one word from the notification message to identify a server status.” App. Br. 16. Specifically, Appellant contends:

The example on column 4 of Kekic discloses SNMP and PDUs using standard commands. . . . The Examiner then moves from column 4 to columns 67 and 85 of Kekic to allegedly provide support for the parsing operation of claim 1. Appellant disagrees and submits that 60 some-odd columns later, the teachings of Kekic disclose various classes associated with a target container. One class “Class Severity” is a helper class that identifies severity parameters, creates color indicators and blinking intervals (see column 67 of Kekic). Also, column 85 provides nothing further to support those features of claim 1. Appellant submits that none of those examples disclose or suggest the parsing of the notification message to identify a server status, this feature was not taught by Kekic.

Id.

The Examiner finds, and we agree, that Kekic teaches or suggests “the parsing of at least one word from a notification message indicating server status.” Ans. 7 (citing Kekic 67:55–60, 85:53–63). Specifically, Kekic

describes “severity level information” that is “passed from server 314.” Kekic 67:52–53. In other words, Kekic discloses a notification message containing severity level information from the server, i.e., a notification message related to server status. Kekic also describes a “helper class” that “helps in parsing the severity parameters” extracted from the notification message. *Id.* at 67:56–58. Accordingly, Appellant does not persuade us of error in the Examiner’s finding that Kekic teaches or suggests claim 1’s “parsing at least one word from the notification message to identify a server status.”

Appellant next contends Kekic and Zabbix fail to teach or suggest claim 1’s “increasing an initial level of importance of the notification message to an elevated level of importance based on a filtering function that identifies the at least one word as requiring an elevated level of importance with regard to the server status.” App. Br. 16–17. Specifically, Appellant contends, “[c]olumn 22 of Kekic, considered pertinent by the Examiner, discloses a table 3 that has various severity levels, however, elevating a severity level is not taught by any of those examples.” *Id.* (emphasis omitted). Further, Appellant contends, “[as] there is no teaching of a word being parsed and then severity increasing, this feature of claim 1 is completely overlooked by the reliance on the teachings of Kekic.” *Id.* at 17 (emphasis omitted). Appellant asserts that Kekic column 67 also “offers nothing about that specific feature of claim 1.” *Id.*

In the Answer, the Examiner newly finds column 22 of Kekic’s “disclosure of the various severity levels issued responsive to the receiving of the message means that changes between these levels, including escalations, are expected based on the message stream.” Ans. 9. The

Examiner also finds, “no explicit use of the word ‘elevation’ is needed in this case.” *Id.* Further, the Examiner finds, “[a] person of ordinary skill in the art would understand that server statuses change regularly from a status indicating, for example, a normal operating condition to an elevated message.” *Id.* The Examiner concludes,

[i]n other words, although the term ‘elevation’ is never explicitly used, one of ordinary skill in the art would understand that elevations and changes in the system based on messages, being the very purpose or operating principle of the system, is disclosed by the Kekic reference in its disclosure of the various server states.

Id.

Appellant does not address the Examiner’s new findings in the Answer. As we noted above, Arguments not made are waived. *See Frye*, 94 USPQ2d at 1075. Accordingly, Appellant does not persuade us of error in the Examiner’s findings.

Lastly, Appellant contends that Kekic and Zabbix fail to teach or suggest claim 1’s “identifying the notification message as being assigned to a predetermined category based on one or more notification statements in a database.” App. Br. 17. Appellant contends that in Kekic, “there is no pool or list of notification statements in a database, retrieved by the application and used to populate the user interface.” *Id.* Further, Appellant contends, “there is no operation disclosed in Kekic for retrieving the category name from a database of category names and display icons and applying it to the notification bar.” *Id.*

The Examiner finds Kekic discloses a “network management agent” and a “network management information database,” which “would contain the structured and retrievable data used to parse these messages and indicate

the severity parameters.” Ans. 10. The Examiner finds, and we agree, “[t]hese associations wi[ll] constitute notification statements in the database used to identify the category and severity level for display.” *Id.*

Appellant’s arguments are not commensurate with the scope of the claim. Claim 1 does not recite a “pool or list of notification statements in a database, retrieved by the application and used to populate the user interface.” *See* App. Br. 17. Likewise, claim 1 does not recite an “operation . . . for retrieving the category name from a database of category names and display icons and applying it to the notification bar.” *See id.* Accordingly, Appellant does not persuade us of error in the Examiner’s findings.

We, therefore, sustain the Examiner’s rejection of claim 1. Appellant’s arguments regarding the rejection of independent claims 8 and 15 rely on the same arguments as for claim 1, and Appellant does not argue separate patentability for the dependent claims. *See* App. Br. 18–44. We therefore also sustain the Examiner’s rejection of claims 4–6, 8, 11–13, 15, and 18–20. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013).

CONCLUSION

In summary:

Claims Rejected	Basis	Affirmed	Reversed
1, 4, 8, 11, 15, and 18	§ 103; Kekic, Zabbix	1, 4, 8, 11, 15, and 18	
5, 6, 12, 13, 19, and 20	§ 103; Kekic, Zabbix, Horvitz	5, 6, 12, 13, 19, and 20	
Overall Outcome		1, 4-6, 8, 11-13, 15, and 18-20	

We affirm the Examiner's § 103 rejections of claims 1, 4-6, 8, 11-13, 15, and 18-20.

AFFIRMED