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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* ROBIN JAMES ADAMS

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Appeal 2019-000111  
Application 14/337,456  
Technology Center 2100

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Before DEBRA K. STEPHENS, JASON V. MORGAN, and  
GREGG I. ANDERSON, *Administrative Patent Judges*.

STEPHENS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant,<sup>1</sup> Adobe Inc., appeals from the Examiner's decision to reject claims 1–7, 9, 12–15, 17–22, 24, and 25 (Final Act. 1). 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(a). Appellant identifies the real party in interest as Adobe Systems, Inc. (Appeal Br. 2).

### CLAIMED SUBJECT MATTER

According to Appellant, the claims are directed to an appending new content to open content. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A computer-implemented method, comprising:
  - displaying, in a window, content having one or more hyperlinks associated with additional content;
  - receiving a first user input corresponding to a selection of a hyperlink embedded in the content that is displayed in the window;
  - responsive to receiving the first user input corresponding to the selection of the hyperlink embedded in the content that is displayed in the window, adding the additional content associated with the selected hyperlink to the displayed content in the window without automatically navigating to the additional content, the content and the additional content being displayable together as a single content chain;
  - generating a list of items including a first item corresponding to the content in the single content chain and a second item corresponding to the additional content in the single content chain; and
  - responsive to receiving a second user input, modifying the single content chain and the list of items, the second user input corresponding to a selection to remove at least one of the content or the additional content in the single content chain, the modifying including removing the first item or the second item from the list of items based on the second user input.

### REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Rowe	US 8,156,428 B1	Apr. 10, 2012
Goodger	US 8,762,879 B1	June 24, 2014
Jang	US 2010/0093325 A1	Apr. 15, 2010

## REJECTIONS

Claims 1–4, 6, 7, 9, 12–15, 18–20, 22, and 25 are rejected under 35 U.S.C. § 103 as being unpatentable over Rowe and Jang (Final Act. 2–24); and

Claims 5, 17, 21, and 24 are rejected under 35 U.S.C. § 103 as being unpatentable over Rowe, Jang, and Goodger (*id.* at 24–30).

## OPINION

*35 U.S.C. § 103(a): Claims 1–4, 6, 7, 9, 12–15, 18–20, 22, and 25*

Appellant contends their invention as recited in claims 1–4, 6, 7, 9, 12–15, 18–20, 22, and 25, is not obvious over Rowe and Jang (*see* Appeal Br.).<sup>2</sup> In particular, Appellant argues independent claims 1, 7, and 14 (*id.* at 1–16). With respect to claim 1, Appellant argues:

(i) the Examiner has not shown the combination of Rowe and Jang teaches:

responsive to receiving a second user input, modifying the single content chain and the list of items, the second user input corresponding to a selection to remove at least one of the content or the additional content in the single content chain, the modifying including removing the first item or the second item from the list of items based on the second user input,

as recited in claim 1 (Appeal Br. 6–9) and

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<sup>2</sup> Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant did not make in the Briefs have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(iv)).

(ii) the Examiner “impermissibl[y relied] on Appellant’s disclosure to interpret a feature not shown by a cited reference as a basis to substantiate a rejection” (*id.* at 9–10).

(i) “responsive to receiving”

The Examiner relies on Jang to teach this limitation, and in particular, Jang paragraphs 98 and 100 (Final Act. 4–5):

In the meantime, if a plurality of web pages are merged into a single web page, a plurality of thumbnail images respectively corresponding to the web pages may be displayed on the display module **151**. Then, if one of the thumbnail images is chosen, the controller **180** may display the web page corresponding to the chosen thumbnail image on the entire display module **151**. In addition, if the thumbnail images are rearranged, the controller **180** may rearrange the web pages included in the single web page accordingly.

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If the user touches one of the group of thumbnail images **710**, as indicated by reference numeral **720**, and then drags the touched thumbnail image **710** into the arrangement zone **750**, as indicated by reference numeral **730**, the dragged thumbnail image **710** may be displayed in the arrangement zone **750**. In this manner, a number of thumbnail images **710** may be displayed and arranged in the arrangement zone **750**. Thereafter, if the user chooses to merge the web pages respectively corresponding to the thumbnail images **710** in the arrangement zone **750**, a web page obtained by merging the corresponding web pages may be displayed

(Jang ¶¶ 98, 100). The Examiner further determines Jang teaches “rearrangement of web pages and their thumbnails within an arrangement zone” (Final Act. 32). According to the Examiner, “[t]o include web pages in the chain[,] thumbnails are placed in the arrangement zone from the list of thumbnails. To remove web pages from the chain[, an ordinarily skilled

artisan would have found it obvious to] remove the web page thumbnail from the arrangement zone” (*id.*).

Appellant contends the Examiner “misapplied Jang” and specifically, “Jang only describes that a user selected thumbnail can be rearranged and the merged web pages are rearranged according to the rearrangement of the list of thumbnails” but does not explicitly describe “rearranging the list of thumbnail images includ[ing] removing and/or closing a web page” (Appeal Br. 8–9; Reply Br. 5). Thus, Appellant asserts Jang fails to teach the disputed limitation (*id.*).

The Examiner responds “[r]earranging thumbnails to rearrange the merged webpages [ ] suggest[s] removing webpages because there are arrangements that would include some but not all of the original arrangement of webpages” (Ans. 33).

We agree with the Examiner’s findings. As noted by the Examiner, the question “is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made” (Ans. 33 (quoting *Merck & Co., Inc. v. Biocraft Laboratories, Inc.* 874 F.2d 804 (Fed. Cir. 1989))). A skilled artisan is “a person of ordinary creativity, not an automaton” (*see KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007)). Here, we determine that Jang’s teaching of rearranging thumbnails to rearrange merged webpages teaches or at least suggests removing webpages. Jang teaches that “thumbnail images” may be “*chosen* from the group of thumbnail images **710** are arranged may be provided below the group of thumbnail images **710**” (Jang ¶ 99 (emphasis added)). A user command that involves a choice would suggest to an ordinarily skilled artisan, that the choice may include deleting the

thumbnail from the arrangement. Indeed, we determine an ordinarily skilled artisan, looking at Jang's teaching of rearranging in conjunction with the disclosure in Figure 10, would understand "rearranging" to include removing webpages.<sup>3</sup>

(ii) impermissibly relied on Appellant's disclosure

Appellant next argues the Examiner "relies on the disclosure of the subject application to interpret a plausible feature of Jang as a basis to substantiate a rejection of the subject application" (Appeal Br. 10).

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<sup>3</sup> Appellant argues the Examiner's quote of case law and further explanation (Ans. 33) introduces a new ground of rejection. Our review of the record indicates that Appellant did not file a petition under 37 C.F.R. § 1.181(a) within two months from the mailing of the Examiner's Answer requesting that a ground of rejection set forth in the Answer be designated as a new ground of rejection:

If appellant believes that an examiner's answer contains a new ground of rejection not identified as such, appellant may file a petition under 37 CFR 1.181(a) within two months from the mailing of the examiner's answer requesting that a ground of rejection set forth in the answer be designated as a new ground of rejection. Any such petition must set forth a detailed explanation as to why the ground of rejection set forth in the answer constitutes a new ground of rejection. *Any allegation that an examiner's answer contains a new ground of rejection not identified as such is waived if not timely raised (i.e., by filing the petition within two months of the answer) by way of a petition under 37 CFR 1.181(a).*

MPEP § 1207.03(IV)(emphasis added).

Therefore, Appellant has waived the allegation that the Examiner's Answer contains a new ground of rejection because Appellant did not file a petition under 37 C.F.R. § 1.181(a) within two months from the mailing of the Examiner's Answer.

According to Appellant, “there is no teaching whatsoever in Jang to ‘remove a web page from the chain’” and thus, the Examiner is “[m]erely concluding, without sufficient support, that a feature of a reference represents that which is positively recited by Appellant” which “is not a proper basis to substantiate a rejection” (*id.*). For the reasons set forth above, we are not persuaded an ordinarily skilled artisan upon reading Jang, would understand “rearranging” to include “removing the first item or the second item from the list of items,” as recited in claim 1.

For the first time in the Reply Brief, Appellant argues the Examiner has failed to show “it would have been obvious to combine teachings in [Jang and Rowe] together to arrive at the claimed invention” (Reply Br. 6). Appellant had an opportunity to raise the arguments in the Appeal Brief, and has provided this record with no such showing of good cause for not doing so. In the absence of a showing of good cause by Appellant, the new arguments by Appellant are thus deemed waived (*see* 37 C.F.R. § 41.41(b)(2); *see also* *Optivus Tech., Inc. v. Ion Beam Appl’ns S.A.*, 469 F.3d 978, 989 (Fed. Cir. 2006) (“[A]n issue not raised by an appellant in its opening brief . . . is waived.”) (Internal citations and quotation marks omitted)).

(iii) Conclusion

Accordingly, we are not persuaded the combination of Rowe and Jang fails to teach or suggest:

responsive to receiving a second user input, modifying the single content chain and the list of items, the second user input corresponding to a selection to remove at least one of the content or the additional content in the single content chain, the

modifying including removing the first item or the second item from the list of items based on the second user input,  
as recited in claim 1.

*Claims 7 and 14:*

Appellant argues nothing in Jang mentions modify[ing] the open document chain and the list of items responsive to a user input that initiates removal of one of the documents in the document chain, the list of items being modified by removing at least one of the items from the list of items that corresponds to the removal of the one document from the document chain,  
as recited in claim 7 (Appeal Br. 11) and as similarly recited in claim 14 (*id.* at 14). Appellant again contends Jang has “no explicit description or mention . . . that rearranging the list of thumbnail images includes removing and/or closing a web page” (*id.* at 12, 15).

Appellant additionally again argues the Examiner relies on the subject application’s disclosure and concludes, without sufficient support, that a feature of a reference represents the recited limitation (*id.* at 13). Thus, according to Appellant, the Examiner’s conclusion “is not a proper basis to substantiate a rejection” (*id.* at 12, 16).

As set forth above, we are not persuaded Jang fails to teach or suggest modifying by “removing at least one of the items from the list of items,” as recited in claim 7 and as similarly recited in claim 14.

*Conclusion:*

We are not persuaded the Examiner erred in finding the combination of Rowe and Jang teaches, suggests, or otherwise renders obvious the limitations as recited in independent claims 1, 7, and 14. Claims 2–4, 6, 9, 12, 13, 15, 18–20, 22, and 25 are not separately argued (Appeal Br. 17). Therefore, we sustain the rejection of claims 1–4, 6, 7, 9, 12–15, 18–20, 22, and 25 under 35 U.S.C. § 103(a) for obviousness over Rowe and Jang.

*35 U.S.C. § 103(a): Claims 5, 17, 21, and 24*

Appellant contends their invention as recited in claims 5, 17, 21, and 24, is not obvious over Rowe, Jang, and Goodger based on their dependence from independent claims 1, 7, and 14, respectively (Appeal Br. 17). Based on our findings and conclusions set forth above with respect to independent claims 1, 7, and 14, we are not persuaded the Examiner erred in finding the combination of Rowe, Jang, and Goodger teaches or suggests claims 5, 17, 21, and 24, not separately argued (Appeal Br. 17). Therefore, we sustain the rejection of claims 5, 17, 21, and 24 under 35 U.S.C. § 103(a) for obviousness over Rowe, Jang, and Goodger.

DECISION

The Examiner's rejections are AFFIRMED.

More specifically:

The Examiner's rejection of claims 1–4, 6, 7, 9, 12–15, 18–20, 22, and 25 under 35 U.S.C. § 103 as being unpatentable over Rowe and Jang is affirmed; and

The Examiner's rejection of claims 5, 17, 21, and 24 under 35 U.S.C. § 103 as being unpatentable over Rowe, Jang, and Goodger is affirmed.

DECISION SUMMARY

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>References</b>	<b>Affirmed</b>	<b>Reversed</b>
1-4, 6, 7, 9, 12-15, 18-20, 22, 25	103(a)	Rowe, Jang	1-4, 6, 7, 9, 12-15, 18-20, 22, 25	
5, 17, 21, 24	103(a)	Rowe, Jang, Goodger	5, 17, 21, 24	
<b>Overall Outcome</b>			1-7, 9, 12-15, 17-22, 24, 25	

FINALITY AND RESPONSE

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

AFFIRMED