UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/427,326	02/08/2017	Ben-Zion KLEIN	BKLK P0597C3	4169

122066   7590   07/01/2020

M&B IP Analysts, LLC
500 Headquarters Plaza
Morristown, NJ 07960-7070

EXAMINER
NGUYEN, DINH

ART UNIT	PAPER NUMBER
2647	

NOTIFICATION DATE	DELIVERY MODE
07/01/2020	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

eofficeaction@appcoll.com
michael.benshimon@gmail.com
pair@mb-ip.com

PTOL-90A (Rev. 04/07)

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte BEN-ZION KLEIN, ISRAEL BELFER, and
EHUD SPIEGEL

_____

Appeal 2019-000364
Application 15/427,326
Technology Center 2600

_____

Before ROBERT E. NAPPI, THU A. DANG, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Examiner's
Final Rejection of claims 75–77, 79–83, 85–87, 89, 90, and 92, which are all
of the claims pending in the application. Claims 1–74, 78, 84, 88, and 91 are
canceled. On June 17, 2020, an oral hearing was held in this appeal. A
transcript of the hearing will be added to the record in due course. We have
jurisdiction under 35 U.S.C. § 6(b).

We reverse.

---

[1] We use the word "Appellant" to refer to "applicant" as defined in
37 C.F.R. § 1.42. Appellant identifies BKLK Ltd. as the real party in
interest. Appeal Br. 3.

STATEMENT OF THE CASE

Introduction

Appellant generally describes the disclosed and claimed invention as follows:

> Apparatus for constructing a digital telephone message including a message defining unit, configured for allowing a sender to define a message for sending to a recipient, and a response defining unit, configured for allowing the sender to predefine a recipient response, and to include the predefined recipient response in the message for activation at the recipient. Apparatus for receiving a digital telephone message, the message including an activatable sender-defined response, the apparatus including a receiving unit for receiving the message, a notification unit for notifying a recipient of the arrival of the message, and a response activation unit for displaying the sender-defined response, and associating the sender-defined response with a user action for providing user input to send the response. Related apparatus and methods are also described.

Abstract.[2]

Claims 75, 81, 82, 87, and 90 are independent claims. Claim 75, which is reproduced below, is illustrative of the subject matter on appeal:

> 75.   A method for authorization-based messaging, comprising:
>
> constructing a digital message, the digital message including a script code and at least one activatable response, the script code defining at least one required authentication; and
>
> sending the constructed digital message to a recipient device, wherein the script code, when executed at the recipient device, configures the recipient device to:

---

[2] Our Decision refers to the Final Office Action mailed Oct. 18, 2017 ("Final Act."), the Appeal Brief filed May 16, 2018 ("Appeal Br."), Reply Brief filed Oct. 15, 2018 ("Reply Br."), the Examiner's Answer mailed Aug. 13, 2018 ("Ans."), and the Specification filed Feb. 8, 2017 ("Spec.").

identify at least one input of a user of the recipient device;

determine, based on the identified at least one input, whether the at least one required authentication has been provided;

display the digital message, when it is determined that the at least one required authentication has been provided, wherein the display includes displaying at least a portion of the at least one activatable response.

Appeal Br. 19 (Claims App.).

Rejections on Appeal

Claims 75–77, 79, 81–83, 85, 87, and 90 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Diddee et al. (US 2006/0026256 A1; published Feb. 2, 2006) ("Diddee") and Mulder et al. (US 2002/0172367 A1; published Nov. 21, 2002) ("Mulder"). Final Act. 8–15.

Claims 80, 86, 89, and 92 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Diddee, Mulder, and Ishigaki (US 2001/0056410 A1; published Dec. 27, 2001) ("Ishigaki"). Final Act. 15–16.

ANALYSIS

The dispositive issue raised by the arguments in Appellant's briefs is whether the combination of Diddee and Mulder teaches or suggests "the digital message including a script code," as recited in claim 75, and as similarly recited in independent claims 81, 82, 87, and 90.[3]

---

[3] Appellant argues the claims as a group focusing on claim 75. *See* Appeal Br. 6–16. Accordingly, we select claim 75 as illustrative, and the remaining claims stand or fall with claim 75. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Examiner's Rejection of Claim 75

The Examiner rejects claim 75 under 35 U.S.C. § 103(a) for obviousness over the combination of Diddee and Mulder. Final Act. 8–11. In particular, the Examiner finds that Diddee teaches the digital message including a script code. *Id.* at 8 (citing Diddee ¶¶ 31, 51, Fig. 9). The Examiner also finds that the screenshot in Figure 9 of Diddee shows that "the sender's instant messenger component 212 has started a chat conversation with one of the recipient's instant messenger components 214," so that "the structured communication is a script code integrated with an instant message and is executed at the recipient device to display the chat screen," which reads on the disputed limitation. Ans. 3; *see also id.* at 6–7. The Examiner further states that Appellant's argument, that Diddee's teaching in paragraph 34 of a user receiving a link does not teach script code that is executable to produce a display, is not related to the Final Office Action. Ans. 7. However, the Examiner then finds that "the link is a script code that is executable and to be executed for a specific intended result to be displayed." *Id.* at 8.

Diddee Reference

Diddee uses instant messaging to effectuate structured communications. Diddee, code (57). Diddee explains that:

> A structured communication component is used in conjunction with an instant messaging component to allow an instant messaging user to formulate a structured communication for transmission to one or more recipients. The recipients are presented with the structured communications such that they provide a structured response that is transmitted back to the sender of the message.

Diddee ¶ 8.

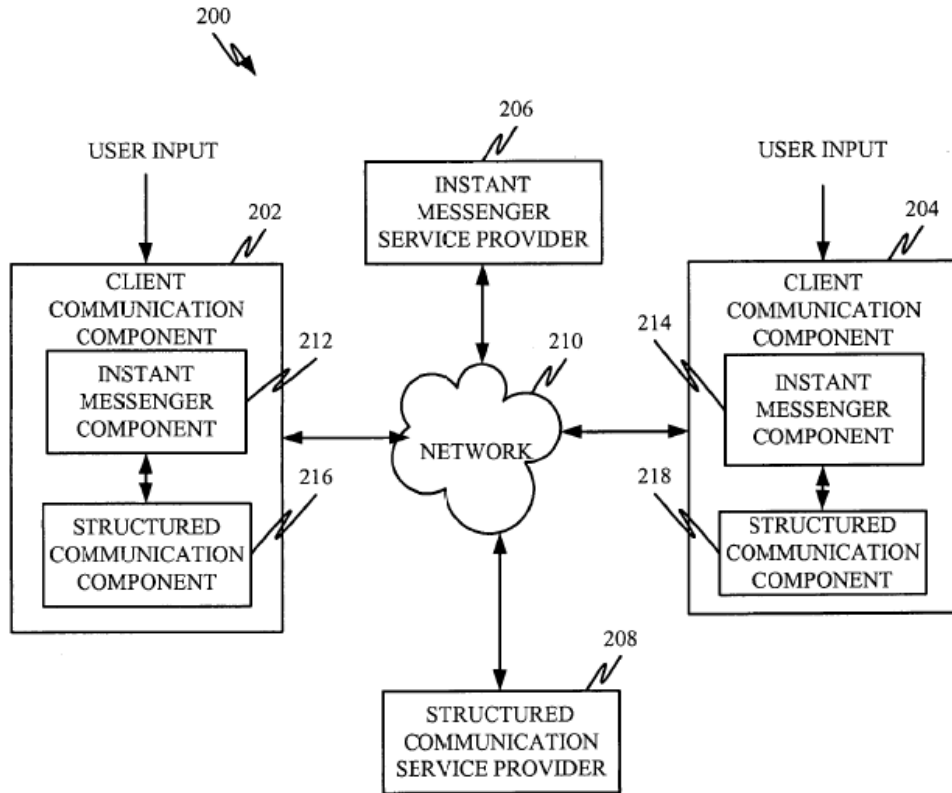Figure 2 of Diddee, which is reproduced below, is an exemplary block diagram of the invention.

FIG. 2

Appellant's Arguments

Appellant contends that neither embodiment of Diddee, as taught in paragraphs 32 and 33, reads on the disputed limitation of claim 75. Appeal Br. 7–8. In that regard, Appellant argues that paragraph 32 teaches that the "structured communication <u>can be integrated within the instant message</u> generated by the user of component 202, using instant messenger component 212," but this "does not teach that the structured communication integrated in the instant message includes script code." *Id.* Appellant also argues that paragraph 33 of Diddee teaches that "the structured communication generated by the sender can be stored by structure[d] communication service

provider 208 and the user <u>can send to a recipient a link to the stored</u> <u>structured communication</u>." *Id.* at 8. Appellant further argues, however, that the link is not script code or executable code, but rather an address or pointer that directs the browser to a particular location when the browser is launched and opens the web page corresponding to the link. *Id.* at 10–16 (citing Diddee ¶¶ 30, 34). Moreover, Appellant argues that paragraph 51 and Figure 9 of Diddee "only show a chat conversation, but do not explain how the chat conversation is displayed, let alone that the chat conversation is caused via execution of a script code included in a digital message as claimed." *Id.* at 9.

Applicable Law

"After evidence or argument is submitted by the applicant in response [to the Examiner's presentation of a *prima facie* case of unpatentability], patentability is determined on the totality of the record, by a preponderance of evidence with due consideration to persuasiveness of argument." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992); *see also In re Sullivan*, 498 F.3d 1345, 1352 (Fed. Cir. 2007) ("Whether the composition would have been obvious cannot be determined without considering evidence attempting to rebut the prima facie case."); *In re Rinehart*, 531 F.2d 1048, 1052 (CCPA 1976) ("When prima facie obviousness is established and evidence is submitted in rebuttal, the decision-maker must start over.").

Claim Construction

Before addressing the merits of Appellant's arguments, we first construe the term "script code." Appellant argues that "in computing, a 'script' is a program 'written for a special run-time environment' and includes code written in the scripting language." Appeal Br. 8 (citing

Wikipedia, Scripting language,
https://en.wikipedia.org/wiki/Scripting_language (last accessed May 15, 2018). Appellant's Specification does not expressly define the term "script code." In describing certain embodiments of the invention, the Specification states, for example, "sending the response is performed by software such as, by way of a non-limiting example, a script, or a widget configured in the receiving apparatus." Spec. p. 21, ll. 23–25. The Specification also states that the short message service ("SMS") client software parses the SMS text and "optionally uses at least some of the SMS text as a directive or script for execution." Spec. p. 35, ll. 13–15. The Specification further states, "the indication that a response is desired optionally comprises code, executable at the receiver" and in other embodiments "the code comprises a script to be optionally run by the receiver." Spec. p. 36, ll. 3–4, 9–10. Thus, in view of Appellant's argument and the Specification, we conclude that the broadest reasonable interpretation of the term "script code" is "executable code."

Does Diddee Teach or Suggest the Disputed Limitation?

Turning to Appellant's arguments, we determine, on this record, that the sections of Diddee relied on by the Examiner do not teach or suggest "the digital message including a script code," for four reasons. First, in regard to the embodiment of Diddee in which the structured communication is integrated with the instant message generated by the user, Appellant argues, and we agree, that Diddee specifically teaches that the <u>structured communication component</u> (not the structured communication) provides the functionality to display the structured communication. Appeal Br. 8 (citing Diddee ¶ 32) (emphasis added). In that regard, paragraph 32 of Diddee states as follows:

7

In that instance, where the structured communication is integrated into the instant message, the message is simply transmitted to communication component 204. <u>Structured communication component</u> 218 on communication component 204 will recognize that a structured communication has been embedded in the instant message and <u>provide functionality to allow instant messenger component 214 to display that structured communication</u> to the user of component 204, and to allow the user to respond to that structured communication. (Emphasis added).

Thus, Appellant also argues, and we agree, that "at best, Diddee appears to teach the <u>structured communication component</u> including a script code," but this "does not read on the claimed features of the <u>digital message</u> including a script code." Appeal Br. 8–9.

Second, we are not persuaded by the Examiner's findings that Diddee discloses the invention can be described in the general context of computer-executable instructions, such as program modules being executed by a computer, and that "the structured communication is a program, a program module which is a script code comprising computer-executable instructions." Ans. 4–5 (citing Diddee ¶ 16). Instead, we agree with Appellant that a person of ordinary skill in the art, reading Diddee as a whole, would understand that Diddee teaches the structured communication components may be implemented with software, but this would not "suggest sending such software in a structured communication." Reply Br. 3 (emphasis omitted). In that regard, Appellant further argues as follows:

Thus, even if such software reads on a script code (which Applicants do not agree with or admit), Diddee still would not disclose sending such software in a digital message as claimed. Rather, sending software would be unnecessary since the structured communication components would include the

8

> software required for providing functionality including displaying the structured communication.

Id. We agree with Appellant's argument that sending software in a digital message as claimed would be unnecessary because, as discussed *supra*, the structured communication component would include the software required for the display functionality.

Third, we are persuaded by Appellant's argument that paragraph 51 and Figure 9 of Diddee do not teach or suggest "the digital message including a script code." Appeal Br. 9–10. The Examiner finds that "the structured communication is a script code integrated with an instant message and is executed at the recipient device to display the chat screen." Ans. 3 (citing Diddee Fig. 9, ¶ 51); *see also id.* at 6–7. The Examiner also finds that "without the structured communication, the structure communication component alone would not be able to configure the recipient device to display as shown in Figure 9 as the structured communication is specifically programmed to display the specific chat screen as shown in Figure 9 of Diddee." *Id.* at 5. We do not agree with the Examiner's findings.

Paragraph 51 of Diddee explains that Figure 9 is a screenshot showing "an embodiment in which the structured communication is integrated with an instant message." Paragraph 51 states that when the sender's instant messenger component has started a chat conversation with one of the recipient's instant messenger components, "a structured question is presented . . . along with a list of pre-defined selectable options for response in a drop down box." However, as Appellant argues, and we agree, this cited section of Diddee does not teach or suggest "that the structured communication is <u>programmed,</u>" and the Examiner fails to identify any portion of Diddee teaching or suggesting that "the structured communication

is specifically programmed to display the specific chat screen" shown in
Figure 9 or "that the structured communication <u>configures</u> any device."
Reply Br. 4. We also agree with Appellant's argument that "showing the
<u>output</u> of a program does <u>not</u> demonstrate that such a program <u>is included as</u>
<u>a script code in a digital message</u>." Appeal Br. 10. As Appellant further
argues, and we agree, "whether the structured communication is required for
a particular display is irrelevant to the question of whether it includes script
code" because "the structured communication may be required for its
<u>contents</u> (e.g., a link, text, or other content) without being needed for
providing <u>functionality</u> as code would." Reply Br. 4.

Fourth, in regard to Diddee's second embodiment in which a user
receives a link to a stored structured communication (*see* Diddee ¶¶ 33–34),
the Examiner states that Appellant's arguments regarding Diddee's teaching
of a user receiving a link does not teach script code "are not related to the
Final Office Action dated 10/18/2017 of the instant application 15/427,326."
Ans. 7. However, the Examiner then finds that "the link is a script code that
is executable and to be executed for a specific intended result to be
displayed." *Id.* at 8. We do not agree with the Examiner's finding.
Appellant provides persuasive evidence and reasoning that a link or
hyperlink corresponds to an address or pointer and is not script code or
executable code. Appeal Br. 10–16 (citing *Wikipedia,* "Hyperlink,"
https://en.wikipedia.org/wiki/Hyperlink (last accessed May 15, 2018);
Merriam Webster, "Hyperlink,"
https://www.merriam-webster.com/dictionary/hyperlink (last accessed May

15, 2018); *Techterms,* "Hyperlink,"

https://techterms.com/definition/hyperlink (last accessed May 15, 2018);

Wikipedia, "Web browser,"

https://en.wikipedia.org/wiki/Web_browser (last accessed May 15, 2018);

Wikipedia, "Pointer (computer programming),"

https://en.wikipedia.org/wiki/Pointer_(computer_programming) (last

accessed May 15, 2018); *Wikipedia,* "Memory address,"

https://en.wikipedia.org/wiki/Memory_address (last accessed May 15,

2018); Diddee ¶¶ 30, 34). Appellant also persuasively argues that this is

confirmed by paragraphs 30 and 34 of Diddee:

> Put together, this shows that the link of Diddee is simply
> an address to where the structured communication is stored.
> When the link is received, it is recognized as a link. The link is
> not executed. Rather, the code in the receiver opens a browser
> and passes the link to the browser. The browser takes the link as
> a new address, bringing in the structured communication as the
> page at the location specified in the link. No script code or
> execution of the link is performed. It is simply a pointer to where
> the structured communication is stored.

Appeal Br. 12–13 (emphasis omitted).

Thus, we agree with Appellant's argument that "a person having

ordinary skill in the art would not understand a link to read on a script code

and, specifically, would not understand the link of Diddee as being

executable code generally or script code specifically." Reply Br. 5.

Opinion

On this record, we find the preponderance of the evidence establishes

that the sections of Diddee relied on by the Examiner do not teach or suggest

"the digital message including a script code." The Examiner does not rely

on Mulder to teach this limitation. Thus, we do not sustain the Examiner's

rejection of claim 75. For the same reasons, we do not sustain the Examiner's rejections of independent claims 81, 82, 87, and 90, and dependent claims 76, 77, 79, 80, 83, 85, 86, 89, and 92, which stand together with claim 75. *See* 37 C.F.R. § 41.37(c)(1)(iv).

DECISION

We reverse the Examiner's rejection of claims 75–77, 79, 81–83, 85, 87, and 90 under 35 U.S.C. § 103(a) as being unpatentable over Diddee and Mulder.

We reverse the Examiner's rejection of claims 80, 86, 89, and 92 under 35 U.S.C. § 103(a) as being unpatentable over Diddee, Mulder, and Ishigaki.

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
75–77, 79, 81–83, 85, 87, 90	103(a)	Diddee, Mulder		75–77, 79, 81–83, 85, 87, 90
80, 86, 89, 92	103(a)	Diddee, Mulder, Ishigaki		80, 86, 89, 92
Overall Outcome				75–77, 79–83, 85–87, 89, 90, 92

REVERSED