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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JICHUAN CHANG, SHENG LI, and  
PARTHASARATHY RANGANATHAN

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Appeal 2019-001747  
Application 15/032,327  
Technology Center 2100

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BEFORE BRYAN F. MOORE, NORMAN H. BEAMER, and  
JASON M. REPKO, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> Throughout this Decision we have considered the Specification filed April 27, 2016 (“Spec.”), the Final Rejection mailed April 6, 2018 (“Final Act.”), the Appeal Brief filed September 4, 2018 (“Appeal Br.”), the Examiner’s Answer mailed October 18, 2018 (“Ans.”), and the Reply Brief filed December 17, 2018 (“Reply Br.”).

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>2</sup> appeals from the Examiner's decision to reject claims 1, 2, 6, 7, 11, and 12. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm in part.

## BACKGROUND

Appellant's disclosed embodiments and claimed invention relate to an overloaded schedule detection and notification in a calendaring and scheduling system. Spec. ¶¶ 2, 6. Claim 1, reproduced below, is illustrative of the subject matter on appeal (*emphasis* added to contested prior-art limitation):

1. A method for compressing and compacting memory on a memory device, comprising:
  - organizing a number of compressed memory pages referenced in a number of compaction table entries based on *a size of the number of compressed memory pages*;
  - and compressing the number of compaction table entries, in which a compaction table entry comprises a number of fields.

Appeal Br. 22 (Claims App.).

## REJECTIONS

Claim 15 stands rejected under 35 U.S.C. § 112(b) as being indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor regards as the invention. Final Act. 2.

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<sup>2</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 Hewlett Packard Enterprise Development LP. Appeal Br. 1.

Claims 1, 2, 4, 5, 10, 16, and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of US 6,452,602 B1, issued Sept. 17, 2002 (“Morein”), in view of US 5,546,575, issued Aug. 13, 1996 (“Potter”). Final Act. 3–10.

Claim 3 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Potter, and in further view of US 2005/0283711 A1, published Dec. 22, 2005 (“Claseman”). Final Act. 10–12.

Claims 6–8 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Potter, and in further view of US 8,862,837 B1, published Oct. 14, 2014 (“Marshak”). Final Act. 12–14.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Potter and Marshak, and in further view of US 6,349,150 B1, published Feb. 19, 2002 (“Jones”). Final Act. 15–16.

Claims 11, 13, and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Marshak. Final Act. 16–19.

Claims 12 and 14 stand rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Marshak, and in further view of US 2010/0316114 A1, published Dec. 16, 2010 (“Fallon”). Final Act. 19–22.

Claim 15 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Potter, and in further view of Marshak. Final Act. 22–26.

Claim 18 stands rejected under 35 U.S.C. § 103 as being unpatentable over the combination of Morein, in view of Marshak, and in further view of Potter. Final Act. 26–27.

### ANALYSIS

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). To the extent Appellant has not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We have considered all of Appellant’s arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

#### *Rejection of Claim 15 under 35 U.S.C. § 112(b)*

The Examiner finds that claim 15 is indefinite for failing to particularly point out and distinctly claim the subject matter which the inventor or a joint inventor regards as the invention. Specifically, the Examiner asserts “‘the same size’ (claim 15 ln 6) appears to lack antecedence basis. Examiner suggests amending to ‘the a same size’.” Final Act. 3.

Appellant asserts it “is not appealing the rejection of claim 15 *on this basis.*” Appeal Br. 3. That is, the Appellant advances no arguments concerning the rejection under 35 U.S.C. § 112, for dependent claim 15, and, thus, waives argument as to the rejections of claim 15. *See* 37 C.F.R. § 41.37(c)(1)(iv). We, therefore, summarily sustain the rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017).

*Rejection of Claims 1, 2, 4, 5, 10, 16, and 17 under 35 U.S.C. § 103*

The Examiner finds that claims 1, 2, 4, 5, 10, 16, and 17 would have been obvious over the combination of Morein, and Potter. Final Act. 5–12. Appellant argues that the cited portions of Morein, relied on by the Examiner, do not teach or suggest that “a size of the number of compressed memory pages.” Appeal Br. 5. Appellant argues that the Examiner’s interpretation of the term “a size of the number of” (Ans. 15) is unreasonable. Reply Br. 2.

We agree with Appellant that the Examiner erred. We give contested claim limitations their broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Here, the Examiner interpreted the term “organizing a number of compressed memory pages . . . based on a size of the number of compressed memory pages” to mean “organizing compressed memory pages based on a single size parameter of the compressed memory pages.” Ans. 10. In applying this construction the Examiner states “Morein teaches grouping (*organizing*) compressed data set (*compressed memory pages*) into a group where the group stores a predetermined number (*size*) of compressed data sets.” *Id.* The Examiner argues that in Morein “compressed data sets are

stored into a group based on predetermined number (*size*) of compressed data sets.” *Id.* Thus, the Examiner equates “size’ in the claim to “number.” The Examiner’s interpretation is overly broad, unreasonable, and is not consistent with Appellant’s Specification for the following reasons.

Paragraph 61 of the Specification, for example, describes that “[c]ompressed memory pages in a memory chunk may be grouped [] together. For example, a memory chunk may include memory pages of 4 KB, 2KB, 1 KB, 2KB, and 4KB. In this example, the memory pages may be re-arranged based on size.” Spec ¶ 61; Appeal Br. 2. Appellant argues “[i]f ‘size’ is interpreted to mean ‘number,’ then the resulting claim construction is ‘organizing a number of compressed memory pages . . . based on a [number] of the number of compressed memory pages.’” Reply Br. 1–2. The Examiner’s interpretation does not correspond with what and how the inventor describes his invention in the Specification and is, thus, overly broad. Merely organizing by the number of compressed memory pages read “size” out of the claim. Additionally, as paragraph 61 describes, the Specification associates grouping by “size” as related to at least the size of the individual memory pages.

Because we conclude the Examiner’s construction is overly broad, unreasonable, and inconsistent with the Specification, on the record before us, we reverse the Examiner’s § 103(a) rejection of independent claim 1.<sup>3</sup> We also reverse the rejection of claims 1, 2, 4, 5, 10, 16, and 17, which are

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<sup>3</sup> Appellant raises additional arguments with respect to claims 1 and 11. Because the identified issue is dispositive of the appeal of the rejection of claims 1 and 11, we do not reach the additional arguments.

not argued separately (*see* Appeal Br. 6–10), as obvious over the combination of Morein and Potter.

*Rejection of Claims 11–14, 18, and 19 under 35 U.S.C. § 103*

Appellant is not appealing the rejection of claims 11–14, 18, and 19. *See* Appeal Br. 1. Thus, Appellant acknowledges these grounds but does not request review of or argue these grounds.<sup>4</sup> Appeal Br., 1.

The Appellant advances no arguments concerning the rejections under 35 U.S.C. § 103, for either independent claim 11, or dependent claims 12–14, 18, and 19, and, thus, waive argument as to the rejections of claims 11–14, 18, and 19. *See* 37 C.F.R. § 41.37(c)(1)(iv). We, therefore, summarily sustain the rejection. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017); *In re Baxter Int’l, Inc.*, 678 F.3d 1357, 1362 (Fed. Cir. 2012) (argument waived when not timely presented in briefing to the Board, absent exceptional circumstances); *In re Berger*, 279 F.3d 975, 984–85 (Fed. Cir. 2002) (Board did not err in sustaining a rejection under 35 U.S.C. § 112 ¶ 2 when the Examiner refused to enter an Amendment filed with Appeal Brief and applicant failed to contest the rejection as to the non-amended claims on appeal); Manual of Patent Examining Procedure § 1215.02 (9th ed., Rev. 08.2017, eff. Jan. 2018); *id.* § 1215.03 (“An appellant may, of course, choose not to present arguments or rely upon particular evidence as to certain claim rejections; however, such arguments and evidence are waived for purposes of the

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<sup>4</sup> Appellant states on page 8 of the Appeal Brief that “the rejection of claim 15 is clearly erroneous at least for the same reasons that the rejections of claims 1 and 11 are.” Appeal. Br. 8. Nevertheless, there are no arguments regarding claim 11 in the Brief so this reference to claim 11 appears to be a typographical error.

appeal and the Board may summarily sustain any grounds of rejections not argued.”).

*Rejection of Claim 15 under 35 U.S.C. § 103*

The Examiner finds that claim 15 would have been obvious over the combination of Morein, and Potter. Final Act. 5–12. Appellant argues that the cited portions of Morein, relied on by the Examiner, do not teach or suggest that “resize a number of memory pages to the same size.” Appeal Br. 4. Examiner argues,

Limitation ‘resize a number of memory pages to a same size’ (as amended) when given its plain meaning is interpreted to mean ‘compress a subset of memory pages to a same size’ under broadest reasonable interpretation based upon the customary meaning given to the term by those of ordinary skill in the art at the time of the invention. In other words, claim 15 appears to only require obtaining a subset of memory pages and compressing the subset of memory pages into compressed memory pages where the compressed memory pages are of a same size (instead of compressing all memory pages to be the same size).

Final Act. 39. Appellant argues that in Morein, each data set when compressed has a size corresponding to the compression scheme used to compress that data set. The data sets are not themselves resized so that they are all the same size. Rather, in the applied art, the compressed version of a data set has a size corresponding to the compression scheme used to compress the data set. The data set itself is not resized, and remains the same size.

Appeal Br. 7. Also, Potter is not used by the Examiner to show “resizing.”  
Ans. 6.

According to the Examiner “‘resizing a number of memory pages to a same size’ is interpreted to mean compressing memory pages to a fixed size (or predetermined size). Since size is fixed, the size is the same. In light of the BRI interpretation, Morein teaches compressing texture blocks (*memory pages*) where resulting compressed data set is of a fixed size.” Ans. 17.

We are persuaded by Appellant that the claim requires that the data set be resized and neither Morein nor Potter resize the data set. This is consistent with the Specification which states “memory chunk may include consecutive memory pages having sizes of 2 KB, 1 KB, and 2 KB. In this example, a size of 2 KB may be selected (block 406) as a compressed page size. Accordingly, the compressed pages may now have sizes of 2 KB, 2KB, and 2 KB [thus,] [r]e-sizing a number of page sizes . . .” Spec. ¶ 62; Appeal. Br. 2. In that citation, a group of memory pages is resized. Thus, although the claim does not recite resizing “compacted” memory pages, the term “resizing” suggest that the memory pages within the number of memory pages were “re”sized to be the same size not simply individually compacted to a pre-determined size. Therefore, we reverse the Examiner’s § 103(a) rejection of independent claim 15.

## CONCLUSION

We summarily affirm the Examiner’s rejection of claim 15 under 35 U.S.C. § 112(b). We affirm the Examiner’s rejection of claims 11–14, 18, and 19 under 35 U.S.C. § 103. We reverse the Examiner’s rejection of claims 1–10, 16–17 under 35 U.S.C. § 103. Because we have affirmed at

least one ground of rejection with respect to claims 11–15, 18, and 19 on appeal, the Examiner’s decision rejecting claims 11–15, 18, and 19 is affirmed. *See* 37 C.F.R. § 41.50(a)(1) (“The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the [E]xaminer on that claim, except as to any ground specifically reversed.”).

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	References/Basis	Affirmed	Reversed
15	112(b)	Indefiniteness	15	
1, 2, 4, 5, 10, 16–17	103(a)	Morein, Potter		1, 2, 4, 5, 10, 16–17
3	103(a)	Morein, Potter, Claseman		3
6–8	103(a)	Morein, Potter, Marshak		6–8
9	103(a)	Morein, Potter, Marshak, Jones		9
11, 13, 19	103(a)	Morein, Marshak	11, 13, 19	
12, 14	103(a)	Morein, Marshak, Fallon	12, 14	
15	103(a)	Morein, Potter, Marshak		15
18	103(a)	Morein, Marshak, Potter	18	
<b>Overall Outcome</b>			11–15, 18, 19	1–10, 16–17

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. § 41.50(f).

AFFIRMED IN PART