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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DAVID L. GREENSPAN, AARON BENJAMIN IBA, and
JOHN D. ZAMFIRESCU-PEREIRA

Appeal No. 2019-001812
Application 13/288,010
Technology Center 2100

Before JOHN A. JEFFERY, JOHN P. PINKERTON, and
NORMAN H. BEAMER, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Under 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1–23. 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 Google Inc. Appeal Br. 3. Although the Appeal Brief is unpaginated (unlike the Reply Brief), we nonetheless refer to the Appeal Brief's pages in the order that they appear in the record.

STATEMENT OF THE CASE

Appellant's invention sends documents from a server to multiple thin clients for real time editing. *See generally* Abstract. Each thin client sends their edits or "changesets" back to the server where they are merged into a merged result. Spec. ¶ 139. The merged result is then sent to each client.

Id. ¶ 140. Claims 1 and 21 are illustrative:

1. A method of providing a document to a plurality of thin clients for realtime editing, the method comprising:

at a server having one or more processors and memory storing one or more programs for execution by the one or more processors to perform the method,

sending to the plurality of thin clients copies of the document for realtime editing;

obtaining two or more respective changesets for two or more respective thin clients in the plurality of thin clients, wherein a respective changeset represents one or more changes to a respective copy of the document at a respective thin client;

generating a merged result changeset from the two or more respective changesets based on rules specifying which one or more characters from the two or more respective changesets to retain in the merged result changeset, wherein the merged result changeset comprises indices of characters retained in the two or more respective changesets; and

sending the merged result changeset to the plurality of thin clients for updating the respective copies of the document at the plurality of thin clients.

21. A method of providing a document to a plurality of thin clients for realtime editing, the method comprising:

at a server having one or more processors and memory storing one or more programs for execution by the one or more processors to perform the method,

sending to a first thin client of the plurality of thin clients a first copy of the document;

sending to a second thin client of the plurality of thin clients a second copy of the document;

obtaining a first changeset from the first thin client, wherein the first changeset represents one or more changes to the first copy of the document at the first thin client, and comprises:

- a first length of the first copy before the one or more changes to the first copy are applied,
- a second length of the first copy after the one or more changes to the first copy are applied, and
- an array comprising:
 - indices of retained characters, and
 - added characters due to the one or more changes to the first copy;

obtaining a second changeset from the second thin client, wherein the second changeset represents one or more changes to the second copy of the document at the second thin client, and comprises:

- a first length of the second copy before the one or more changes to the second copy are applied,
- a second length of the second copy after the one or more changes to the second copy are applied, and
- an array comprising:
 - indices of retained characters, and
 - added characters due to the one or more changes to the second copy;

generating a merged result changeset from the first changeset and the second changeset based on rules specifying which one or more characters from the first changeset and the second changeset to retain in the merged result changeset, wherein the merged result changeset comprises indices of characters retained in the first changeset and the second changeset;

sending the merged result changeset to the first thin client for updating the first copy of the document; and

sending the merged result changeset to the second thin client for updating the second copy of the document.

THE REJECTIONS²

1. The Examiner rejected claims 1, 2, 5, 6, 9, 10, 13–16, 19,–20, and 23 under 35 U.S.C. § 103 as unpatentable over Kleppner (US 2013/0218845 A1; published Aug. 22, 2013), Kausik (US 7,047,281 B1; issued May 16, 2006), Bernhard Westfechtel, *Structure-Oriented Merging of Revisions of Software Documents* ACM (1991) (“Westfechtel”), and Ishihara (US 2011/0296317 A1; published Dec. 1, 2011). Final Act. 5–17.³

2. The Examiner rejected claims 3 and 4 under 35 U.S.C. § 103 as unpatentable over Kleppner, Kausik, Westfechtel, Ishihara, and Bultrowicz (US 2010/0095198 A1; published Apr. 15, 2010). Final Act. 17–19.

3. The Examiner rejected claims 7, 8, 17, and 18 under 35 U.S.C. § 103 as unpatentable over Kleppner, Kausik, Westfechtel, Ishihara, and John Day-Richter, *What's different about the new Google Docs: Making Collaboration Fast*, (accessed Sept. 23, 2010), available at <http://web.archive.org>. Final Act. 19–20.

4. The Examiner rejected claim 11 under 35 U.S.C. § 103 as unpatentable over Kleppner, Kausik, Westfechtel, Ishihara, and Neff (US 2009/0217196 A1; published Aug. 27, 2009). Final Act. 20–21.

5. The Examiner rejected claim 12 under 35 U.S.C. § 103 as unpatentable over Kleppner, Kausik, Westfechtel, Ishihara, and Bhansali (US 6,006,239; issued Dec. 21, 1999). Final Act. 21–22.

² Because the Examiner withdrew the rejection under 35 U.S.C. § 101 (Ans. 5), that rejection is not before us.

³ Throughout this opinion, we refer to (1) the Final Rejection mailed March 15, 2018 (“Final Act.”); (2) the Appeal Brief filed September 11, 2018 (“Appeal Br.”); (3) the Examiner’s Answer mailed October 30, 2018 (“Ans.”); and (4) the Reply Brief filed December 28, 2018 (“Reply Br.”).

6. The Examiner rejected claims 21 and 22 under 35 U.S.C. § 103 as unpatentable over Kleppner, Gelman (US 2008/0178117 A1; July 24, 2008), Kausik, and Mak (US 2003/0172168 A1; published Sept. 11, 2003), Westfechtel, and Ishihara. Final Act. 22–30.

7. The Examiner rejected claims 1, 13, 14, and 21⁴ on the ground of nonstatutory double patenting as being unpatentable over claims 1, 6, and 18 of U.S. Patent No. 8,656,290 in view of Ishihara. Final Act. 31–34.

8. The Examiner rejected claims 15, 19, and 20 on the ground of nonstatutory double patenting as being unpatentable over claims 1, 6, and 18 of U.S. Patent No. 8,656,290 in view of Kleppner and further in view of Ishihara. Final Act. 32–33.

THE DOUBLE PATENTING REJECTIONS

Appellant did not challenge the Examiner’s double patenting rejections in the Appeal Brief. *See* Appeal Br. 8–9 (omitting the double patenting rejections in the “Grounds of Rejection to be Reviewed on Appeal” section). *Accord* Ans. 5 (declining to comment further on the double patenting rejections because they were not argued in the Appeal Brief).

Appellant, however, indicates for the first time in the Reply Brief that a terminal disclaimer was filed the day before the Appeal Brief was filed. Reply Br. 3. Nevertheless, because Appellant did not address the Examiner’s double patenting rejections in the Appeal Brief, we summarily

⁴ Although the Examiner rejects claim 21 separately over the same grounds (*see* Final Act. 33–34), we nonetheless consolidate the Examiner’s separate rejections here for clarity and brevity.

sustain those rejections. *See* Manual of Patent Examining Procedure (MPEP) § 1205.02 (9th ed. Rev. 08.2017, Jan. 2018). We leave it to the Examiner to consider Appellant’s Terminal Disclaimer, if necessary.

THE OBVIOUSNESS REJECTION OVER KLEPPNER, KAUSIK
WESTFECHTEL, AND ISHIHARA

The Examiner finds that Kleppner discloses every recited feature of claim 1 except (1) thin clients, (2) a changeset having a rule that specifies which characters to retain, where the changeset comprises indices of retained characters Final Act. 5–12. The Examiner cites Ishihara to cure the first deficiency, and Kausik to cure the second deficiency. Final Act. 7–9, 12. The Examiner also acknowledges that the cited prior art does not disclose merging two changesets, but cites Westfechtel for teaching this feature. Final Act. 9. Based on the cited references’ collective teachings, the Examiner concludes that the claim would have been obvious. Final Act. 7–12.

Appellant argues the cited prior art fails to teach or suggest “generating a merged result changeset from the two or more respective changesets based on rules specifying which one or more characters from the two or more respective changesets to retain in the merged result changeset.” Appeal Br. 9–10. Appellant argues that Kleppner’s teaching of a “storing changes from both clients together” does not teach “generating a merged result changeset from two changesets based on rules specifying which characters to retain from the two changesets.” *Id.* 10. According to Appellant, Kleppner fails to teach merging two updates and sending the updates to the client. *Id.* 11. Appellant also argues that Kleppner fails to

teach rules that specify which characters to retain from the merged changeset. *Id.* Appellant further argues Kausik fails to teach “realtime editing of a document by receiving multiple changesets and merging them based on rules specifying which characters to retain from the changesets.” *Id.* at 12. Appellant adds that Westfechtel fails to teach merging two changesets and/or rules that specify characters to retain from changesets. *Id.* at 12–13.

ISSUE

Under § 103, has the Examiner erred by finding that Kleppner, Kausik, Westfechtel, and Ishihara collectively would have taught or suggested “generating a merged result changeset from the two or more respective changesets based on rules specifying which one or more characters from the two or more respective changesets to retain in the merged result changeset,” as recited in claim 1?

ANALYSIS

We begin by clarifying the Examiner’s mapping of various disputed limitations of representative claim 1. The Examiner cites the functionality associated with Kleppner’s Figure 3A for teaching “generating a merged result changeset from the two or more respective changesets⁵ based on rules.” *See* Final Act. 6. We see no error in this finding. The user inputs 312a and 312b of Kleppner’s Figure 3A together teach “two or more

⁵ The term “changeset” is not defined explicitly in the Specification, unlike other terms whose concrete definitions leave no doubt as to their meaning. *See, e.g.*, Spec. ¶¶ 34, 39, 41 (defining various terms explicitly).

respective changesets” because the user inputs of 312a and 312b each reflect an update (i.e., a “set of changes”) for a document. *See* Kleppner ¶ 64. As shown in Kleppner’s Figure 3A, the updates are sent to web server 302 that verifies and stores the updated document elements in database 106.

Kleppner ¶¶ 64–66. By storing these document elements together in the database, Kleppner at least suggests combining them as the Examiner indicates. *See* Ans. 10 (explaining that updates 314a and 314b in Kleppner’s Figure 3A are sent by the clients to the server and combined into a result); *see also* Final Act. 7 (noting the merged result changeset resulting from storing the changes from both client devices together in a database).

The Examiner also finds that Kleppner’s merging occurs “based on rules.” Ans. 10. The Examiner apparently reasons that the updates sent by the clients are “based on rules” because the updates effectively identify what is retained and what is changed in the update. *See* Ans. 8, 10.

We see no error in these findings. A “rule” is simply “a prescribed guide for conduct or action.” Merriam-Webster.com (accessed March 5, 2020), <https://www.merriam-webster.com/dictionary/rule>. These updates from each client effectively act as a guide to the server to determine what part of the document to retain and what part of the document to change.⁶ *See* Kleppner ¶ 64 (teaching that the update contains “additional content elements that have not been modified”).

Although the Examiner indicates that Kleppner teaches the updates’ changes are based on rules, the Examiner also cites Kausik to teach “rules specifying which one or more **characters** [to] retain[.]” Final Act 7; Ans.

⁶ We also note that the server in Kleppner also uses “rules” in the form of various verification procedures. *See* Kleppner ¶ 65.

11 (emphasis added). We find no error in this position. Kausik teaches a condensed message with numbers that indicate retained characters. *See* Kausik col. 8, ll. 24–41; Fig. 5. We find that the numbers that instruct the computer to retain particular characters in a document are also “rules” consistent with the term’s definition noted above. The Examiner also finds that Kausik teaches the changeset comprises indices of retained characters.” Final Act. 7; Ans. 9. We see no error in this position. The numbers in the condensed message in Kausik are indices that indicate which characters are retained. *See* Kausik col. 8, ll. 35–39; Fig. 5. *Accord* Final Act. 10 (“The numbers within [Kausik’s] rule(s) indicate the indices of the characters.”).

Appellant’s contention that “storing changes from both clients together is not a teaching of generating a merged result changeset from two changesets based on rules specifying which characters to retain from the two changesets” (Appeal Br. 10–11) is unavailing. First, Appellant does not persuasively rebut the Examiner’s finding that Kleppner teaches a *merged* result changeset because the changes (rules) from both client devices are stored together. *See* Final Act. 7. Second, Kleppner teaches (1) two users each changing a copy of the same document (¶ 62); (2) the users sending changes of the document (i.e., the claimed “changeset”) to a server (¶ 64); and (3) the server saving those changes as document elements of a document (¶ 66 and Fig. 3A element 318). Versioning information is also saved along with each document element to indicate to a user what has changed in a particular document. *Id.* ¶ 66. These teachings, then, at least suggest that the updates (i.e., changesets) are saved together in a document (i.e., “merged”), and thus teach a “merged result changeset.” *See* Final Act. 6–7;

Ans. 10. Thus, we agree with the Examiner that Kleppner teaches “generating a merged result changeset from two changesets based on rules.”

Appellant further argues “Kleppner does not discuss merging the first update and the second update into a merged result changeset that is sent to the clients.” Appeal Br. 11. But as noted previously, we agree with the Examiner that Kleppner teaches merging the first update and the second update into a merged result changeset. We also agree with the Examiner’s finding that the combined update on the server (i.e., the merged changeset result) is sent back to each client as a collective unit as indicated in Kleppner Fig. 3A, elements 320a and 320b, and paragraph 67. *See* Ans. 10–11. Thus, we find this argument unpersuasive.

Appellant’s contention that there is ostensibly no teaching or suggestion of generating a merged result changeset from two or more changesets each including changes to a local copy of a document in Kleppner (Appeal Br. 11) is likewise unavailing. In Kleppner, two users update a copy of the same document on their respective client devices. *See* Kleppner ¶ 62; Fig. 3A (elements 312a and 312b). As indicated above, Kleppner teaches a merged changeset in at least element 318 in Figure 3A.

Nor do we find availing Appellant’s contention that Kleppner does not discuss using rules specifying which characters from the two or more respective changesets to retain in the merged result changeset. Appeal Br. 11. Notably, the Examiner cites Kausik—not Kleppner—for teaching this particular feature. *See* Final Act. 7–9; Ans. 11. That is, the Examiner cites (1) Kleppner for teaching generating a merged result changeset from respective changesets based on rules, and (2) Kausik for teaching rules specifying which characters to retain from the changesets. *See* Final Act. 6–

9. Therefore, Appellant’s arguments regarding Kleppner’s individual shortcomings in this regard (Appeal Br. 10–11; Reply Br. 12–13) do not show nonobviousness where, as here, the rejection is based on the cited references’ collective teachings. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellant further argues

Kausik does not appear to discuss enabling realtime editing of a document by receiving multiple changesets and merging them based on rules specifying which characters to retain from the changesets, as generally recited by claim 1, because Kausik is related to merely providing a “current news” web page that is updated hourly on a web site to that a new story is added and the oldest story is dropped. (Kausik, Abstract.)

Appeal Br. 12. But Kausik was not cited to teach realtime editing and merging. *See* Ans. 8–9. Again, Appellant’s argument individually attacks a particular reference without taking into account the combination of references. Accordingly, Appellant’s argument is unpersuasive. *See Merck*, 800 F.2d at 1097.

Appellant further argues the following:

That is, there is no discussion in Kausik regarding how to merge **two or more changesets** each including one or more changes, much less the use of **rules that specify which characters to retain from the *changesets***.

Appeal Br. 12. As indicated above, Kleppner—not Kausik—was cited to teach merging changesets. *See* Final Act. 6–7.⁷ Again, Appellant’s

⁷ The Examiner indicates that Kleppner teaches a “merged result changeset.” Final Act. 6. The Examiner, however, also indicates that the “cited art fails to specifically disclose the merging of two changesets.” *Id.* 9. The

argument individually attacks a particular reference without taking into account the combination of references, and is, therefore, unpersuasive. *See Merck*, 800 F.2d at 1097.

Appellant further argues that Kausik “does not teach or suggest merging two changesets together with each other, where each changeset includes one or more changes to a respective copy of the document at a respective thin client, based on rules specifying which characters to retain from the two changesets.” Appeal Br. 12. As indicated above, Kleppner—not Kausik—was cited to teach “merging changesets. *See* Final Act. 6–7. Moreover, the Examiner cites Ishihara for teaching that “thin” clients are known in the art. *See* Final Act. 12. Given the Examiner’s reliance on these collective teachings, Appellant’s argument is unpersuasive, for it individually attacks a particular reference, namely Kausik, without taking into account the combination of references. *See Merck*, 800 F.2d at 1097.

Therefore, we are not persuaded that the Examiner erred in rejecting claim 1, and claims 2, 5, 6, 9, 10, 13–16, 19, 20, and 23 not argued separately with particularity.

Examiner further cites Westfechtel to teach a “merger of two deltas.” *Id.* Despite this additional reliance on Westfechtel, it is nonetheless superfluous to the Examiner’s finding that Kleppner teaches a merged result changeset. Nevertheless, we see no harmful error in the Examiner’s reliance on Westfechtel, for it is technically cumulative to Kleppner given the limited purpose for which Westfechtel was cited.

THE OBVIOUSNESS REJECTION OVER KLEPPNER, GELMAN,
KAUSIK, MAK, WESTFECHTEL, AND ISHIHARA

The Examiner finds that that Kausik teaches the disputed limitation in independent claim 21 reciting “an array comprising: indices of retained characters, and added characters due to the one or more changes to the first copy.” *See* Final Act. 24–26; Ans. 21–22.

Appellant argues that the cited references do not teach generating a merged result changeset from the first and second changesets based on rules specifying one or more characters from those changesets to retain in the merged changeset, where the merged result changeset comprises indices of characters retained in the changesets. Appeal Br. 15–17; Reply Br. 20–22. Appellant adds that the prior art does not teach or suggest changesets received from the thin clients that include an array comprising indices of retained characters, and added characters due to the one or more changes to the local copies of the document. Appeal Br. 17–18; Reply Br. 20–22.

The Examiner responds by indicating that Kausik, along with the combination of the remaining references, teaches the claimed array. Ans. 18, 21. The Examiner also finds that thin clients are taught by Ishihara. Final Act. 29. The Examiner further finds that the changesets are modified locally by clients and are sent to a server in Kleppner. Ans. 10.

Appellant also argues that there is no discussion of what reference teaches “an array comprising indices of retained characters, and added characters due to the one or more changes.” *Id.* 17–18 (emphasis omitted).

The Examiner responds by indicating that Kausik along with the combination of the remaining references teaches the claimed array. Ans. 18, 21.

Appellant further argues that Gelman fails to teach a changeset including an array comprising indices of retained characters in a document and added characters to the document due to one or more changes. Appeal Br. 18.

The Examiner responds by noting that Gelman was not recited to explicitly teach the array. Ans. 19.

ISSUE

Under § 103, has the Examiner erred by finding that Kleppner, Gelman, Kausik, Mak, Westfechtel, and Ishihara collectively would have taught or suggested “an array comprising: indices of retained characters, and added characters due to the one or more changes to the first copy,” as recited in claim 21?

ANALYSIS

We begin by noting that Appellant’s first argument regarding independent claim 21, namely that the cited prior art does not teach or suggest generating a merged result changeset as claimed (Appeal Br. 15–17; Reply Br. 20–22), is similar to that raised in connection with commensurate limitations in claim 1 and is, therefore, unpersuasive for the reasons previously discussed.

Regarding Appellant’s second argument pertaining to the recited array, the Examiner finds, and we agree, that Kausik’s condensed message (e.g., “(1, 35)m(37, 40)”) is an array⁸ containing indices of retained

⁸ The Examiner appears to indicate that Kausik teaches “an array of the differences and retained characters for each of the changesets,” but also

characters and added characters due to one or more changes to the first copy.

See Ans. 21:

Furthermore, “(1, 35)m(37, 40)” within the message could be view[ed] as an array. It comprises an arrangement of data as [a] structure element. (1, 35) and (37, 40) make up the portion of the array that discloses the indices of retain[ed] characters. “m” represents the added characters due to the changes. Thus, Kausik[’s] message comprising the text “(1, 35)m(37,40)” is a form of an array that comprises indices of retain[ed] characters and added characters.

See also Final Act. 24 (quoting Kausik col. 8, ll. 24–40 as teaching a condensed message). Thus, we find Appellant’s argument that Kleppner, Gelman, Kausik, Mak, Westfechtel, and Ishihara fail to teach “an array comprising: indices of retained characters, and added characters due to the one or more changes to the first copy” is unpersuasive.⁹

states that “the cited art fails to disclose each changeset has an array comprising the differences as claimed.” Final Act. 26 (citing Mak). We agree with the Examiner’s finding that Kausik teaches “an array of the differences and retained characters for each of the changesets.” We find no harmful error in the Examiner citing Mak because Mak is technically cumulative to Kausik in this regard. In any event, Appellant did not address Mak in the Appeal Brief, but did address Mak in the Reply Brief. Reply Br. 25.

⁹ Although the Examiner refers to two additional references, Hatcher and Hollander, on page 18 of the Answer, we find these citations puzzling, for they were not relied upon in the rejection, nor were they made of record in this appeal. To the extent that the Examiner intends to rely on these additional references to support the rejection, we decline to consider those additional references here. *See In re Hoch*, 428 F.2d 1341, 1342 n.3 (CCPA 1970) (“Where a reference is relied on to support a rejection, whether or not in a ‘minor capacity,’ there would appear to be no excuse for not positively including the reference in the statement of the rejection.”). We nevertheless treat the Examiner’s error in this regard as harmless, for the Examiner’s

Appellant's arguments regarding Gelman's alleged shortcomings regarding the recited array comprising indices of retained characters in a document, and added characters to the document due to the changes (Appeal Br. 17–18; Reply Br. 24) are unavailing because the Examiner cites Kausik—not Gelman—for teaching those features. *See* Final Act. 24. As noted above, we find that Kausik at least suggests the recited array.

Therefore, we are not persuaded that the Examiner erred in rejecting claim 21, and claim 22 not argued separately with particularity.

THE OTHER OBVIOUSNESS REJECTIONS

We also sustain the Examiner's obviousness rejections of claims 3, 4, 7, 8, 11, 12, 17, 18, 20, and 23. Final Act. 17–30. Despite nominally arguing these claims separately, Appellant reiterates similar arguments made in connection with claim 1, and alleges that the additional cited references fail to cure those purported deficiencies. *See* Appeal Br. 14–15. We are not persuaded by these arguments, however, for the reasons previously discussed.

rejection of claim 21 was based solely on Kleppner, Gelman, Kausik, Mak, and Westfechtel. *See* Final Act. 22.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 13–15, 19–21		Obviousness-type Double Patenting	1, 13–15, 19–21	
1–2, 5–6, 9–10, 13–16, 19–20, 23	103	Kleppner, Kausik, Westfechtel, Ishihara	1, 2, 5, 6, 9, 10, 13–16, 19, 20, 23	
3, 4	103	Kleppner, Kausik, Westfechtel, Ishihara, Bultrowicz	3, 4	
7–8, 17–18	103	Kausik, Westfechtel, Ishihara, Day-Richter	7, 8, 17, 18	
11	103	Kleppner, Kausik, Westfechtel, Ishihara, Neff	11	
12	103	Kleppner, Kausik, Westfechtel, Ishihara, Bhansali	12	
21, 22	103	Kleppner, Gelman, Kausik, Mak, Westfechtel, Ishihara	21, 22	
Overall Outcome			1–22	

Appeal 2019-001812
Application 13/288,010

TIME PERIOD FOR 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)(1).

AFFIRMED