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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/319,057	06/30/2014	Nicholas Kushmerick	B739.CIP2	1028
152606	7590	06/16/2020	EXAMINER	
VMWare - OPW			DABIPI, DIXON F	
P.O. Box 4277			ART UNIT	PAPER NUMBER
Seattle, WA 98194			2443	
			MAIL DATE	DELIVERY MODE
			06/16/2020	PAPER

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* NICHOLAS KUSHMERICK and JUNYUAN LIN

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Appeal 2019-002049  
Application 14/319,057  
Technology Center 2400

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Before JEAN R. HOMERE, MICHAEL M. BARRY, and  
PHILLIP A. BENNETT, *Administrative Patent Judges*.

HOMERE, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE<sup>1</sup>

Pursuant to 35 U.S.C. § 134(a), Appellant appeals from the Examiner’s decision to reject claims 1–23, which constitute all of the claims pending in this appeal.<sup>2</sup> Claims App. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

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<sup>1</sup> We refer to the Specification filed June 30, 2014 (“Spec.”); the Final Office Action, mailed Nov. 16, 2017 (“Final Act.”); the Appeal Brief, filed Apr. 24, 2018 (“Appeal Br.”); and the Examiner’s Answer, mailed Aug. 3, 2018 (“Ans.”).

<sup>2</sup> We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies VMWARE, Inc. as the real party-in-interest. Appeal Br. 1.

## II. CLAIMED SUBJECT MATTER

According to Appellant, the claimed subject matter is directed to an event-message clustering method and system for classifying and storing incoming event messages, according to their types, in corresponding event logs. Spec. ¶ 2. In particular, upon receiving an event message, processor (102–105) assigns the event message to a corresponding cluster, extracts data values from the event message to compute a significance value (priority) for generating an event record for storing the event message in the selected cluster in physical storage device (128). *Id.* ¶ 5.

Figure 1, discussed and reproduced below, is useful for understanding the claimed invention:

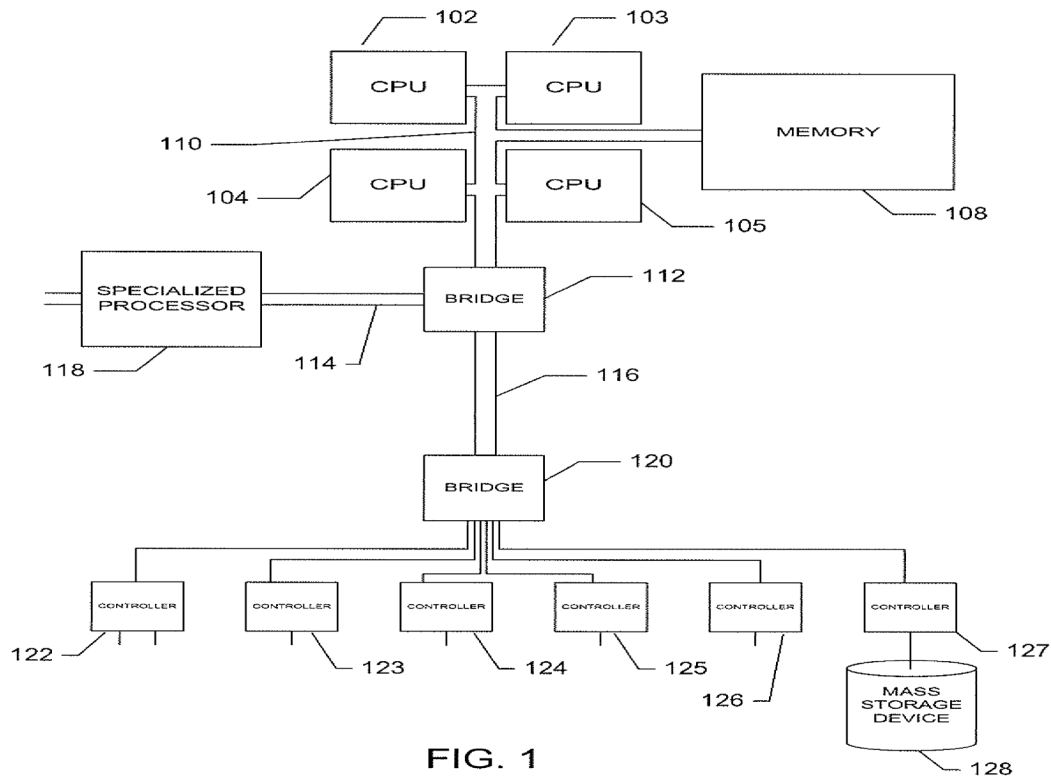


Figure 1 illustrates event-clustering system including processors (102–105) coupled to memory (108) storing computer instructions to process received event messages, classify and store them in mass storage device (128). *Id.* ¶ 43.

Claims 1, 12, and 23 are independent. Claim 1, reproduced below with disputed limitations emphasized in *italics*, is illustrative of the claimed subject matter:

1. An event-message clustering system comprising:
  - one or more processors;
  - one or more memories; and
  - computer instructions, stored in one or more of the one or more memories that, when executed by one or more of the one or more processors, control the event-message clustering system to receive event messages, and process each of the received event messages by
    - determining a cluster to which to assign the event message,
    - extracting data values from the event message,*
    - computing a significance value for the event message,*
    - generating an event record corresponding to the event message that includes the extracted data values,* and
    - storing the event record within, or associated with, the selected cluster in a physical data-storage device.

Appeal Br. 30 (Claims Appendix).

### III. REFERENCES

The Examiner relies upon the following references.<sup>3</sup>

<b>Name</b>	<b>Reference</b>	<b>Date</b>
Seshadri	US 2004/0002958 A1	Jan. 1, 2004
Cohen <sup>4</sup>	US 2011/0185234 A1	July 28, 2011
Umanesan	US 2014/0334739 A1	Nov. 13, 2014

### IV. REJECTIONS

The Examiner rejects claims 1–23 as follows:

1. Claims 1, 12, and 23 stand provisionally rejected under nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 13, and 22 co-pending application No. 14/318,968 in view of Cohen and Umanesan. Final Act. 22–25.
2. Claims 1–10, 12–21, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Cohen and Umanesan. Final Act. 25–40.
3. Claims 11 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Cohen, Umanesan, and Seshadri. Final Act. 40–43.

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<sup>3</sup> All reference citations are to the first named inventor only.

<sup>4</sup> Cohen (US 2011/0185234 A1; July 28, 2011) has been issued as US Patent No. 8,209,567.

## V. ANALYSIS

We consider Appellant's arguments *seriatim*, as they are presented in the Appeal Brief, pages 9–29.<sup>5</sup> We are unpersuaded by Appellant's contentions. Except as otherwise indicated herein below, we adopt as our own the findings and reasons set forth in the Final Action, and the Examiner's Answer in response to Appellant's Appeal Brief. Final Act. 2–44; Ans. 3–48. However, we highlight and address specific arguments and findings for emphasis as follows.

### *1. Double Patenting Rejection*

The Examiner provisionally rejects claims 1, 12, and 23 under nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 13, and 22 co-pending application No. 14/318,968. Final Act. 22–25. In response, Appellant argues that the Examiner's double patenting rejection is in error because Cohen has been issued as US Patent No. 8, 209,567, which is assigned to Hewlett Packard Development Company, and Umanesan is owned by Xyratex Technology, which are not commonly owned or assigned with the present application. Appeal Br. 9–10.

Appellant's arguments are not persuasive. Although Cohen and Umanesan are not commonly assigned with Appellant's application, we agree with the Examiner that the provisional double patenting is primarily based on co-pending application No. 14/318,968, which is commonly owned

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<sup>5</sup> We have considered in this Decision only those arguments Appellant actually raised in the Briefs. Any other arguments Appellant could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2017).

and assigned with Appellant's application to VMWARE, Inc. Ans. 24. Because Appellant's arguments failed to address the Examiner's findings regarding the cited commonly owned and assigned co-pending applications, such arguments are deemed waived. Accordingly, we sustain the Examiner's provisional obviousness double patenting rejection of claims 1, 12, and 23.

## *2. Obviousness Rejections*

Appellant argues the Examiner erred in finding that the combination of Cohen and Umanesan teaches or suggests processing event messages that are generated, and received, as recited in independent claim 1. Appeal Br. 15. In particular, Appellant argues Cohen instead processes event logs that already contain event messages. *Id.* at 15, 18, 19 (citing Cohen ¶¶ 48, 49). According to Appellant, although Cohen is directed to an event-message clustering system that classifies events into event clusters, and stores event messages into event logs, Cohen “does not employ parsers to identify and extract parameters values and it does not carry out clustering on non-parameter tokens within message events.” *Id.* at 14–15. Appellant submits that Cohen merely uses a simple clustering algorithm to cluster event messages based on the ratio of identical words in the message, but it is devoid of any teaching pertaining to significance values for prioritizing clustered event messages. *Id.* at 15. Appellant particularly argues that Cohen's disclosure of using the similarity function to calculate a distance metric does not teach the significance value because the former computes similarity between two event messages, whereas the latter calculates the priority of each event message. *Id.* at 22–24. Appellant also argues that

because Umanesan similarly discloses calculating a distance between characters of different event messages, it does not cure the noted deficiencies of Cohen. *Id.* at 15, 24, 25. Further, Appellant argues that Cohen discloses an offline processing system for processing event messages contained in event logs, as opposed to an online system for processing the event messages as they are received. *Id.* at 17 (citing Cohen ¶¶ 13, 41, 52, 64). Additionally, Appellant argues that because Cohen’s atom recognizer module parses log files, not event messages, and identifies sets of messages rather than extracting data values therefrom, it does not teach extracting data values from event messages. *Id.* at 20–21 (citing Cohen ¶¶ 11, 41, 53, 72). Finally, Appellant argues that because Cohen’s disclosure of a cluster assignment record relates to simply to a list of assignments of event messages to clusters, it does not teach generating and storing an event record, as recited in claim 1. *Id.* at 27.

Appellant’s arguments are not persuasive of reversible Examiner error. As an initial matter, we note that claim 1 does not recite processing event messages online, nor does it recite clustering non-parameter tokens within message events. Accordingly, Appellant’s arguments regarding these limitations are not commensurate with the scope of the claim. We further note that although Appellant strenuously argues that Cohen’s disclosure of calculating distance values between event messages does not teach a significance value, as recited in the claim, Appellant has failed to provide a definition for “significance value” beside indicating that it pertains to determining priority of the event message. We agree with the Examiner that under the broadest reasonable interpretation in light of the Specification, “significance value” can be reasonably construed as a value pertaining to the



similarity or distance metric between different event messages. Final Act. 2–3 (citing Spec. ¶ 104, Fig. 31). We, therefore, agree with the Examiner that the disclosure of calculating the distance or similarity value between event messages as taught by the combination of Cohen and Umanesan teaches the claimed step of computing the significance value. Ans. 45–47. Further, as correctly noted by the Examiner, Cohen discloses that upon receiving an event message, the network management system (NMS) stores the event message and extracts characters therefrom to calculate a similarity value thereof with another received message so as to classify messages with similar values in the same cluster. Cohen ¶¶ 28, 38–41. We thus agree with the Examiner that Cohen’s disclosure teaches extracting values from incoming event messages to subsequently classify them into corresponding clusters. Ans. 31, 32, 36, 40. Further, Cohen discloses creating a record for each assignment of an incoming event message to a cluster, and storing the created record in the storage device. Cohen ¶¶ 48–51. Accordingly, we agree with the Examiner that Cohen’s disclosure of storing assigned event messages in the processed log teaches generating a record to store each incoming event message. Final Act. 18, 19, 21 (citing Cohen ¶¶ 76–90).

Additionally, we agree with the Examiner that it would have been obvious to one of ordinary skill in the art to combine the cited teachings of Cohen and Umanesan, because the proposed combination would have predictably resulted in an event-message clustering system for storing in a permanent device incoming event messages assigned to particular clusters according to similarity values extracted therefrom. Final Act. 24–25. We find the Examiner’s proposed combination of the cited teachings of Cohen

and Umanesan is no more than a simple arrangement of old elements with each performing the same function it had been known to perform, yielding no more than one would expect from such an arrangement. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 416 (2007). Therefore, the ordinarily skilled artisan, being “a person of ordinary creativity, not an automaton,” would have been able to fit the teachings of the cited references together like pieces of a puzzle to predictably result in an event-message clustering system for storing in a permanent device incoming event messages assigned to particular clusters according to similarity values extracted therefrom. *Id.* at 420–21. Because Appellant has not demonstrated that the Examiner’s proffered combination would have been “uniquely challenging or difficult for one of ordinary skill in the art,” we agree with the Examiner that the proposed modification would have been within the purview of the ordinarily skilled artisan. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418). Consequently, we are satisfied that on the record before us, the Examiner has established by a preponderance of the evidence that the combination of Cohen and Umanesan renders claim 1 unpatentable. Accordingly, we are not persuaded of error in the Examiner’s obviousness rejection of claim 1.

Regarding the rejections of claims 2–23, Appellant has not presented separate patentability arguments or reiterated substantially the same arguments as those previously discussed for patentability of claim 1. As such, claims 2–23 fall therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

## VI. CONCLUSION

We affirm the Examiner's provisional obviousness double patenting rejection of claims 1, 12, and 23. We further affirm the Examiner's obviousness rejections of claims 1–23 under 35 U.S.C. § 103(a).

## DECISION SUMMARY

In summary:

<b>Claims Rejected</b>	<b>35 U.S.C. §</b>	<b>Reference(s)/Basis</b>	<b>Affirmed</b>	<b>Reversed</b>
1, 12, 23	Nonstatutory Double Patenting	US Appl. 14/318,968, Cohen, Umanesan	1, 12, 23	
1–10, 12–21, 23	103 (a)	Cohen, Umanesan	1–10, 12– 21, 23	
11, 22	103 (a)	Cohen, Umanesan, Seshadri	11, 22	
<b>Overall Outcome</b>			1–23	

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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

**AFFIRMED**