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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 LEIF ALEXANDER and GILBERT WALKER
_____

Appeal 2019-002207
Application 14/635,821
Technology Center 2100
_____

Before CAROLYN D. THOMAS, JAMES B. ARPIN, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

ARPIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a), the Examiner's final rejections of claims 1–20. Final Act. 2.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] "Appellant" here refers to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party-in-interest as Warhead, Inc. Appeal Br. 1.

[2] In this Decision, we refer to Appellant's Appeal Brief ("Appeal Br.," filed September 27, 2018) and Reply Brief ("Reply Br.," filed January 16, 2019); the Final Office Action ("Final Act.," mailed November 29, 2017) and the Examiner's Answer ("Ans.," mailed November 16, 2018); and the Specification ("Spec.," filed March 2, 2015). Rather than repeat the Examiner's findings and determinations and Appellant's contentions in their entirety, we refer to these documents.

STATEMENT OF THE CASE

Appellant's claimed methods, servers, and computer-readable storage media "relate[] to improving processing during development of a website and more particularly, but not exclusively, relate[] to methods and tools to move traditional backend server processing to a frontend browser level during the development of a website." Spec., 1:4–7. In particular,

> A theme editor portion of the website development tool will be operated, the theme editor portion arranged to modify themes associated with webpages. In another act of the method, a modification command is received at the theme editor portion. The modification command is arranged to request a change to a first theme associated with a first web page, and based on the modification command, a first theme identifier of the first theme is communicated to a sector system controller. A theme draft based on the first theme is created, the theme draft having a theme draft identifier, and a new [uniform resource locator (URL)] is created by incorporating the theme draft identifier into the first URL. The new URL is communicated to the web server and the method, and a webpage having a control interface to the theme editor portion is delivered.

Id. at 5:21–6:3. Referring to Figure 3 of the application, editing themes may include determining the structure or format of the webpage, such as how many columns appear on a webpage and whether those columns are left or right justified. *See id.* at 23:15–22.

As noted above, claims 1–20 stand rejected. Claims 1, 11, and 16 are independent. Appeal Br. 27 (claim 1), 29–30 (claim 11), 31 (claim 16) (Claims App.). Claims 2–10 depend directly or indirectly from claim 1, claims 12–15 depend directly from claim 11, and claims 17–20 depend directly or indirectly from claim 16. *Id.* at 27–32.

The Examiner relies on the same references and substantially similar arguments in rejecting independent claims 1, 11, and 16 (Final Act. 3–9, 11, 12); and Appellant does not contest the rejections of claims 2–20 separately from claim 1 (*see* Appeal Br. 18, 26; Reply Br. 7).

Claim 1, reproduced below with disputed limitations emphasized, is representative.

> 1. A website development tool method to implement a website development tool, comprising:
>
> operating a web server, the web server configured to execute backend processing and frontend processing, the web server configured to establish at least one frontend session communicatively coupling the web server to an Internet browser;
>
> opening a website with the Internet browser, the website addressed by a first uniform resource locator (URL), the website having a plurality of web pages, each web page of the website including a set of computer readable instructions, at least some instructions of the set [of][3] computer readable instructions configured to create one or more interactive objects, the one or more interactive objects associated with the backend processing of the web server;
>
> operating a theme editor portion of the website development tool, the theme editor portion arranged to modify themes associated with web pages;
>
> receiving a modification command at the theme editor portion, the modification command arranged to request a change to a first theme associated with a first web page, the first web page having at least one interactive object associated with the backend processing of the web server;

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[3] The Examiner objects to claim 1 as containing a typographical error. Specifically, claim 1 omits the word "of" in the phrase "the set *of* computer readable instructions." We do not address such objections on appeal. MPEP § 706.01.

> based on the modification command, communicating a first theme identifier of the first theme to a sector system controller;
>
> creating a theme draft based on the first theme, the theme draft having a theme draft identifier;
>
> *creating a new URL by incorporating the theme draft identifier into the first URL, the new URL directed to a modified version of the first web page*, the modified version of the first web page being absent from the plurality of web pages when the website was opened with the Internet browser;
>
> communicating the new URL to the web server; and
>
> delivering, from the web server to the Internet browser, a web page having a control panel interface to the theme editor portion.

Id. at 27 (emphasis added).

REFERENCES AND REJECTIONS

The Examiner relies upon the following references in rejecting the claims:

Name[4]	Number	Publ'd	Filed
Khan	US 2002/0038384 A1	Mar. 28, 2002	July 13, 2001
Beesley	US 2005/0021668 A1	Jan. 27, 2005	Jan. 30, 2004
Fedorynski	US 2013/0073536 A1	Mar. 21, 2013	Nov. 10, 2011
Rogish	US 2013/0132422 A1	May 23, 2013	Dec. 16, 2011
Walker	US 2014/0053060 A1	Feb. 20, 2014	Aug. 16, 2013

In addition, the Examiner relies on the WordPress User Guide, Version 3.5, created by Interconnect IT Ltd (UK), dated December 17, 2012 (hereinafter "WordPress") and "How To Create Dynamic Website Page URLs With PHP

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[4] All reference citations are to the first named inventor only.

Script," created by Online Website Design Tutorials, posted August 9, 2013 (hereinafter "PHP"). Final Act. 3.

Claims 1, 5–7, 10–12, 15–17, and 20 are rejected as unpatentable under 35 U.S.C. § 103 over the combined teachings of Walker, WordPress, PHP, and Fedorynski. Final Act. 3–12. In addition, claims 2–4, 9, 13, 18, and 19 are rejected as unpatentable under 35 U.S.C. § 103 over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Beesley (*id.* at 12–16); claim 8 is rejected as unpatentable under 35 U.S.C. § 103 over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Khan (*id.* at 16–17); and claim 14 is rejected as unpatentable under 35 U.S.C. § 103 over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Rogish (*id.* at 17–18).

Appellant contests the obviousness rejection of independent claim 1 (Appeal Br. 18–26; Reply Br. 2–7) and relies on the alleged deficiencies in that rejection to overcome the rejections of the independent claims 11 and 16 and of the dependent claims (Appeal Br. 26; Reply Br. 7). Because we determine that our affirmance of the rejection of independent claim 1 is dispositive, except for our ultimate decision, we do not discuss the merits of the rejections of claims 2–20 further herein. We review the appealed rejection of independent claim 1 for error based upon the issues identified by Appellant, and in light of the contentions and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Unless otherwise indicated, we adopt the Examiner's findings in the Final Action and the Answer with respect to the affirmed rejections as our own and add

any additional findings of fact for emphasis. We address the rejection of claim 1 below.

ANALYSIS

1. *Obviousness of Claim 1 Over Walker, WordPress, PHP, and Fedorynski*

As noted above, the Examiner rejects independent claim 1 as obvious over the combined teachings of Walker, WordPress, PHP, and Fedorynski. Final Act. 3–9. The Examiner finds that Walker and WordPress teach or suggest the majority of the limitations of claim 1. *Id.* at 3–7. Nevertheless, the Examiner finds, "[t]he combination of Walker and WordPress_User_Guide discloses **'a theme draft identifier,'** but the combination of Walker and WordPress_User_ Guide does not explicitly disclose: - **creating a new URL by incorporating the theme draft identifier into the first URL**." *Id.* at 7 (emphasis in original); *see* Ans. 21– 22. The Examiner finds, however, PHP teaches this limitation. Final Act. 8. In particular, PHP states, "[i]f we want to create a dynamic web page, then we have to create a dynamic url that will create a parameter query contains a variable string." *Id.* (quoting PHP, 2); *see* PHP, 3 ("As an example, dynamic-page-ex.php?**username**=admin or dynamic-page-ex.php?**username**=author. See the results, the page content will change according to the command in the variable.").   The Examiner concludes:

> Therefore, it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to incorporate the teaching of [PHP] into the teaching of Walker to include "creating a new URL by incorporating the theme draft identifier into the first URL; and communicating the new URL to the web server." The modification would be obvious because one of ordinary skill in the art would be motivated to create dynamic web pages, in which the content and

> appearance of the dynamic web pages can be changed automatically without the need to make changes to the HTML code of the dynamic web pages ([PHP], page 1).

Final Act. 8.

The Examiner finds, however, that neither Walker nor WordPress nor PHP teaches or suggests, "**the new URL directed to a modified version of the first web page**." *Id.* Nevertheless, the Examiner finds Fedorynski teaches this limitation. *Id.* In particular, Fedorynski discloses,

> conventional usage of URL fragments enable usage of modified URLs which point specifically to desired information within a larger website context. Subsequently, solutions have been implemented which leverage existing URL fragment techniques to enable direct linking to partially updated/modified webpages, i.e., *to automatically generate modified URLs containing URL fragments which correspond directly to webpages which have been partially updated and/or modified.* Specifically, for example, websites which are enabled with the ability to provided selective or partial updating and/or modifications thereof may further include software functionality for generating a modified URL containing a URL fragment for each such selective or partial updating and/or modification. *As a result, a user may be provided with a modified URL which has a one-to-one correspondence with a modified webpage, so that the user may thereafter utilize such a modified URL to provide a direct link to the specific modified version of the webpage in question.*

Fedorynski ¶ 8 (emphases added); *see* Final Act. 8; Ans. 22, 25.

The Examiner concludes:

> Therefore, it would have been obvious to one of ordinary skill in the art before the effective filing date of the claimed invention to incorporate the teaching of Fedorynski into the teaching of Walker to include "the new URL directed to a modified version of the first web page." The modification would be obvious because one of ordinary skill in the art would be motivated to utilize a modified URL to provide a direct link to a specific modified version of a web page in question (Fedorynski,

paragraph [0008]).

Final Act. 9.

Appellant challenges the Examiner's obviousness rejection of claim 1 for two reasons. First, Appellant contends the Examiner fails to show that PHP teaches or suggests, "**creating a new URL by incorporating the theme draft identifier into the first URL**." Appeal Br. 20; *see* Reply Br. 4. Second, Appellant contends the Examiner fails to show that Fedorynski teaches or suggests, "**the new URL directed to a modified version of the first web page**." Appeal Br. 21–26; *see* Reply Br. 4–7. For the reasons given below, we disagree.

Initially, Appellant does not contest the Examiner's findings with respect Walker or WordPress. Appeal Br. 19–20.[5] Appellant's challenges are limited to the applied teachings of PHP and Fedorynski. Appeal Br. 21–26; Reply Br. 2–7. Specifically, Appellant contends that none of the other cited references teaches or suggests the limitation allegedly taught by Fedorynski. Appeal Br. 19–21; Reply Br. 2. The Examiner asserts that Appellant is improperly challenging the references individually. Ans. 21. However, Appellant is only clarifying the Examiner's findings regarding the disputed limitations. The Examiner does not dispute Appellant's statements regarding the other references, but it does not alter that the Examiner finds PHP or Fedorynski teach or suggest the disputed limitations. *Id.*

First, with respect to PHP's teachings, Appellant contends:

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[5] Appellant states, "[t]here is no acquiescence to, or agreement with, the Examiner's rejections in the [Final Office Action], nor is there any acquiescence to, or agreement with, the Examiner's assertions regarding what the applied references show or teach." Appeal Br. 18. Nevertheless, Appellant may not reserve arguments. *See* 37 C.F.R. § 41.37(c)(1)(iv).

> According to the Examiner, [PHP] teaches creation of a new URL by incorporating "an identifier" into a first URL, but the identifier of the [PHP] reference is clearly not a *theme draft identifier*. What's more, just like Walker and the [WordPress] reference, the Examiner recognizes on Page 8 of the [Final Office Action] that does not disclose the [PHP] reference teaches "**the new URL directed to a modified version of the first web page**." In fact, not only does the [PHP] reference fail to teach *creating a new URL by incorporating the* <u>*theme draft identifier*</u> *into the first URL* and *the new URL directed to a modified version of the first web page*, the [PHP] reference expressly teaches that "the content and appearance of the website page can be changed automatically **without the need to make changes to the html code of the page**." [PHP] at Page 1.

Appeal Br. 20–21. As Appellant acknowledges, however, the Examiner only finds that PHP teaches or suggests that its new URL incorporates an "identifier." *See* Final Act. 8 ("**creating a new URL by incorporating an identifier into a first URL** (page 2, 'If we want to create a dynamic web page, then we have to create a dynamic url that will create a parameter query contains a variable string.')"). The Examiner relies on Walker and WordPress to teach or suggest "**a theme draft identifier**." Ans. 22; *see* Final Act. 7. Thus, the Examiner finds that a person of ordinary skill in the art would have had reason to combine the teachings of Walker and WordPress regarding "the theme draft identifier" with those of PHP to teach or suggest this limitation. Final Act. 8. On this record, we are not persuaded the Examiner errs.

> Second, Appellant contends that Fedorynski discloses:

> The rendered web page, however, is an original web page addressed by the base URL, and it is not a modified version of the web page. [Fedorynski ¶¶ 3–8.] The rendered web page includes instructions for displaying dynamic content, and the indexable fragment determines what dynamic content will be

> displayed, but it is the coding of the original web page that renders the dynamic content. *Id.* Even though the web page "looks" different to a user (i.e., it looks "modified"), it is the exact same web page addressed at the base URL even after the indexable fragment is added. And because the exact same web page is delivered to the user's browser from the web server, the *Fedorynski* reference fails to teach a *new URL <u>directed to a modified version of a first web page</u>*.

Appeal Br. 22–23, 25; *see* Reply Br. 5 (Fedorynski's new URL is not "directed to" a modified version of the first web page). Appellant appears to contend that a web page with different content is not a modified web page, but that only a web page with a different theme is a modified web page. Nevertheless, Fedorynski discloses, "a user may be provided with a modified URL which has a one-to-one correspondence *with a modified webpage*, so that the user may thereafter utilize such a modified URL to provide a direct link *to the specific modified version of the webpage in question*." Fedorynski ¶ 8 (emphases added); *see* Final Act. 8; Ans. 8. Thus, we agree with the Examiner that a person of ordinary skill in the art would understand a web page with different content to be modified. Walker and WordPress supply teachings regarding the nature of the modification, that is, the "theme." *See* Final Act. 7; Ans. 7.

Appellant notes Fedorynski discloses an example of an original URL "www.examplesportsnews.com" and of a modified URL www.examplesportsnew.com#football." Appeal Br. 24; *see* Fedorynski ¶ 7 (describing use of "#"). According to Appellant,

> This new URL can be saved, re-loaded, or sent to a friend, and when the URL is re-used, the <u>original</u> web page is retrieved. Then, rather than having to manually re-navigate to the football content, this original web page will use the URL fragment to automatically navigate to the football content "through

implementation of software functions which are capable of independently modifying such selected portions" of the original web page. *Fedorynski* at [0008]. According to *Fedorynski*, these techniques provide benefits of increased loading speed as well as an improved user experience.

Appeal Br. 24. Nevertheless, Appellant challenges the teachings of Fedorynski individually, instead of in combination with the teachings of Walker, WordPress, and PHP. Claim 1 recites, "**the new URL directed to a modified version of the first web page**." Walker and WordPress teach that the webpage's theme may be modified and a theme draft identifier may identify that modification, PHP teaches that a new URL may be created by incorporating an identifier, e.g., "a theme draft identifier," into the first URL, and Fedorynski teaches that the new URL, as taught by Walker, WordPress, and PHP, may be directed to a modified version of the first web page. Ans. 21. We are not persuaded that the Examiner errs in combining the teachings of the applied references in this manner to achieve the limitations of claim 1.

Finally, Appellant introduces a new contention in the Reply Brief, asserting that:

> The Examiner impermissibly parses the claimed limitation in ways that render the limitation fragmented and incoherent. There is no motivation provided by the Examiner or found by Appellant for any such fragmentation of a single, cohesive claim limitation, it is unclear why such fragmentation would occur to one of ordinary skill in the art. More to the point, there is no reason asserted by the Examiner or understood by Appellant why one of skill would see the fragmented features identified by the Examiner in the applied art and combine them to form the expressly recited limitation of claim 1.

Reply Br. 3–4. This contention is not responsive to any new argument made in the Examiner's Answer and, therefore, is improper. *See* 37 C.F.R. § 41.41(b)(2).

Nevertheless, the Examiner bases the rejection of claim 1 on the combined teachings of various references. As the U.S. Supreme Court explained, "in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *KSR Intern. Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007). Thus, when the teachings of various references are combined to determine that a claim is rendered obvious, some degree of parsing is inevitable. Here, the Examiner provides sufficient support for its combination of the teachings of the applied references. Final Act. 7 (reason to combine the teachings of Walker and WordPress; citing WordPress, 62), 8 (reason to combine the teachings of Walker, WordPress, and PHP; citing PHP, 1), 9 (reason to combine the teachings of Walker, WordPress, PHP, and Fedorynski; citing Fedorynski ¶ 8); *see KSR*, 550 U.S. at 418 ("'[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'"). Therefore, we are not persuaded by Appellant's conclusory contentions that the Examiner improperly parses the claim limitations or that the Examiner fails to provide sufficient reason to combine the teachings of the applied references to achieve the methods of claim 1.

Consequently, we are not persuaded that the Examiner errs in rejecting claim 1, and we sustain the obviousness rejection of claim 1.

2. The Remaining Claims

As noted above, claims 11 and 16 recite limitations corresponding to the disputed limitations of claim 1, and Appellant challenges the rejection of independent claims 11 and 16 for substantially the same reasons as claim 1. Appeal Br. 18; *see* Final Act. 7. Each of claims 2–10, 12–15, and 17–20 depends directly or indirectly from independent claim 1, 11, or 16. Appeal Br. 27–32 (Claims App.). Because we are not persuaded the Examiner errs with respect to the obviousness rejection of claim 1, we also are not persuaded the Examiner errs with respect to the obviousness rejections of claims 11 and 16, as well as to the pending claims dependent therefrom. For this reason, we sustain the obviousness rejections of those claims.

DECISIONS

1. The Examiner does not err in rejecting:
   a. claims 1, 5–7, 10–12, 15–17, and 20 under 35 U.S.C. § 103 as rendered obvious over the combined teachings of Walker, WordPress, PHP, and Fedorynski;
   b. claims 2–4, 9, 13, 18, and 19 under 35 U.S.C. § 103 as rendered obvious over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Beesley;
   c. claim 8 under 35 U.S.C. § 103 as rendered obvious over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Khan; and
   d. claim 14 under 35 U.S.C. § 103 as rendered obvious over the combined teachings of Walker, WordPress, PHP, Fedorynski, and Rogish.

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2. Thus, on this record, claims 1–20 are unpatentable.

CONCLUSION

For the above reasons, we affirm the Examiner's decision rejecting claims 1–20.

In summary:

Claims Rejected	35 U.S.C. §	References	Affirmed	Reversed
1, 5–7, 10–12, 15–17, 20	103	Walker, WordPress, PHP, Fedorynski	1, 5–7, 10–12, 15–17, 20	
2–4, 9, 13, 18, 19	103	Walker, WordPress, PHP, Fedorynski, Beesley	2–4, 9, 13, 18, 19	
8	103	Walker, WordPress, PHP, Fedorynski, Khan	8	
14	103	Walker, WordPress, PHP, Fedorynski, Rogish	14	
Overall Outcome			**1–20**	

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1).

AFFIRMED