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14/728,791	06/02/2015	David T. Wilson	522158 (P27103US1)	3272
77970	7590	08/28/2020	EXAMINER	
Polsinelli -- Apple Inc. c/o Polsinelli PC Three Embarcadero Center Suite 2400 San Francisco, CA 94111			STOLTENBERG, DAVID J	
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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* DAVID T. WILSON and THOMAS ALSINA

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Appeal 2019-006739  
Application 14/728,791  
Technology Center 3600

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Before BIBHU R. MOHANTY, PHILIP J. HOFFMANN, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant<sup>1</sup> appeals from the Examiner's decision to reject claims 1–27. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF THE DECISION

We AFFIRM.

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<sup>1</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 Apple, Inc. (Appeal Br. 2).

### CLAIMED SUBJECT MATTER

The Appellant's claimed invention relates to selecting media content based on a computing device context (Spec., para. 1). Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A computer-implemented method comprising:
  - determining that a first media content item was inserted into a first application executing at a client device;
  - detecting that at least one media content presentation opportunity is available for a second media content item to be inserted into a second application executing at the client device, the second application configured for operating independently from the first application;
  - generating a present context filter for the client device comprising one or more copresentation rules associated with a present context of the client device, wherein the copresentation rules includes selection criteria for selecting at least one compatible media content item for the at least one media content presentation opportunity while the first application and the second application are concurrently executing on the client device;
  - applying the present context filter to a plurality of candidate media content items available for presentation at the client device to select the at least one compatible media content item as the second media content item; and
  - based on the selection, inserting the second media content item into the second application via the at least one media content presentation opportunity.

### THE REJECTIONS

The following rejections are before us for review:

1. Claims 1–12 and 14–27 are rejected under 35 U.S.C. § 102(a) as anticipated by Gagner (US 2012/0264504 A1; published Oct. 18, 2012).
2. Claim 13 is rejected under 35 U.S.C. § 103(a) as unpatentable over Gagner and Kilar (US 2012/0072272 A1; published Mar. 22, 2012).

### FINDINGS OF FACT

We have determined that the findings of fact in the Analysis section below are supported at least by a preponderance of the evidence.<sup>2</sup>

### ANALYSIS

The Appellant first argues that the rejection of claim 1 is improper because Gagner does not disclose inserting media content into the “second application” (Appeal Br. 9, Reply Br. 2). The Appellant further argues that the rejection of claim 1 is improper because the prior art fails to disclose a “second application configured for operating independently from the first application” (Appeal Br. 9, 10).

In contrast, the Examiner has determined that the cited claim limitation is disclosed by Gagner at paragraphs 20–23 (Final Act. 9–11; Ans. 4–7).

We agree with the Examiner. Gagner at paragraph 20 discloses that the independent applications can run independently from each other. Gagner

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<sup>2</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

at paragraph 20 also discloses that applications can run concurrently. Thus, it is disclosed in Gagner that the applications can run independently from each other. Gagner at paragraph 21 also discloses that a contextual management module 110 can route data between the secondary applications 113 (secondary application) and the primary wagering game application 103 (first application). Gagner at paragraph 22 also discloses that the context management module 110 can dynamically update any or all structure (e.g., update structures of windows, update content presented in windows) in any of the applications. While the Appellant at page 2 of the Reply Brief argues that the “updating” of the content is not the claimed “insertion” of the content, the claimed “inserting” is broad enough to include “updating” as new data is “inserted” for the old data, under a broadest reasonable interpretation. Regardless, Gagner at paragraph 21 also discloses that the management module can “route and/or publish application data” between the secondary gaming applications 113 and primary wagering game application 103 which would serve as “insertion” of content. Thus, Gagner discloses the insertion of media content items in the applications, which would include the first and second applications. Accordingly, the argued claim limitations have been disclosed by Gagner, and the rejection of claim 1 is sustained. The Appellant has provided the same arguments for the remaining claims, and the rejection of these claims is sustained as well.

#### CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 1–12 and 14–27 under 35 U.S.C. § 102(a) as anticipated by Gagner.

We conclude that Appellants have not shown that the Examiner erred in rejecting claim 13 under 35 U.S.C. § 103(a) as unpatentable over Gagner and Kilar.

#### 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, 14-27	102(a)	Gagner	1-12, 14-27	
13	103	Gagner, Kilar	13	
<b>Overall Outcome</b>			1-27	

#### 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). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED