UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LUDMILA CHERKASOVA, YUN FU,
and WENTIN TANG

Appeal 2007-1757
Application 10/146,967
Technology Center 2100

Decided: December 14, 2007

Before: ALLEN R. MACDONALD, ROBERT E. NAPPI, and JEAN R. HOMERE, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal a Final Rejection of claims 1-9 and 11-42 under 35 U.S.C. § 134. We have jurisdiction under 35 U.S.C. § 6(b).

According to Appellants, Appellants invented a method and system for measuring at least one performance measurement of a client access of data from a server. (Spec. ¶¶[0015] and [0041]-[0042].)

Claims 1 and 32 are reproduced below:

1. A method for measuring performance of service provided to a client by a server in a client-server network, said method comprising:

capturing network-level information for a client access of data from a server in a client-server network, wherein said client access of said data comprises a plurality of transactions, and wherein said client-server network comprises a server side and a client side and wherein said network-level information is captured on said server side; and

determining from the captured network-level information at least one performance measurement computed from the plurality of transactions.

32. A system for measuring performance of serving a web page to a client in a client-server network, said system comprising:

server for communicating at least one web page to clients via a communication network to which said server is communicatively coupled;

means for capturing network-level information for client accesses of said at least one web page, wherein a client access of said at least one web page comprises a plurality of transactions;

means for reconstructing, from said captured network-level information, said client accesses of said at least one web page; and

means for determining at least one performance measurement for at least one of the reconstructed client accesses.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Curley et al.	US 2002/0120727 A1	Aug. 29, 2002 (filed Dec. 21, 2000)
Aviani, Jr. et al.	US 6,594,260 B1	Jul. 15, 2003 (filed Sep. 3, 1999)
Veres et al.	US 6,807,156 B1	Oct. 19, 2004 (filed Nov. 7, 2000)

Claims 1-6, 9, 11-18, 21-28, and 31 are rejected under 35 U.S.C. § 102(e) as being anticipated by Curley.

Claims 7-8, 19-20, and 29-30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Curley and Aviani.

Claims 32-41 are rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Curley, Veres, and Aviani.

Claim 42 is rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Curley and Veres.

We affirm-in-part.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

Curley

1. Curley discloses "network monitor 16 can listen to network 12 (subnetwork 13) to detect requests for web pages or other information from a client 10 to server 14, and may monitor the response provided by the server to the client. Using such monitoring techniques, network monitor 16 can determine speed performance

and other parameters associated with server 14 and/or network 12." (¶[0138].) Curley discloses "one or more network monitors 16 could be placed locally with server 14 and/or client 10." (¶[0135].)

2. Curley discloses "FIG. 3 shows an example typical *transaction* between a client 10 and a server 14 using a transaction-based protocol." (Emphasis added) (¶[0146].) Curley discloses that a transaction of FIG. 3 involves *multiple* HTTP request-reply pairs for a single web page. (Fig. 3.) Curley discloses that "once the web page and all (any) inline objects associated therewith have been received by client 10, breaking down the TCP connection." (¶[0150].)

3. Curley discloses "a promiscuous mode adapter/card receiver 16a . . . receives transaction-based protocol requests and responses comprising the data traffic flowing back and forth through network 12 between client 10 and server 14. These received data packets are analyzed by a protocol analyzer 16b which analyzes the various characteristics of the received protocol information in accordance with the features discussed above." (¶[0242].) Curley discloses "[a]nalyzer 16b logs the time at which receiver 16a receives various pieces of protocol having the characteristics described above. This logged information may be stored on a data logger 16d." (*Id*.) Curley discloses "[w]hen protocol analyzer 16b determines that a particular transaction or series of transactions has completed, it requests a latency calculator 16e to access the information logged by

data logger 16d and calculate, in response thereto, the various latencies." (*Id.*)

4. For example, Curley discloses that network monitor 16 calculates "HTTP Total Time," which is the amount of time for the Get or Post request to complete from the time the Get or Post is sent until all data has been sent to the client." (p. 14, item HTTP Total Time.)

5. Curley teaches "collecting data for both a cached page as well as a non-cached page over time, the web team can easily create a report to compare the responsiveness and/or availability for the two. These reports can then be used to ensure both accurate delivery of content and adequate global response." (¶[0099].)

Veres

6. Veres teaches "real-time traffic capture and prefiltering process 120 captures the packets passing the monitor and cuts, or copies, a portion of the packet data (e.g., the first few dozen bytes) of each packet containing the protocol header fields . . . and stores it in a data record." (Col. 9, ll. 30-37.)

7. Veres teaches "a microflow record stores real-time statistics about each individual traffic stream (e.g., TCP, UDP, RTP) in both directions, containing subscriber, protocol and service dependent information about the microflow. Typically, a microflow record is uniquely identified by values for a subscriber IP address, a destination IP address (i.e., the address of the host to which the subscriber is connected), a subscriber port, and a destination port." (Col. 10, l. 62 – Col. 11, l. 2.) Veres teaches a "microflow record

contains statistics about a single conversation between two applications residing at the server and the subscriber. For instance, *every Web page download* is a microflow, or every voice conversation is a microflow." (Emphasis added) (Col. 11, ll. 3-8.)

Aviani

8. Aviani teaches "a web cache is installed at any network location to transparently intercept and service all web requests passing through that point. On a cache miss, the cache obtains the desired document by sending out a request addressed to the document's home server, causing this request to be picked up by the next upstream cache." (Col. 2, ll. 3-8.)

PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

During examination of a patent application, a claim is given its broadest reasonable construction consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). "[T]he words of a claim 'are generally given their ordinary and customary meaning.' . . . the ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention,

i.e., as of the effective filing date of the patent application." *Phillips v. AWH Corp.,* 415 F.3d 1303, 1312-1313 (Fed. Cir. 2005) (en banc) (internal citations omitted).

The limitations under 35 U.S.C. § 112, sixth paragraph, must be interpreted by reference to the corresponding disclosure. *See, e.g., In re Lonardo*, 119 F.3d 960, 967 (Fed. Cir. 1997) (citing *In re Donaldson Co.*, 16 F.3d 1189, 1193 (Fed. Cir.1994) (en banc)); *In re Alappat*, 33 F.3d 1526, 1541 (Fed. Cir. 1994) (en banc). "First, the court must determine the claimed function." *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1332 (Fed. Cir. 2006). Once the function has been identified, we turn to the specification to determine which structures disclosed in the specification perform that function. *Id*.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), *cert. denied*, 484 U.S. 827 (1987).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc*., 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383

U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls."). The Court in *Graham* further noted that evidence of secondary considerations, such as commercial success, long felt but unsolved needs, failure of others, etc., "might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." 383 U.S. at 18.

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. In particular, the Supreme Court emphasized that "the principles laid down in *Graham* reaffirmed the 'functional approach' of *Hotchkiss*, 11 How. 248 [(1850)]." *KSR,* 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)), and reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740. "[W]hen a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *Id.* at 1740 (citing *Sakraida v. AG Pro, Inc.*, 425 U. S. 273, 282 (1976)).

The Supreme Court noted in *KSR* that although the teaching, suggestion, motivation (TSM) test "captured a helpful insight," an obviousness analysis "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *See KSR,* 127 S. Ct. at 1741.

"Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *See KSR,* 127 S. Ct. at 1742. The Court noted that "[c]ommon sense teaches . . . that familiar items may have obvious uses beyond their primary purposes, and in many cases a person of ordinary skill will be able to fit the teachings of multiple patents together like pieces of a puzzle." *Id.* "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *Id.*

In *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), although the combination of prior art references lacked a "reader" to automatically identify the book inserted in the device, the Federal Circuit found no error in the District Court's determination that readers were well known in the art at the time of the invention. The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* (citing *KSR*, 127 S. Ct. at 1740-41).

ANALYSIS

Group A: Plurality of Transactions

The Examiner finds that Curley discloses all limitations of claim 1. (Ans. 3-5.) Appellants allege that Curley does not disclose a determining step comprising "determining from the captured network-level information at least one performance measurement *computed from the plurality of transactions*," (emphasis added) but rather captures individual transactions and makes measurements on a transaction-by-transaction basis. (App. Br. 9-11.)

Thus the sole issue for claims identified below in this group is whether Curley discloses the determining step.

Claim 1

First, we construe the term "transaction." Appellants' Specification defines "transaction":

> [a] client request and corresponding server response (e.g., HTTP request-response pair) may be referred to collectively herein as a "transaction" (e.g., an HTTP transaction).

(Spec. pp. 13, ¶[0048].)

Accordingly, we construe "transaction" to require a single HTTP request-response pair.

Curley discloses that a "transaction" of FIG. 3 involves multiple HTTP request-reply pairs. (FF 2.) Accordingly, we find that Curley's transaction, which involves multiple HTTP request-reply pairs, discloses "plurality of transactions" of claim 1.

We find that Curley discloses receiving multiple HTTP request-reply pairs flowing back and forth between client 10 and server 14 and

determining time differences (latencies) between requests and replies for objects in a web page (FF 2-4). The determining step requires determining at least one performance measurement computed from a plurality of transactions. We find that determining latencies based on multiple HTTP request-reply pairs meets the computing at least one performance measurement from a plurality of transactions of the determining step. Accordingly, we find that Curley discloses the determining step.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 1 for being anticipated by Curley.

Claims 4-6, 8, 9, 11-13, 15, 17, 18, 20-23, and 30

As to claims in this group, Appellants merely reference or repeat the arguments made with respect to claim 1 (App. Br. 12-13 and 16 and Reply Br. 5). Therefore, as to the rejection of these claims, the Appellants have not shown Examiner error for the same reasons discussed *supra* with respect to claim 1.

Claims 2, 3, 14, 16, 24-28, and 31

The Examiner finds that Curley discloses all elements of claims in this group. (Ans. 4-8.) Appellants rely on the allegation set forth with regard to claim 1 that Curley does not teach the measuring a plurality of transactions. (App. Br. 12-15.) We addressed such allegation *supra* with regard to claim 1.

In addition, Appellants allege that Curley does not disclose measurement of end-to-end performance of providing desired data to a client based on a measurement of a plurality of transactions, where the end-to-end

performance is a measurement of time from when the client requests data to when the client fully receives the data. (App. Br. 12-15.)

Curley discloses that network monitor 16 calculates "HTTP Total Time" based on a plurality of transactions, where HTTP Total Time is the amount of time for the Get or Post request to complete from the time the Get or Post is sent until all data has been sent to the client. (FF 2-4.) We find that Curley's measurement of HTTP Total Time discloses measurement of time from when a client requests data to when the client receives the data. Accordingly, we agree with the Examiner and find that Curley discloses the measurement of end-to-end performance.

Accordingly, we find that the Appellants have not shown that the Examiner erred in rejecting claims 2, 3, 14, 16, 24-28, and 31.

Group B: Reconstructing

The Examiner concludes that the combined teachings of Curley with Veres render claims 32 and 42 obvious. (Ans. 11-12 and 15.)

With regard to claim 32, Appellants allege that Curley does not teach measuring a plurality of transactions and that Veres does not teach a reconstructing means comprising "means for reconstructing, from said captured network-level information, said client accesses of said at least one web page" because Veres "does not teach reconstructing a web page access from a plurality of transactions." (App. Br. 21-22.) Similarly, with regard to claim 42, Appellants allege that Curley does not teach measuring a plurality of transactions and that Veres does not teach a reconstructing step

comprising "reconstructing, from the captured network-level information, said client access of said at least one web page." (App. Br. 25-26.)

We addressed *supra* with regard to claim 1 allegations that Curley does not teach measuring a plurality of transactions. Therefore a first issue with respect to claims in Group B is whether the combination of Curley with Veres teaches the reconstructing means and the reconstructing step.

The Examiner provides reasons to combine the teachings of Curley with those of Veres and explains why the combination of references is proper. (Ans. 12 and 18-19.) In a pre-*KSR* brief, Appellants allege that the Examiner improperly combined the teachings of Curley with those of Veres by providing insufficient basis for making the combination by not providing a motivation to make the combination. (App. Br. 23 and 26-27.)

Therefore a second issue with respect to claims in Group B is whether the combination of Curley with Veres is proper.

Claims 32, 35-39, and 41

We begin our analysis by construing the reconstructing means. Claim 32 is drafted in a means-plus-function format, as permitted under 35 U.S.C. § 112, sixth paragraph. The function recited in the reconstructing means is reconstructing client accesses of at least one web page. As for the structure, the Appellants' Specification states:

> web page access reconstructor module 403 is responsible for grouping the underlying physical object retrievals together into logical web pages, and stores them in Web Page Session Log 403A. More specifically, web page access reconstructor module 403 analyzes Transaction Log 402A and groups the various different HTTP transactions that correspond to a common web page access.

(Emphasis added) (Spec. ¶[0071].)

Accordingly, we construe the reconstructing means to require storing retrievals of a common web page as a group.

Veres teaches that process 120 captures the packets passing the monitor, copies a portion of the packet data, and stores the copies in a data record. (FF 6.) Veres teaches a microflow record stores real-time statistics about each individual traffic stream such as protocol and service dependent information about the microflow and that every Web page download is a microflow. (FF 7.) Accordingly, we find that Veres teaches the reconstructing means by teaching storing retrievals (i.e., packet data and statistics) of a common web page as a group in the form of a microflow record.

We find that the Examiner's proffered reasons for combining the teachings of Curley with those of Veres (Ans.12 and 18-19) are sufficient to support the combination because they identify a problem solved by making the combination, namely, performing further QoS processing, and because the Examiner identifies a motivation in paragraph 1 of Curley to perform reconstructing. *See KSR,* 127 S. Ct. at 1741 and 1742. Moreover, we find another portion of Curley provides a sufficient reason to incorporate Veres' reconstructing means into Curley's system by also teaching storing information concerning various received pieces of protocol related to a web page access into a data logger 16d. (FF 2-3.)

In addition, adding Veres' reconstructing means into Curley's system changes the functions of neither Curley's system nor Veres' reconstructing means. *See KSR,* 127 S. Ct. at 1740. The combination yields a predictable result of storing client accesses of at least one web page access as a group.

Id. Appellants have presented no evidence that incorporating Veres' reconstructing means in Curley's system was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *See Leapfrog*, 485 F.3d at 1162.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 32 for being unpatentable over the combined teachings of Curley and Veres.

As to dependent claims 35-39 and 41 in this group, Appellants merely reference or repeat the arguments made with respect to claim 32 (App. Br. 21-23). Therefore, as to the rejection of these dependent claims, the Appellants have not shown Examiner error for the same reasons discussed *supra* with respect to claim 32.

Claim 42

The customary and ordinary meaning of "reconstruct" is "[t]o assemble or build again mentally; re-create." *The American Heritage Dictionary of the English Language* (4th ed. 2000), found at www.bartelby.com. We refer to the same portion of Appellants' Specification as for construing the reconstructing step of claim 32 *supra*.

We broadly but reasonably construe the reconstructing step to at least require assembling related accesses of a common web page into a group.

For reasons set forth with regard to claim 32, we find that Veres teaches the reconstructing step. Alternatively, we find that Curley teaches the reconstructing step by teaching recording latency information of HTTP request-reply pairs for transactions in a data logger 16d, where the stored

latency information are associated with a particular web page access. (FF 2 and 3.)

For similar reasons as set forth with regard to claim 32, we find that the combination of Curley with Veres to arrive at claim 42 is proper.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 42 for being unpatentable over the combined teachings of Curley and Veres.

Other claims

Claim 33

The Examiner finds that Curley teaches a capturing means comprising "means for capturing network-level information is arranged on said server side of said client-server network." (Ans. 14.) However, Appellants allege that Veres does not teach that the capturing means is arranged on a server side. (App. Br. 23.) Therefore the issue is whether Curley teaches that the capturing means is arranged on a server side.

We find that Curley teaches that a network monitor 16 that monitors transactions is placed locally at the server. (FF 1.) We agree with the Examiner that Curley teaches the capturing means is arranged on a server side of claim 33 (Ans. 14).

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 33 for being unpatentable over the combined teachings of Curley and Veres.

Claim 34

The Examiner finds Curley teaches a relating means comprising "means for relating said plurality of transactions to their corresponding client web page access based at least in part on said captured network-level information for said plurality of transactions" of claim 34. (Ans. 14.) Appellants allege that Curley "provides no teaching or suggestion of relating a plurality of transactions to their corresponding client web page access. Instead, Curley addresses each transaction individually without relating a plurality of such transactions together." (App. Br. 24.)

As we found *supra*, Curley teaches measuring multiple HTTP request-response pairs of a single web page access. Therefore, the sole issue for claim 34 is whether Curley teaches the relating means.

Claim 34 is drafted in a means-plus-function format, as permitted under 35 U.S.C. § 112, sixth paragraph. The function recited in the relating means is relating a plurality of transactions to their corresponding client web page access. As for the structure, the Appellants' Specification states:

> once information about various individual HTTP transactions is collected in Transaction Log 402A, the next step in reconstructing a web page access is to *relate the different individual HTTP transactions in the sessions corresponding to a particular web page access*. . . . web page access reconstructor module 403 is responsible for grouping the underlying physical object retrievals together into logical web pages, and stores them in Web Page Session Log 403A.

(Emphasis added) (Spec. ¶[0071].)

Accordingly, we construe the relating means to require relating information of related HTTP transactions for a single web page.

Curley teaches that client 10 groups multiple HTTP request-reply pairs to a common web page because client 10 closes a connection after receiving the web page and thereby identifies a group of HTTP request-reply pairs of a common web page. (FF 2.) Moreover, Curley teaches storing information involved in a web page access into a data logger 16d for a web page. (FF 3.) Accordingly, Curley relates HTTP transactions for a web page access by closing a connection after retrieval of the web page or storing information relating to a common web page access in a data logger 16d. Accordingly, we find that Curley teaches the relating means.

Accordingly, we find that Appellants have not shown that the Examiner erred in rejecting claim 34 for being unpatentable over the combined teachings of Curley and Veres.

Claims 7, 19, 29, and 40

Claim 7 recites a measurement step comprising "measurement of the number of files of said data that are retrieved from said server for said client access."

The Examiner finds that Aviani teaches the measurement step. (Ans. 8.) Appellants allege that "Aviani . . . provides no teaching or suggestion of . . . measuring the number of files of data that are retrieved from a server for a client access (as in claim 7)." [1] (App. Br. 17.)

---

[1] We note that the Appellants allege Examiner error with regard to claim 7 but mention language from claim 6. We respond to the allegations of Examiner error concerning claim 7 because the heading indicates claim 7 is addressed (App. Br. 16).

Therefore the issue is whether the combined teachings of Curley with Aviani teach or suggest the measurement step.

Curley teaches collecting data for both a cached page as well as a non-cached page over time to ensure both accurate delivery of content and adequate global response. (FF 5.) Aviani teaches using web caches to store documents. (FF 8.) We find neither Curley nor Aviani teach the measuring a number of files of data retrieved in the measurement step.

Accordingly, we find that Appellants have shown that the Examiner erred in rejecting claim 7 as unpatentable over the combined teachings of Curley with Aviani.

Claims 19 and 29 are subject to similar rejections as that applied to claim 7. For reasons provided *supra* with regard to claim 7, we find Appellants have shown that the Examiner erred in rejecting claims 19 and 29 as unpatentable over the combined teachings of Curley with Aviani.

Claim 40 recites similar subject matter as claim 7 but is subject to a different rejection. For reasons provided *supra* with regard to claim 7, we find that the Appellants have shown that the Examiner erred in rejecting claim 40.

CONCLUSIONS OF LAW

(1) The Appellants have not shown that the Examiner erred in finding claims 1-6, 9, 11-18, 21-28, and 31 anticipated by Curley under 35 U.S.C. § 102(e);

(2) The Appellants have not shown that the Examiner erred in finding claims 8, 20, and 30 as being unpatentable over the combination of Curley and Aviani under 35 U.S.C. § 103(a);

(3) The Appellants have not shown that the Examiner erred in finding claims 32-39 and 41 as being unpatentable over the combination of Curley, Veres, and Aviani under 35 U.S.C. § 103(a);

(4) The Appellants have not shown that the Examiner erred in finding claim 42 as being unpatentable over the combination of Curley and Veres under 35 U.S.C. § 103(a);

(5) Claims 1-6, 8-9, 11-18, 20-28, 30-39, and 41 are not patentable;

(6) The Appellants have shown that the Examiner erred in finding claims 7, 19, and 29 as being unpatentable over the combination of Curley and Aviani under 35 U.S.C. § 103(a);

(7) The Appellants have shown that the Examiner erred in finding claim 40 as being unpatentable over the combination of Curley, Veres, and Aviani under 35 U.S.C. § 103(a); and

(8) On the record before us, claims 7, 19, 29, and 40 have not been shown to be unpatentable.

DECISION

We affirm the Examiner's rejection of claims 1-6, 8-9, 11-18, 20-28, 30-39, and 41, but we reverse the Examiner's rejection of 7, 19, 29, and 40.

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).

AFFIRMED-IN-PART

pgc

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins CO 80527-2400