

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* TE-CHENG SHEN, ROBERT TROSPER,  
and YU WANG

---

Appeal 2008-0418  
Application 10/200,867  
Technology Center 2100

---

Decided: September 4, 2008

---

Before LANCE LEONARD BARRY, ALLEN R. MACDONALD, and  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-20. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

#### A. INVENTION

The invention at issue on appeal exchanges data among computing processes. (Spec. 1.) It is not uncommon for multiple processes to operate simultaneously in computing environments. During such operations the processes may exchange data, (*id.*); such an exchange is often called "interprocess communication" or "IPC."

Consequently, the Appellants' invention includes a shared memory into which data exchanged between processes are copied. An external arbitrator arbitrates the exchange of data and may provide additional functionality such as automatically re-invoking a process that has terminated unexpectedly. (*Id.* 30.)

#### B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1. A method for providing data communication between a plurality of processes in a computing environment, said method comprising:

invoking an arbitrator process to arbitrate communication between said plurality of processes;

establishing a shared memory accessible to said plurality of processes;

storing data to be transmitted from a first process of said plurality of processes to a second process of said plurality of processes in said shared memory; and

sending a message including location information with respect to said data to be transmitted stored in said shared

memory from said first process to said second process via said arbitrator process.

### C. REJECTIONS

Claims 1-7, 10-16, and 18-20 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,829,769 ("Cranston").

Claims 8 and 17 stand rejected under 35 U.S.C. § 103(a) as obvious over Cranston.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as obvious over Cranston and U.S. Patent No. 6,877,160 ("Delatorre").

### II. CLAIMS 1 AND 6

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii) (2006).<sup>1</sup>

---

<sup>1</sup> We cite to the version of the Code of Federal Regulations in effect at the time of the Appeal Brief. The current version includes the same rules.

Here, the Appellants argue claims 1 and 6, which are subject to the same ground of rejection, as a group. (App. Br. 9-11). We select claim 1 as the sole claim on which to decide the appeal of the group. "With this representation in mind, rather than reiterate the positions of the parties in toto, we focus on the issue therebetween." *Ex parte Nikoonahad*, No. 2006-3247, 2007 WL 1591636, at \*2 (BPAI 2007).

The Examiner finds that "Cranston et al. disclose . . . sending a message including location information with respect to said data to be transmitted stored in said shared memory from said first process to said second process via said arbitrator process (col. 3 . . . ." (3d Ans.<sup>2</sup> 3-4.) The Appellants make the following argument.

[T]he signaling arrangement of *Cranston* does **not** itself include location information. *Id.* To the contrary, *Cranston's* enqueueing process places a memory handle (i.e., location information) in a shared queue, and then a signal is sent to the dequeuing process only to indicate that the memory handle awaits in the queue. *Cranston* at col. 3, lns. 26, 27, and 53-56. (2d Reply Br.<sup>3</sup> 5.) Therefore, the issue is whether a skilled artisan could take teachings of Cranston in combination with his own knowledge of the particular art and be in possession of the transferring of a message between

---

<sup>2</sup> We rely on and refer to the third Examiner's Answer in lieu of the original and second Examiner's Answers, because the latter were defective. We have not considered the original or the second in deciding this appeal.

<sup>3</sup> We rely on and refer to the Second Reply Brief in lieu of the original Reply Brief, because the former follows the third Examiner's Answer. We have not considered the original in deciding this appeal.

processes wherein the message includes location data regarding data to be transferred therebetween.

#### A. ANTICIPATION AUTHORITIES

"[A]nticipation is a question of fact." *In re Hyatt*, 211 F.3d 1367, 1371-72 (Fed. Cir. 2000) (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in *combination with his own knowledge of the particular art and be in possession of the invention.*'" *In re Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re LeGrice*, 301 F.2d 929, 936 (CCPA 1962)).

#### B. ADDITIONAL FINDINGS OF FACT

Here, we agree with the Examiner's finding that Cranston's "IIS [i.e., Internet Information Server] process 220a and store process 220b meet the limitation of the plurality of processes." (3d Ans. 10.) In the reference, moreover, "[c]ommunication between [the] processes occurs through a shared memory heap and a shared memory queue. (Col. 3, ll. 19-21.) We find that such communication constitutes transferring data between the IIS process and the store process. For their part, the transferred data comprise "an operation code, parameters, and any other relevant data [placed] in . . . allocated memory." (*Id.* ll. 24-26.)

As part of the communication between the processes, "[a]llocations from the shared memory heap produce a process agnostic memory handle and a process specific memory pointer." (*Id.* ll. 21-23.) An "enqueueing process . . . adds the memory handle to the shared memory queue. [A] dequeuing process uses the memory handle from the shared memory queue to generate a valid memory pointer so that the allocated shared memory can be accessed. . . ." (*Id.* ll. 25-29.)

### C. ANALYSIS

Because Cranston transfers the memory handle between the IIS and store processes and use it to for accessing data in the shared memory, we further find that a skilled artisan could take teachings of Cranston in combination with his own knowledge of the particular art and be in possession of the transferring of a message between processes wherein the message includes location data regarding data to be transferred therebetween. Therefore, we affirm the rejection of claim 1 and of claim 6, which falls therewith.

### III. CLAIMS 2-5, 14-17, 19, AND 20

The Examiner finds that "ExIPC 240b meets the limitation of the arbitrator process" (3d Ans. 10) and adds the following findings.

Cranston teaches a notify thread that monitors for received communications by stating:

Each protocol in each process includes a notify thread for receiving event signals from other processes, such as a signal for new entries in a queue, a shutdown signal, a process termination

signal if another process terminates unexpectedly, etc. Cranston col. 9 lines 46 - 50. Since the notify threads are used to control queuing operations by the SMQ [i.e., shared memory queue], the notify threads are part of the arbitrator process.

(*Id.* 12.)

The Appellants argue that "*Cranston* uses notify threads at each of its protocols (*i.e.*, SMPT **231a**, IMAP4 **233a**, DAV **235a**, POP3 **237a**, NNTP **239a**), **not** at ExIPC layer **240b**. *Cranston* at col. 9, lns. 46-50." (2d Reply Br. 6.) Therefore, the issue is whether the Examiner has shown that Cranston's notify threads are part of its ExIPC layer.

#### A. CLAIM CONSTRUCTION

"The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art." *In re Lowry*, 32 F.3d 1579, 1582 (Fed. Cir. 1994) (citing *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983)).

Here, claims 2 and 14 recite in pertinent part the following limitations: "a monitoring thread at said arbitrator process for each process . . . ." Claim 19 includes similar limitations. Considering all the limitations, the three claims require monitoring threads that are part of an arbitrator process.

#### B. ANTICIPATION AUTHORITIES

"[A]n invention is anticipated if the same device, including all the claim limitations, is shown in a single prior art reference. Every element of

the claimed invention must be literally present, arranged as in the claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed.Cir. 1989) (citing *Perkin-Elmer Corp. v. Computervision Corp.*, 732 F.2d 888, 894 (Fed. Cir. 1984); *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771-72 (Fed. Cir. 1983)).

#### C. ADDITIONAL FINDINGS OF FACT

As aforementioned, the Examiner reads the claimed "plurality of processes" on Cranston's IIS process 220a and store process 220b and the claimed "arbitrator process" on the reference's ExIPC 240b. For their part, Cranston's "IIS process 220a supports connections over a variety of communication protocols 230a" (col. 7, ll. 38-39) and its "store process 220b supports access to content over corresponding communication protocols 230b" (*id.* ll. 44-46). The part of the reference cited by the Examiner, moreover, explains that "[e]ach protocol in each process includes a notify thread . . . ." (Col. 9, ll. 46-48.)

#### D. ANTICIPATION ANALYSIS

Because Cranston uses notify threads at each of its protocols, and the reference describes the protocols as being "in" each of its processes, the notify threads appear to be part of these processes rather than the ExIPC 240b. The Examiner has not shown that Cranston's notify threads are part of its ExIPC. Therefore, we reverse the rejection of claims 2, 14, and 19 and of claims 3-5, 15, 16, and 20, which depend therefrom.

The Examiner does not allege, let alone show, that it would have been obvious to implement Cranston's notify threads as part of its ExIPC. Therefore, we also reverse the rejection of claim 17.

#### IV. CLAIMS 7 AND 8

The Examiner finds that Cranston's "SMQ is a shared message queue." (Answer 13.) He also finds that the reference "teaches the SMQ controllers manage enqueueing operations (col. 7 lines 54 - 65)." (*Id.*) Citing column 9, lines 54 – 58, of Cranston, the Examiner finds that "Cranston teaches the SMQ controller, which must have a thread to execute, and worker threads (main thread and receiving threads) share a message queue as claimed." (*Id.*) The Appellants argue that "*Cranston* does not teach that SMQs **214** is shared between a main thread of each process of a plurality of processes and a corresponding one of receiving threads." (2d Reply Br. 7.) Therefore, the issue is whether the Examiner has shown that Cranston shares a message queue between threads of different processes.

##### A. CLAIM CONSTRUCTION

Claim 7 recites in pertinent part the following limitations: "sharing a message queue between a main thread of each process of said plurality of processes and a corresponding one of said receiving threads." Considering all the limitations, the claim requires sharing a message queue between threads of different processes.

#### B. ADDITIONAL FINDINGS OF FACT

The second column of Cranston cited by the Examiner discloses that "[t]wo particular types of threads are used in the embodiment shown in FIG. 2: notify threads and worker threads." (Col. 9, ll. 44-46.) More specifically, "[e]ach protocol in each process includes a notify thread for receiving event signals from other processes, such as a signal for new entries in a queue . . . ." (*Id.* ll. 46-48.) "When a notify thread receives a new queue entry event signal, the thread posts a completion status packet to the completion port identified in creating the SMQ. Each process . . . dispatches a . . . worker thread each time a completion status packet is received. The worker threads dequeue items from the SMQ for processing." (*Id.* ll. 52-58.)

#### C. ANTICIPATION ANALYSIS

Assuming *arguendo* that a pair of Cranston's notify threads and worker threads could be said to share an SMQ, the Examiner has not shown that the shared threads belong to different processes. To the contrary, the aforementioned disclosure implies that the notify threads and worker threads belong to the same receiving process. Because he not has shown that Cranston shares a message queue between threads of different processes, we reverse the rejection of claim 7.

#### D. OBVIOUSNESS AUTHORITIES

"In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a *prima facie* case of obviousness." *In re Rijckaert*, 9 F.3d 1531, 1532 (Fed. Cir. 1993) (citing *In re Oetiker*, 977 F.2d

1443, 1445 (Fed. Cir. 1992)). "A *prima facie* case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art." *In re Bell*, 991 F.2d 781, 783 (Fed. Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)).

#### E. OBVIOUSNESS ANALYSIS

Here, the Examiner does not allege, let alone show, that it would have been obvious for Cranston to shares a message queue between threads of different processes. Absent a teaching or suggestion of sharing a message queue between threads of different processes, we are unpersuaded of a *prima facie* case of obviousness. Therefore, we reverse the rejection of claim 8.

#### V. CLAIM 10

The Examiner finds that "Cranston teaches monitoring for termination and the option of reconnecting (reinstating) the processes (col. 8 lines 17-26)." (3d Ans. 13.) The Appellants argue that "[t]his passage does not teach or suggest spawning a reinstate thread at an arbitrator process, as recited in the claim." (App. Br. 13.) Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Cranston spawns a reinstate thread at an arbitrator process.

#### A. ANTICIPATION AUTHORITIES

Anticipation "is not an 'ipsissimis verbis' test." *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990) (citing *Akzo N.V. v. United States Int'l Trade*

*Comm'n*, 808 F.2d 1471, 1479 n.11 (Fed. Cir. 1986)). "An anticipatory reference . . . need not duplicate word for word what is in the claims."  
*Standard Havens Prods. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991).

#### B. ADDITIONAL FINDINGS OF FACT

Here, the part of Cranston relied on by the Examiner follows.

Upon receiving a shutdown notification 350 from the remote process, the local process NAKs registered packets 360. After NAKing registered packets 360, shutdown is complete 370, the SMQ is released, and the local process has at least two options: attempt local protocol reconnect . . . 380. Reconnection begins with creating a new SMQ in protocol registration 310 as identified above.

(Col. 8, ll. 21-27.) Although this part may not use the words "spawning," "thread," or "arbitrator process" as in claim 10, we agree with the Examiner's finding that attempting a "local protocol reconnect" constitutes initiating a reconnection process. Because the "ExIPC 240b is responsible for handling interprocess communication on the store process 220b side" (col. 7, ll. 55-57), we further agree with the Examiner's finding that the reconnection process can be said to be initiated "at" the ExIPC.

#### C. ANTICIPATION ANALYSIS

Incorrectly assuming that anticipation is an ipsissimis verbis test, the Appellants' argument shows no error in the Examiner's finding that Cranston spawns a reinstate thread at an arbitrator process. Therefore, we affirm the rejection of claim 10.

## VI. CLAIM 11

“Rather than reiterate the positions of parties *in toto*, we focus on the issues therebetween.” *Ex parte Katsukawa*, No. 2007-0732, 2007 WL 3043602 at \*2 (BPAI 2007).

### A. NEW ARGUMENT

The Appellants' Second Reply Brief (pp. 7 and 8) includes the new argument "that *Cranston* is **completely silent** regarding a third process . . . ." Therefore, the issue is whether the new argument should be considered.

#### 1. Authorities

"[I]t is inappropriate for appellants to discuss in their reply brief matters not raised in . . . the principal brief[ ]. Reply briefs are to be used to reply to matter[s] raised in the brief of the appellee." *Kaufman Company, Inc. v. Lantech, Inc.*, 807 F.2d 970, 973 n. (Fed. Cir. 1986). "Considering an argument advanced for the first time in a reply brief . . . is not only unfair to an appellee . . . but also entails the risk of an improvident or ill-advised opinion on the legal issues tendered." *McBride v. Merrell Dow and Pharms., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986) (internal citations omitted).

There are cogent reasons for not permitting an appellant to raise issues or arguments in a reply brief. Among them are the unfairness to the appellee who does not have an opportunity to respond and the added burden on the court that a contrary practice would entail. As the Tenth Circuit put it, permitting an appellant to raise new arguments in a reply brief "would be unfair to the court itself, which without the benefit of a response from appellee to an appellant's late-blooming

argument, would run the risk 'of an improvident or ill-advised opinion, given [the court's] dependence . . . on the adversarial process for sharpening the issues for decision.'" *Headrick v. Rockwell Int'l Corp.*, 24 F.3d [1272,] 1278 [(10th Cir. 1994)], (quoting *Herbert v. Nat'l Academy of Sciences*, 974 F.2d 192, 196 (D.C. Cir. 1992).

*Carbino v. West*, 168 F.3d 32, 34-35 (Fed. Cir. 1999).

## 2. Findings of Fact

Here, the findings related to claim 11 that the Examiner makes in the Examiner's Answer (p. 6) are identical to those in the Final Rejection (p. 7).

## 3. Analysis

Because the findings related to claim 11 that the Examiner makes in the Examiner's Answer are identical to those in the Final Rejection (p. 7), from which the instant appeal was taken, we find nothing that would have prompted the new argument in the Second Reply Brief. The Appellants could have made the argument in their Appeal Brief. The term "reply brief" is exactly that, a brief in reply to new rejections or new arguments set forth in an examiner's answer. The Appellants may not present arguments in a piecemeal fashion, holding back arguments until an examiner answers the original brief. Of course, the Appellants may present new arguments directly to the Examiner for consideration as part of a continuing application. Therefore, we will not consider the new argument.

## B. SAME PROCESS

The Examiner makes the following findings. "When communicating with other processes (col. 3 lines 16-21), the arbitrator process (ExIPC) is involved with the transfer of messages from the other processes. Therefore, messages sent from the first and third processes to the second process are sent via the same arbitrator process . . . ." (3d Ans. 14.) The Appellants argue that "the ExIPC layer of the third process would not be the same arbitrator process that also sends a message from the first process to the second process . . . ." (App. Br. 13.) Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Cranston uses the same process to send a message from a first process or a third process to a second process.

### 1. Additional Findings of Fact

As mentioned regarding claim 10, Cranston's ExIPC 240b handles interprocess communication for the reference's store process 220b.

### 2. Anticipation Analysis

Because the ExIPC 240b is involved in handling a message sent to the store process regardless of its originating process, the Appellants have shown no error in the Examiner's finding that Cranston uses the same process to send a message from a first process or a third process to a second process. Therefore we affirm the rejection of claim 11.

## VII. CLAIM 12

The Examiner finds that "Cranston teaches the storing occurs substantially simultaneously" (3d Ans. 14) in "col. 11 lines 7 - 10." (*Id.* 15.) The Appellants argue that "the portion of *Cranston* cited to by Appellee only refers to the searching of free memory blocks, and it does not disclose that the steps of storing data to be transmitted are performed substantially simultaneously without suspending operation of a first or third processes." (2d Reply Br. 8.) Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Cranston's steps of storing data to be transmitted are performed substantially simultaneously without suspending operation of a first or third process.

### A. ANTICIPATION AUTHORITIES

"[A]nticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)). "[A]bsence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

### B. ADDITIONAL FINDINGS OF FACT

Here, the part of Cranston relied on by the Examiner describes "the allocation of shared memory from one or more shared memory block heaps . . . with reference to FIG. 6." (Col. 10, ll. 51-53.)

### C. ANTICIPATION ANALYSIS

Because we agree with the Appellants that the part referenced by the Examiner refers to the searching of free memory blocks, their argument shows error in the Examiner's finding that Cranston's steps of storing data to be transmitted are performed substantially simultaneously without suspending operation of a first or third processes. Therefore, we reverse the rejection of claim 12.

### VIII. CLAIMS 13 AND 18

The Examiner makes the following findings regarding claim 13.

Cranston teaches the sending occurs substantially simultaneously without suspending the first or third processes by stating:

When multiple processes run concurrently on a single processor, the state information that distinguishes one process from another must be kept separate. Switching from one process to another requires storing the state information for the currently executing process and loading the state information for the process to be executed. The storing and loading of state information is known as a context switch.

Cranston, col. 1 lines 48 - 54.

The enqueueing and dequeueing operations are asynchronous, thereby allowing multiple enqueues and/or multiple dequeues without a context Switch.

Cranston, col. 3 lines 51 - 53.

(3d Answer 15.) The Examiner also makes the following findings regarding claim 18.

The claim does not specify what makes the arbitrator a parent process. Cranston teaches the arbitrator process is responsible for communication operations associated with the processes (col. 7 lines 54 - 65). By being responsible for communication operations, the arbitrator process acts as a parent to the communicating processes as claimed.

(*Id.* 17.) He further finds that "[a]lthough Cranston does not specifically state 'library command,' the disclosure does teach calling routines from a set of routines (library) (col. 8 lines 28 - 48)." (*Id.*)

Regarding claim 13, the Appellants "ha[ve] been unable to find any passage of *Cranston* that teaches or suggests" (Appeal Br. 15) "sending a message substantially simultaneously without suspending operation of a first or third processes." (*Id.*) Regarding claim 18, they argue that "neither ExIPC layer **240a** nor **240b** is a parent process to each process of a plurality of processes . . . ." (Appeal Br. 17.) They also argue "that Cranston is completely silent regarding a library command . . . ." (*Id.*) Therefore, the issue is whether the Appellants have shown error in the Examiner's findings regarding claims 13 and 18.

#### A. AUTHORITIES

"It is not the function of [the U.S. Court of Appeals for the Federal Circuit] to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991). Similarly, it is not the

function of this Board to examine claims in greater detail than argued by an appellant, looking for distinctions over the prior art.

#### B. ANALYSIS

The Appellants fail to address, let alone show error in the Examiner's aforementioned findings. We will not examine these findings in greater detail than argued by the Appellants. Therefore, we affirm the rejection of claim 18.

#### IX. CLAIM 9

The Examiner makes the following findings and conclusion.

Cranston et al. fail to specifically disclose that the message is transmitted using a pipe facility. However, Delatorre et al. substantially disclose the use of pipes to communicate (col. 1 lines 16 - 28). It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to combine these references because Delatorre et al. disclose communicating using pipes and a FIFO, which one of ordinary skill in the art would realize could provide the implementation of the shared memory queue described by Cranston et al. One of ordinary skill in the art would realize the benefit of doing this because Delatorre et al. describe existing mechanisms (col. 1 lines 16 - 28) that can be used instead of creating mechanisms from scratch to implement the disclosure of Cranston et al.

(3d Ans. 9-10.) The Appellants argue that "the motivation put forth by Appellee— *i.e.*, to avoid creating mechanisms from scratch—is a general incentive, and not an objective reason to combine the references." (App. Br. 21.) Therefore, the issue is whether the Appellants have shown error in the

Examiner's reason for using a pipe facility to implement Cranston's transfer of messages.

#### A. OBVIOUSNESS AUTHORITIES

The presence or absence of a reason "to combine references in an obviousness determination is a pure question of fact." *In re Gartside*, 203 F.3d 1305, 1316 (Fed. Cir. 2000) (citing *In re Dembiczak*, 175 F.3d 994, 1000 (Fed. Cir. 1999)).

Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. A court must ask whether the improvement is more than the predictable use of prior-art elements according to their established functions.

*KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 1731 (2007).

#### B. OBVIOUSNESS ANALYSIS

Here, we agree with the Examiner's finding that in transferring messages from its IIS process to its store process, Cranston transfers a message from the IIS process to its ExIPC. The Examiner's finding that Delatorre uses a pipe to pass data between processes, moreover, is uncontested.

Because we further find that using such a pipe in transferring messages from the IIS process to the ExIPC would have improved the communication therebetween in the same way, and the results would have been predictable, the Appellants have shown no error in the Examiner's

reason for using a pipe facility to implement Cranston's transfer of messages. Therefore, we affirm the rejection of claim 9.

#### X. ORDER

In summary, the rejections of claims 1, 6, 10, 11, 13, and 18 under § 102(e) and claim 9 under § 103(a) are affirmed. The rejections of claims 2-5, 7, 12, 14-16, 19, and 20 under 35 U.S.C. § 102(e) and claims 8 and 17 under § 103(a), however, are reversed.

"Any arguments or authorities not included in the brief or a reply brief filed pursuant to [37 C.F.R.] § 41.41 will be refused consideration by the Board, unless good cause is shown." 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, our affirmance is based only on the arguments made in the Appeal Brief and Second Rely Brief. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.")

Appeal 2008-0418  
Application 10/200,867

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

AFFIRMED-IN-PART

rwk

AGILENT TECHNOLOGIES, INC.  
Legal Department, DL429  
Intellectual Property Administration  
P.O. Box 7599  
Loveland CO 80537-0599