

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* PAUL W. FORNEY, RASHESH MODY,  
CHAU BICH TRIEU, DAVID NEFF, TODD MILLER,  
and KIMSON Q. NGUYEN

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Appeal 2008-0964  
Application 09/954,425  
Technology Center 2600

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Decided: April 28, 2008

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Before JOSEPH F. RUGGIERO, JOHN A. JEFFERY,  
and KEVIN F. TURNER, *Administrative Patent Judges*.

TURNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the non-final rejection of claims 1-27. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was conducted on this appeal on April 10, 2008.

We affirm.

Appellants' claimed invention relates to methods for graphically displaying information from process control equipment, where the methods

render animated graphics on a browser client based on a stream of runtime data from a portal server. (Spec. 1:11-16 and 4:13-25).

Claim 1 is illustrative of the invention and reads as follows:

1. A method for generating and displaying animated graphics on a browser client based upon an animated graphic display object specification and runtime data from a portal server affecting an appearance trait of the animated graphic display object, the method comprising the steps of:

receiving, by the browser client, an animated graphics description from the portal server, the description specifying an animation behavior for an identified graphical display object;

creating a connection between an animated display object, corresponding to the animated graphics description, and a source of runtime data from the portal server affecting display of the animated display object; and

applying runtime data received from the source of runtime data to the animated display object to render an animated view of the animated display object.

The Examiner relies on the following prior art references to show unpatentability:

Lewis	US 5,812,394	Sep. 22, 1998
Merrill	US 2002/0008703 A1	Jan. 24, 2002 (filed Feb. 26, 1998)
Itoh	US 6,741,242 B1	May 25, 2004 (filed Jul. 17, 2000)

Claims 1, 2, 5-7, 11, 12, 14-17, 21, 22, and 25-27 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Merrill.

Claims 3, 13, and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Merrill.

Claims 4 and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Merrill and Itoh.

Claims 8-10 and 18-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Merrill and Lewis.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

## ISSUES

(i) Under 35 U.S.C § 102(e), with respect to appealed claims 1, 2, 5-7, 11, 12, 14-17, 21, 22, and 25-27, does Merrill disclose all of the elements of those claims to render them anticipated?

(ii) Under 35 U.S.C § 103(a), with respect to appealed claims 3, 13, and 23, would one of ordinary skill in the art at the time of the invention have found it obvious to modify Merrill to render the claimed invention unpatentable?

(iii) Under 35 U.S.C § 103(a), with respect to appealed claims 4 and 24, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Merrill and Itoh to render the claimed invention unpatentable?

(iv) Under 35 U.S.C § 103(a), with respect to appealed claims 8-10 and 18-20, would one of ordinary skill in the art at the time of the invention

have found it obvious to combine Merrill and Lewis to render the claimed invention unpatentable?

#### PRINCIPLES OF LAW

“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., Inc. v. Union Oil Co. of Calif.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]here must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the 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.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1369 (Fed. Cir. 2004). When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning,

in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

## ANALYSIS

### *I. Anticipation by Merrill*

#### *Claims 1, 2, 5-7, 11, 12, 14-17, 21, 22, and 25-27*

Appellants argue that Merrill fails to disclose (1) a “portal server,” (2) “creating a connection,” and (3) creating a connection between the animated display object and a source of runtime data from the portal server. (App. Br. 4). Appellants also allege that Merrill’s animation server is an entity that resides on the “local” computer, running the browser, and does not reside on a portal server, (App. Br. 6), and “the portal server 10 provides portal services to a manufacturing/process control environment,” (Reply Br. 3). Additionally, Appellants argue that an ordinary web server, such as the web site (458) in Merrill, is not the same as a portal server, where the portal server provides access to a variety of resources that do not reside on the portal server itself. (Reply Br. 3).

We do not find Appellants’ arguments to be persuasive. The definition of a “portal server” is provided by the instant Specification, where “[p]ortal servers handle user traffic at portal sites and provide user access over the Internet/internet to the variety of data sources exposed by the portal site.” (Spec. 3:3-5). Nothing in that description limits the term “portal server” to the description that Appellants would have us accept. The data sources need not be distant from the server and can reside at the server “site” itself, as long as they are “exposed by the portal site/server.” (Spec. 3: 7-8). While Appellants may wish to redefine the portal server such that it does not

read upon a web server, the Specification does not provide a basis for such a redefinition. Additionally, while Appellants have argued that the portal server should be defined by the illustrative examples in the Specification, and thus not read upon a web server, the term must be given its broadest reasonable interpretation, and not the interpretation that is most expedient when compared to the prior art. As such, we are not persuaded that the recitation of the “portal server” in the independent claims does not read upon the disclosed web site in Merrill.

Appellants also argue that Merrill discloses no connection between the animated display object and a source of runtime data from the portal server. However, Merrill makes clear that developers can access animation services in web pages using scripting languages and declaring the object on the page. (Merrill, [0322]). The animations can be downloaded as sets, or can be downloaded as needed. (Merrill, [0109]). A web page, accessed by a browser, has an embedded agent object, where, when the browser renders the web page, it creates an animation and displays it on the user interface of the computer. (Merrill, [0329]-[0333]). The script can also include conditional statements that describe the behavior of the agent when the client specified input commands are detected. (Merrill, [0341]). Given this communication between the remote site and the browser, we find that this disclosure satisfies the steps of claims 1, 11, and 21; i.e., receiving an animated graphics description, creating a connection between the animated display object and a source of runtime data and applying the runtime data to the animated display object.

In view of the above discussion, since the Examiner’s anticipation rejection has not been overcome by any convincing arguments from

Appellants, we sustain the Examiner's 35 U.S.C. § 102(e) rejection, based on Merrill, of independent claims 1, 11, and 21, as well as dependent claims 2, 5-7, 12, 14-17, 22, and 25-27 not separately argued by Appellants.

*II. Obviousness over Merrill  
Claims 3, 13, and 23*

Appellants argue that while the Examiner may be correct, in that XML may be well known, such a basis alone does not suggest that XML is appropriate for use in the context of the Appellants' system. (App. Br. 8). Appellants further argue that nothing in Merrill indicates a benefit, or why a developer would use XML to describe the animation behavior, or why they would not use any of other known languages to describe the animation behavior. (Reply Br. 4). The Examiner finds that since Merrill is directed to animation performed in a web environment, and XML is generally known to web developers, it would have been obvious to one of ordinary skill in the art. (Ans. 11-12).

We find no error in the Examiner's stated position that the ordinarily skilled artisan would have recognized and appreciated that the direction of animation could be performed through XML. Given the disclosure by Merrill that HTML object tags can be used to access animation services, as discussed above, we find that the use of XML, another markup language cannot be said to be unobvious over the explicit disclosure. Thus, we sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 3, 13, and 23 based on Merrill.

*III. Obviousness over Merrill and Itoh*

*Claims 4 and 24*

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 4 and 24 based on the combination of Merrill and Itoh. Appellants, (App. Br. 8), have made no separate arguments for patentability of these claims but, rather, rely on arguments previously made with respect to independent claims 1 and 21, which arguments we found to be unpersuasive for all of the reasons discussed *supra*.

*IV. Obviousness over Merrill and Lewis*

*Claims 8-10 and 18-20*

We also sustain the Examiner's 35 U.S.C. § 103(a) rejection of dependent claims 8-10 and 18-20 based on the combination of Merrill and Lewis. Appellants have argued that neither Merrill nor Lewis discloses the use of a portal server, the relationship between the portal server and a data access server or using that relationship to drive animation behaviors on remote browser clients. (App. Br. 8 and 9) These arguments, however, are analogous to the argument we found to be unpersuasive above. We find the addition of Lewis, which discloses a computer system for developing control schemes for facilities, teaches the elements of claims 8-10 and 18-20 not found in Merrill and we find no error in the Examiner's combination of Merrill and Lewis.

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### CONCLUSION

In summary, we have sustained the Examiner's rejections of all of the claims on appeal. Therefore, the decision of the Examiner rejecting claims 1-27 is affirmed.

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) (2006).

AFFIRMED

KIS

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