

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EMC CORPORATION, EMC INTERNATIONAL U.S. HOLDINGS, INC.,
and VMWARE, INC.,
Petitioner,

v.

CLOUDING CORP.,
Patent Owner.

Case IPR2014-01218
Patent 7,254,621 B2

Before JAMESON LEE, MICHAEL W. KIM, and KRISTINA M. KALAN,
Administrative Patent Judges.

KIM, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. *Background*

EMC Corporation, EMC International U.S. Holdings, Inc., and VMware, Inc., (collectively, “Petitioner”) filed a Petition requesting *inter partes* review of claims 1–24 of U.S. Patent 7,254,621 B2 (“the ‘621 patent”) pursuant to 35 U.S.C.

§§ 311–319. Paper 1 (“Pet.”). Clouding Corp. (“Patent Owner”) filed a Preliminary Response. Paper 7, 2; Paper 9. On January 26, 2015, we instituted an *inter partes* review of claims 1–24 on one ground of unpatentability alleged in the Petition. Paper 10 (“Dec.”). After institution of trial, Patent Owner filed a Patent Owner Response (Paper 23, “PO Resp.”) and Petitioner filed a Reply (Paper 27, “Reply”). An oral hearing was held on August 17, 2015. Paper 36 (“Tr.”).

The Board has jurisdiction under 35 U.S.C. § 6(c). In this Final Written Decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, we determine that Petitioner has shown by a preponderance of the evidence that all claims for which trial is instituted, namely, claims 1–24, are unpatentable.

B. The ’621 Patent

The ’621 patent sets forth:

The present invention relates to pervasive computing, and more particularly to methods, systems, and computer program instructions for enabling users of **pervasive devices** (such as limited-function mobile devices, smart appliances, etc.) to remotely access and manipulate information in ways that might otherwise be impossible or impractical because of inherent limitations of the device.

Ex. 1001, 1:14–20 (emphasis added).

As explained in the ’621 patent, pervasive devices have become popular in recent years as people increasingly seek “anywhere, anytime” access to services such as voice and data communications. Ex. 1001, 1:24–27. However, pervasive devices have inherent drawbacks. Ex. 1001, 1:52–53. Pervasive devices typically do not have sufficient memory to store all information that the user requires. Ex. 1001, 1:64–2:1. Pervasive devices also may not have sufficient software to access all of the data that a user might wish to use. Ex. 1001, 2:7–9. Pervasive devices further may not have the necessary drivers installed with which to support all the

data manipulation operations a user might wish to perform. Ex. 1001, 2:17–19. Accordingly, the ‘621 patent discloses a technique for enabling pervasive devices to access and manipulate data that avoids these drawbacks. Ex. 1001, 3:26–28.

C. Related Matters

Patent Owner identifies the following related district court proceeding between Petitioner and Patent Owner that involves the ‘621 patent: *Clouding Corp. v. EMC Corp.*, Case No. 1:14-cv-01178 (D. Del.). Paper 7, 2. Petitioner and Patent Owner identify also the following *inter partes* reviews, involving different petitioners than the present Petition, that were before the Board involving the ‘621 patent, but are now terminated: IPR2013-00088 (Ex. 1003); IPR2014-00300 (Ex. 1004). Paper 5, 2; Paper 7, 2.

D. Illustrative Claim

Independent claim 1 is reproduced below:

1. A method of enabling data access and manipulation from a pervasive device, comprising the steps of:
 - receiving a data access request from a pervasive device;
 - obtaining the requested data;
 - determining what data manipulation operations are available for the obtained data; and
 - providing references to the determined data manipulation operations to the pervasive device.

E. Prior Art Reference Applied by Petitioner and Alleged Ground of Unpatentability

Petitioner challenges the patentability of claims 1–24 based on anticipation in view of the following item of prior art:

US 6,670,968 B1 (“Schilit”) Dec. 30, 2003 Ex. 1006

II. ANALYSIS

A. *Claim Construction*

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent in which it appears. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 793 F.3d 1268, 1275–79 (Fed. Cir. 2015) (“We conclude that Congress implicitly approved the broadest reasonable interpretation standard in enacting the AIA.”). Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). We construe the terms below in accordance with these principles.

1. *Whether No More than One Data Access Request Is Permitted*

Independent claims 1 and 9 each recite “receiving a data access request.” Independent claim 17 recites “receive a data access request.” Petitioner asserts the following:

For purposes of this *inter partes* review, Petitioners submit that the broadest reasonable construction of “receiving [receive] a data access request” is the construction adopted by the Board in the Oracle and SAP proceedings. Specifically, the broadest reasonable construction of the term “receiving a data access request” as used in claims 1 and 9, and the term “receive a data access request” as used in claim 17 of the ’621 Patent, does not preclude receiving additional

data access requests, or having steps performed also in response to another request. IPR2013-00088 and IPR2014-00300. (Ex. 1003 at 7-8; Ex. 1004 at 5-7).

As the Board twice noted, this construction is consistent with the open-ended transition “comprising” in the independent claims. IPR2013-00088 and IPR2014-00300. (Ex. 1003 at 7-8; Ex. 1004 at 5-7). It is also consistent with the specification, which explicitly notes that the embodiments in which only one request was disclosed were not to be construed as limiting. (Ex. 1001 at 18:43-45); (*see also* Ex. 1003 at 7-8; Ex. 1004 at 5-7).

Pet. 13–14 (citing Exs. 1001, 1003, 1004).

Patent Owner asserts that elements within claim 1 could be obtained in response to additional data access requests not recited in claim 1, because that would run contrary to the plain meaning and internal consistency of the claim’s terms, as well as the disclosure in the specification as viewed by a person of ordinary skill in the art. PO Resp. 6–11 (citing Ex. 1001, 2001). We disagree, and agree with Petitioner in construing independent claim 1 such that elements within claim 1 could be obtained in response to additional data access requests not recited in claim 1.

Patent Owner asserts that the “requested data” is synonymous with the “obtained data,” and is indeed the only data found in the claims. We agree. Patent Owner’s assertion is misplaced, however, because giving the term that meaning does not conflict with the above-stated claim construction of Petitioner. For example, independent claim 1 recites “obtaining the requested data,” where that “requested data” is in response to a “data access request” received in “receiving a data access request from a pervasive device.”

To clarify our construction, we provide the following illustrative scenario. Assume a user makes a data access request, “we want the Elvis song ‘Jailhouse Rock’.” This request for “Jailhouse Rock” is sent from the pervasive device to a

server. The server may find “Jailhouse Rock,” but then may wonder “what music format for ‘Jailhouse Rock’ would the pervasive device prefer?” The server may then send such a query back to the pervasive device, and the pervasive device can respond “we request .wav files.” Based on the two requests from the pervasive device, the server then sends “Jailhouse Rock” as a .wav file. “Jailhouse Rock” in a .wav file format received by the pervasive device corresponds properly to the “requested data” recited in “obtaining the requested data,” because it is clearly the “Jailhouse Rock” song initially requested by the pervasive device. Of course, “Jailhouse Rock” in the .wav file format is *also responsive* to the additional data access request of “we request .wav files.” Indeed, Patent Owner does not appear to dispute the applicability of this scenario. *See* Tr. 48:17–50:4.

What Patent Owner attempts to assert in distinguishing the prior art, however, is that the recited obtained data (e.g., “Jailhouse Rock” in the .wav file format) cannot be obtained based on *both* the recited data access request (e.g., “we want the Elvis song ‘Jailhouse Rock’”) *and an additional data access request* (e.g., “we request .wav files”). Clearly, the recited obtained data (e.g., “Jailhouse Rock” in the .wav file format) may be responsive to both. We are unpersuaded that independent claims 1 and 52 require that the recited obtained data (e.g., “Jailhouse Rock” in the .wav file format) be obtained *only* from the recited data access request (e.g., “we want the Elvis song ‘Jailhouse Rock’”) **and** *to the exclusion of any other additional data access request* (e.g., “we request .wav files”) for several reasons.

First, independent claim 1, for example, recites the open-ended transitional phrase “comprising” in conjunction with all of the recited steps, including “receiving a data access request.” *See Invitrogen Corp. v. Biocrest Mfg., L.P.*, 327 F.3d 1364, 1368 (Fed. Cir. 2003) (“The transition ‘comprising’ in a method claim indicates that the claim is open-ended and allows for additional steps.”). Thus, the

recitation of “receiving a data access request” (e.g., “we want the Elvis song ‘Jailhouse Rock’”) does not preclude receiving additional data access requests (e.g., “we request .wav files”) or having steps performed in response to both requests (e.g., returning “Jailhouse Rock” in the .wav file format).

Second, other language in each independent claim is consistent with our claim construction set forth above. For example, a subsequent step recited in independent claim 1 and also subject to the open-ended transitional phrase “comprising” is “obtaining the requested data.” While the requested data must be obtained in response to the previously recited “data access request,” it does not follow that the requested data must be obtained only in response to the same recited “data access request,” and cannot also be obtained in response to other, additional data access requests. Obtaining data in response to other data access requests, in addition to the one particular data access request, is not excluded by the claim language at issue.

Third, the specification is consistent also with the construction proposed by Petitioner, which we agree with and adopt. For example, the Summary of the Invention section of the specification mentions accommodating multiple data access requests. Ex. 1001, 4:9–12 (“In preferred embodiments, the proxies, agents, and DMS are not located within the WID, but instead are accessed by sending one or more request messages from the WID.”). In another example, the embodiments in the specification, such as Figure 3 cited by Patent Owner, disclose performing the obtaining, determining, and returning steps in response to one data access request. There is no indication, however, that other embodiments are excluded, and, indeed, the specification nowhere disclaims other embodiments. Moreover, the specification actually indicates the contrary of Patent Owner’s position by stating, “[t]he foregoing description of a preferred embodiment is for purposes of

illustrating the present invention, and is not to be construed as limiting thereof.” Ex. 1001, 18:43–45; *see also* Ex. 1001, 4:53–60 (“As will be obvious to one of ordinary skill in the art, these flowcharts are merely illustrative of the manner in which the associated aspects of the present invention may be implemented, and changes may be made to the logic that is illustrated therein (for example, by altering the order of operations shown in some cases, by combining operations, etc.) without deviating from the inventive concepts disclosed herein.”).

At oral argument, Patent Owner asserted that the aforementioned portions of the specification are boilerplate language, and, thus, should be given minimal weight as compared to the balance of the specification. Tr. 32:16–33:6. As an initial matter, we note that column 4, lines 9–12 are cited above, and those portions of the specification are directed to preferred embodiments. Moreover, we are unable to discern, and Patent Owner does not cite, any authority on characterizing, and thus, disregarding certain prior art disclosure as boilerplate language. Accordingly, we decline to disregard what Petitioner characterizes as “boilerplate” language.

Patent Owner asserts also that any additional data access requests would be undefined, for none are shown in Figure 3 or elsewhere described in the specification. Patent Owner’s assertions are misplaced. While we agree that the ’621 patent does not disclose explicitly additional data access requests, such an absence does not support affirmatively precluding obtaining data responsive to *both* the recited data access request *and additional data access requests*, for the reasons set forth above.

Patent Owner asserts also that any additional data access requests would be superfluous, for the requested data has already been obtained, and, therefore, without meaning. Here, too, Patent Owner’s assertions are misplaced, for the

additional data access request is not superfluous in the above construction where the obtained data (e.g., “Jailhouse Rock” in the .wav file format) is responsive to *both* the recited data access request (e.g., “we want the Elvis song ‘Jailhouse Rock’”) *and an additional data access request* (e.g., “we request .wav files”).

Patent Owner asserts further that the independent claims do not permit the data that is operated upon in the balance of the claim to be obtained by the additional, unrecited data request, because this would run contrary to the plain meaning of the terms as well as the purpose and mechanics of the method as disclosed in the specification. To the extent that Patent Owner is asserting that the operating steps set forth in the balance of the claim should operate *only* on the additional, unrecited data request *to the exclusion of* the recited data access request, Patent Owner’s assertion is misplaced for the reasons set forth above.

Patent Owner cites *In re Abbott Diabetes Care Inc.*, 696 F.3d 1142, 1149 (Fed. Cir. 2012), in support of several of its positions. Patent Owner asserts that any additional data access requests would be superfluous, and that *In re Abbott Diabetes Care Inc.* instructs that superfluous language is disfavored. We are unpersuaded that the additional data access requests are superfluous, for the reasons set forth above.

Patent Owner asserts further that the specification as a whole is directed to compensating for the limitations of a pervasive device—e.g., “access to limited-bandwidth networks,” and “the need to maximize the device’s relatively short battery life” (Ex. 1001 at 1:42–61), thus teaching a person of ordinary skill that adding data access requests, where the specification teaches a method can be accomplished using only one, would be undesirable. Patent Owner asserts that the above-quoted language from the specification amounts to sufficient disparagement of additional data access requests under *In re Abbott Diabetes Care Inc.* to warrant

exclusion from a proper claim construction. In effect, Patent Owner is asserting that the specification indicates a disclaimer of additional data access requests. We disagree. Unlike the explicit references to and disparagement of the disputed subject matter in the background section of the patent at issue in *In re Abbott Diabetes Care Inc.*, the above-quoted language from the specification does not even mention additional data access requests, a fact confirmed repeatedly by Patent Owner. Such explicit references are necessary, because any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d at 1480. It can be difficult to show the necessary clarity, deliberateness, and precision without there being any explicit discussion of the subject, and we are unpersuaded that Patent Owner has made a sufficient showing. *See also Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1372–73 (Fed. Cir. 2014) (*quoting Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1327 (Fed.Cir.2002)) (“[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using ‘words or expressions of manifest exclusion or restriction’”). Indeed, Patent Owner’s assertion appears to be a hindsight attempt to impermissibly read a particular embodiment appearing in the written description into the claim, where the claim language would support a broader embodiment. *See In re Van Geuns*, 988 F.2d 1184.

In light of the lack of explicit reference to additional data access requests, Patent Owner can at best show only a tangential relationship between additional data access requests and the above-quoted language from the specification. Given the need in a disclaimer for clarity, deliberateness, and precision using “words or expressions of manifest exclusion or restriction,” in order to show that this

tangential relationship rises to the level of a disclaimer, Patent Owner would need to show that the correlation between additional data access requests and bandwidth and battery life is so undisputedly negative, that one of ordinary skill could not have helped but come to the conclusion that any action that would negatively impact bandwidth and battery life, such as additional data access requests, are precluded by the claim. In support of this implication, Patent Owner cites the Declaration of Dr. Scott M. Nettles, which recites the following:

There is no method corresponding to claim 1 that is described in the ['621] patent that involves or suggests more than one data access request. Indeed, such methods would run contrary to the goals of the patentee to reduce power consumption at the mobile device while also simplifying its operation. The method of claim 1 requires one send and one receive at the pervasive device. And in fact, those sends and receives would have been needed just to communicate. As discussed above, a person of ordinary skill would have understood that this minimal scheme was desirable to conserve resources.

Ex. 2001 ¶ 30. This paragraph constitutes the entirety of Patent Owner's factual support for its position in this regard.

In response, Petitioner relies on the Declaration of Dr. Benjamin Goldberg to support its position that one of ordinary skill in the art would have understood that, in certain circumstances, using multiple data access requests is commensurate with preserving bandwidth and battery life, for example, and, most notably, when obtained data is in response to multiple requests, but also when a request for a large data file is broken up into multiple smaller requests to preserve the possibility that the rest of the data won't be sent. Reply 3–4 (citing Ex. 1022 ¶¶ 23–28).¹

¹ In reply to Patent Owner's assertions on this issue, Petitioner cites Schilit for disclosing that it, too, is directed to "minimiz[ing] transmissions over relatively low-bandwidth wireless communications." Reply 17 (citing Ex. 1005, 11:11–13). Accordingly, as Schilit discloses additional data access requests, Schilit provides

Accordingly, when we consider that Patent Owner's position is based on a tangential extrapolation from the specification supported by minimal factual support from Dr. Nettles, we are more persuaded by Petitioner's reasoning and response, which is supported by the more robust Declaration of Dr. Goldberg, the contents of which we have considered and determine are more reasonable than those of Dr. Nettles's Declaration.

Accordingly, although independent claims 1, 7, and 19 do require that the steps recited therein, other than the receiving step, be responsive to the same data access request, they do not preclude receiving additional data access requests, or having steps performed also in response to another request.

2. *"References to the Determined Data Manipulation Operations"*

Independent claims 1, 9 and 17 recite "references to the determined data manipulation operations." Petitioner cites our Decisions in *Oracle Corporation v. Clouding IP, LLC*, Case IPR2013-00088 (PTAB May 14, 2013) (Paper 7), and *SAP America, Inc. v. Clouding IP, LLC*, Case IPR2014-00300 (PTAB May 14, 2013) (Paper 9), in asserting that "references to the determined data manipulation operations" should be construed as "an identifier, such as a URL, an e-mail address, or a combination of an e-mail address and subject line, specifying a location of a data manipulation operation or service on a computer network." Pet. 14. The specification does not use the term "reference" as it pertains to returning determined data manipulation operations. The specification does disclose a service invocation address that specifies a location of a data manipulation service. Ex. 1001, 9:16–20. The specification interchangeably refers to data manipulation operations and data manipulation services. Ex. 1001, 4:22–40. The service

objective evidence that additional data access requests are not undisputedly correlated negatively with minimizing bandwidth and battery life.

invocation address is specified for each data manipulation service and indicates an address at which the data manipulation service may be invoked. Ex. 1001, 8:63–66. These addresses are provided as Uniform Resource Locators (“URLs”). Ex. 1001, 8:66–9:1. In alternative embodiments, service invocation addresses may employ address formats other than URLs, such as e-mail addresses, or a combination of an e-mail address and subject line, to designate a service to be invoked. Ex. 1001, 9:21–25. Thus, we construe “references to the determined data manipulation operations” as an identifier, such as a URL, an email address, or a combination of an e-mail address and subject line, specifying a location of a data manipulation operation or service on a computer network.

3. *“Location of the Pervasive Device”*

Dependent claim 6 recites “location of the pervasive device.” Petitioner cites our Decision in *Oracle Corporation v. Clouding IP, LLC*, Case IPR2013-00088 (PTAB May 14, 2013) (Paper 7), in asserting that “location of the pervasive device” should be construed as “a physical location of the pervasive device.” Pet. 14–15. The specification discloses that location information may be determined by querying a global positioning system (“GPS”) function on the pervasive device. Ex. 1001, 11:32–37. A GPS determines a physical location. The specification also discloses that location information may include a list of access points which are near the pervasive device. Ex. 1001, 11:46–49. The use of the term “near” indicates physical proximity to a physical location. The rest of dependent claim 6 is consistent with “location” being a physical location. Accordingly, we construe “location of the pervasive device” as “a physical location of the pervasive device.”

B. *Claims 1–24 as Anticipated by Schilit*

Petitioner contends that claims 1–24 are anticipated by Schilit. Pet. 15–48. Patent Owner disagrees. PO Resp. 11–15. Petitioner replies. Reply 10–22.

1. *Schilit (Ex. 1006)*

Schilit relates to a Web Browser program, referred to as an “m-link,” which converts HTML documents for displaying on a mobile display. Ex. 1006, 5:30–32. The m-link program accesses a server to retrieve a document as identified by a user-selected URL. Ex. 1006, 5:32–34. The document received from the server is then parsed and hyper-links contained in the document are separated from the content. Ex. 1006, 5:34–36. The hyper-links are processed, re-organized, and provided for display on the mobile device. Ex. 1006, 5:36–37. Once the links are displayed, the mobile-device keypad can be used to navigate to and select one of the displayed links. Ex. 1006, 5:46–48. As shown below in Figures 6A and 6B, Schilit discloses a menu tree of links that can be navigated by user selection so as to allow a user to select the “Publications” link, and then the “Hypertext Interaction revisited” link.

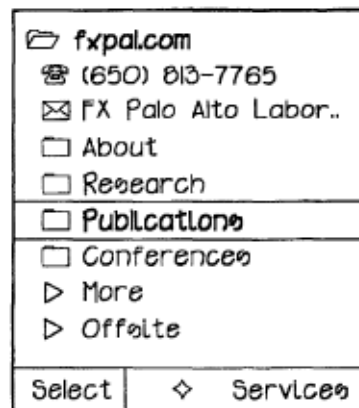


FIG. 6A

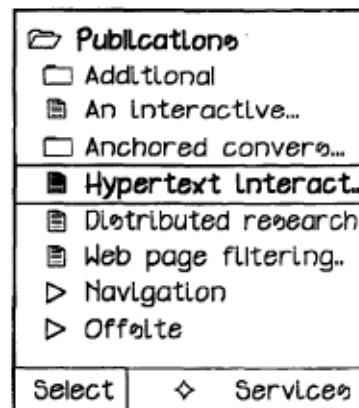


FIG. 6B

Figure 6A displays links from the FXPAL Web page with links reorganized for better viewer accessibility, and new links for a telephone number and an address are provided. Figure 6B shows links provided after selection of the publications link in Figure 6A.

As shown below in Figure 6C, a list of situations, or content-appropriate services, such as reading, printing, or faxing, is then provided to the mobile device display after the “Hypertext Interaction revisited” link is selected in Figure 6B. Ex. 1006, 5:48–49.

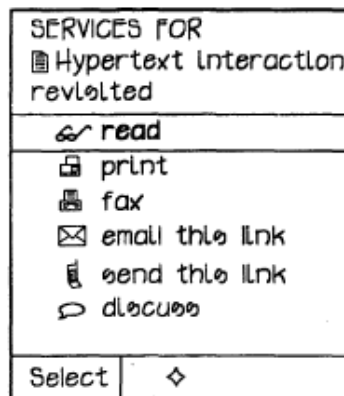


FIG. 6C

Figure 6C shows services available for the “Hypertext interact . . .” publication link from Figure 6B. The services are hosted on a database. Ex. 1006, 10:1–2. The list of content-appropriate services, including printing and faxing, are provided dynamically by the database, for display on the mobile device display, based on the link owner or link type selected by the user. Ex. 1006, 10:1–4. Selecting one of the services from the list enables the service selected to be performed on the user-selected URL. Ex. 1006, 5:49–51.

2. Claims 1–24

After considering the Petition, Patent Owner Response, Reply, and all evidence relied on by Petitioner and Patent Owner, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claims 1–24 are anticipated by Schilit. The Petition sufficiently accounts for each of the elements in these claims. For example, independent claim 1 recites “receiving a data access request from a pervasive device” and “obtaining the requested data.” Schilit

discloses that an m-link program accesses a server to retrieve a document identified by a user-selected URL. Ex. 1006, 5:32–34. Independent claim 1 also recites “determining what data manipulation operations are available for the obtained data; and providing references to the determined data manipulation operations to the pervasive device.” Schilit discloses that in response to receipt of a user-identified URL, a list of situations or content-appropriate services for that user-identified URL, such as reading, printing, or faxing, are located on a database (Ex. 1006, 10:1–4) and provided as links on a mobile device display. Ex. 1006, 5:48–49, Fig. 6C.

The correspondence of Schilit’s disclosure to independent claim 1 is even clearer for the phone number and address functions of Figure 6A. For example, independent claim 1 recites “receiving a data access request from a pervasive device” and “obtaining the requested data.” Schilit discloses that an m-link program accesses a server to retrieve a document identified by a user-selected URL. Ex. 1006, 5:32–34. Independent claim 1 also recites “determining what data manipulation operations are available for the obtained” and “providing references to the determined data manipulation operations to the pervasive device.” Schilit provides a link for a telephone number identified in the user-identified URL (e.g., “(650) 813-7765” as shown Figure 6A of Schilit) in response to receipt of a user-identified URL. Schilit displays the link listed as the telephone number identified in the user-identified URL on a mobile device display. The link is configured such that when the user selects the link, the device dials the telephone number displayed on the mobile device. Ex. 1006, 8:14–18, Fig. 6A. Thus, as distinguished from the embodiment of Figure 6C of Schilit, one request for a user-selected URL results in both obtained data from the user-selected URL (e.g., “(650) 813-7765” as shown in Figure 6A of Schilit) and data manipulation operations (e.g., the link is configured

such that when the link is selected the telephone number displayed on the mobile device is dialed). The same analysis applies to the address link (e.g., “FX Palo Alto Laboratory”), the selection of which brings up a map of the address listed in identified in the user-identified URL. Ex. 1006, 8:22–35, Fig. 6A.

We are persuaded similarly that the Petition has set forth adequately how Schilit discloses each and every limitation of claims 2–24. Pet. 28–48.

Patent Owner asserts that Schilit does not disclose “providing references to the determined data manipulation operations to the pervasive device,” in response to the data access request, as recited in independent claims 1, 7, and 19.

Specifically, Patent Owner asserts that Schilit does not return the determined data manipulation operations in response to a requested URL (i.e., the data access request), but instead “returns links extracted from (and potentially derived from) the original web page.” PO Resp. 13 (citing Ex. 1006, 5:55–67; Ex. 2001 ¶ 46).

As an initial matter, we note that the extracted links are not merely provided in Figures 6A–6C, but also reorganized. The’621 patent makes clear that “data manipulation operations” should be construed broadly. Ex. 1001, 3:43–57 (“[m]any other manipulation operations might be provided in an implementation of the present invention, including modifying or changing data in some way”).

Extraction and reorganization of links are clearly a change or modification of data.

Insofar as Patent Owner may be asserting that the recited determined data manipulation operations must be more than just links extracted from the original web page, Patent Owner’s assertions are misplaced, as Schilit discloses a plethora of data manipulation operations—for example, a list of situations, or content-appropriate services, such as reading, printing, or faxing, for that user-identified URL (Ex. 1006, 10:1–4, Fig. 6C), as well as phone number and mapping operations (Ex. 1006, 8:14–35, Fig. 6A). Indeed, many of these are the same data

manipulation operations listed in the '621 patent. Ex. 1001, 3:38–41 (“[t]he data manipulation operations that are provided through use of the present invention may include viewing, faxing, printing, and projecting the data, as well as delivering the data to a voice messaging system”).

Patent Owner asserts further that the alleged data manipulation operations of Schilit are not returned in response to only one data access request. As an initial matter, we determined above that the claims are not so limited. Even if the claims are so limited, however, we disagree with Patent Owner’s assertion, because at least the phone number and mapping operations of Schilit are returned in response to one, and only one, data access request.

Claim 8 depends from independent claim 1, and recites “performing one or more data manipulation operations on the obtained data, thereby creating transformed data; determining what data manipulation operations are available for the transformed data; and providing references to the determined data manipulation operations for the transformed data to the pervasive device.” Claims 16 and 24 depend from independent claims 9 and 17, respectively, and recite similar limitations. Patent Owner asserts that Figures 6A–6C of Schilit only disclose extracting links from a web page in response to a request from a pervasive device, and that the extracting process does not correspond properly to “performing one or more data manipulation operations on the obtained data, thereby creating transformed data.” As an initial matter, Patent Owner has not explained adequately why extracting links from a web page would not correspond properly to one of the recited data manipulation operations. Specifically, Patent Owner has not explained adequately why “extraction” would not correspond properly to a data manipulation operation, as the extracted links were previously part of a larger webpage, and now they are not, which we discern as being a change or

modification of data. Furthermore, at a minimum, the extracted links are not merely provided in Figures 6A–6C, but also reorganized, which we also discern as being a data manipulation operation, as it results in transformed data, i.e., the organized links.

Additionally, Patent Owner’s assertions are misplaced, as they focus on “extraction” and do not account for, or address, the plethora of other data manipulation operations disclosed by Schilit and relied on by Petitioner. Accordingly, even if we were to agree with Patent Owner that extracting links from a web page in response to a request from a pervasive device does not correspond properly to “performing one or more data manipulation operations on the obtained data, thereby creating transformed data,” Schilit discloses a plethora of data manipulation operations that are more than just extracting links from a web page, for example, a list of situations, or content-appropriate services, such as reading, printing, or faxing, for that user-identified URL (Ex. 1006, 10:1–4, Fig. 6C), as well as phone number and mapping operations (Ex. 1006, 8:14–35, Fig. 6A).

3. *Conclusion*

For the foregoing reasons, after considering the Petition, Patent Owner Response, Reply, and all evidence relied on by Petitioner and Patent Owner, we are persuaded that Petitioner has shown, by a preponderance of the evidence that claims 1–24 are anticipated by Schilit.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–24 of the ’621 patent are held unpatentable; and

IPR2014-01218
Patent 7,254,621 B2

FURTHER ORDERED that because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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