

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORP.,
Petitioner,

v.

SURFCAST, INC.,
Patent Owner.

IPR2022-00590
Patent 9,043,712 B2

Before SCOTT B. HOWARD, JASON W. MELVIN, and
MICHAEL T. CYGAN, *Administrative Patent Judges*.

HOWARD, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

A. *Background and Summary*

Microsoft Corp. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting *inter partes* review of claims 1–4 of U.S. Patent No. 9,043,712 B2 (Ex. 1001, “the ’712 patent”). Surfcast, Inc. (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 6. We instituted an *inter partes* review of claims 1–4 of the ’712 patent on all grounds of unpatentability alleged in the Petition. Paper 9 (“Institution Decision” or “Inst. Dec.”).

After institution of trial, Patent Owner filed a Response (Paper 14, “PO Resp.”), Petitioner filed a Reply (Paper 15, “Pet. Reply”), and Patent Owner filed a Sur-reply (Paper 16, “PO Sur-reply”).

An oral hearing¹ was held on July 12, 2023, and the record contains a transcript of this hearing. Paper 21 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons that follow, we determine that Petitioner has shown by a preponderance of the evidence that all of the challenged claims are unpatentable.

B. *Real Parties in Interest*

Petitioner identifies itself as the real party in interest. Pet. 3.

Patent Owner identifies itself as the real party in interest. Paper 3, 2 (Patent Owner’s Mandatory Notices).

C. *Related Matters*

The parties identify the following district court proceeding: *SurfCast, Inc. v. Microsoft Corporation*, No. 6:21-cv-01018-ADA (W.D. Tex.).

¹ A single consolidated oral hearing was held for IPR2022-00423, IPR2022-00590, IPR2022-00591, and IPR2022-00592. Tr. 1, 3:2–5.

Pet. 3; Paper 3, 2. Additionally, Petitioner identifies *SurfCast, Inc. v. Microsoft Corporation*, No. 2:12-cv-00333-DBH (D. Me.) (“Maine Proceeding”) and various *inter partes* review proceedings, including a series of *inter partes* review proceedings that determined that the claims of a related patent were unpatentable.² Pet. 3–4.

D. The ’712 Patent

The ’712 patent is entitled “System and Method for Simultaneous Display of Multiple Information Sources” and is directed to a graphical user interface that organizes content from a variety of information sources into a grid of tiles, each of which can refresh its content independently of the others. Ex. 1001, codes (54), (57). As described in the “Background,” at the time of the invention, display technologies lacked a user interface capable of presenting any type of information in a consistent manner and in such a way that all open channels could indicate their activity on a continual basis. Ex. 1001, 4:38–49. In response to this need, the ’712 patent describes a graphical user interface comprising a grid of tiles that resides on the user’s computer desktop. Ex. 1001, 4:53–54. “The grid of tiles provides a uniform[] graphical environment in which a user can access, operate, and/or control multiple data sources on electronic devices.” Ex. 1001, 4:54–57. Figure 1 is reproduced below.

² *Microsoft Corporation v. SurfCast, Inc.*, IPR2013-00292 is representative of those proceedings. A copy of the Final Written Decision (“the 403 FWD”) is Exhibit 1017.

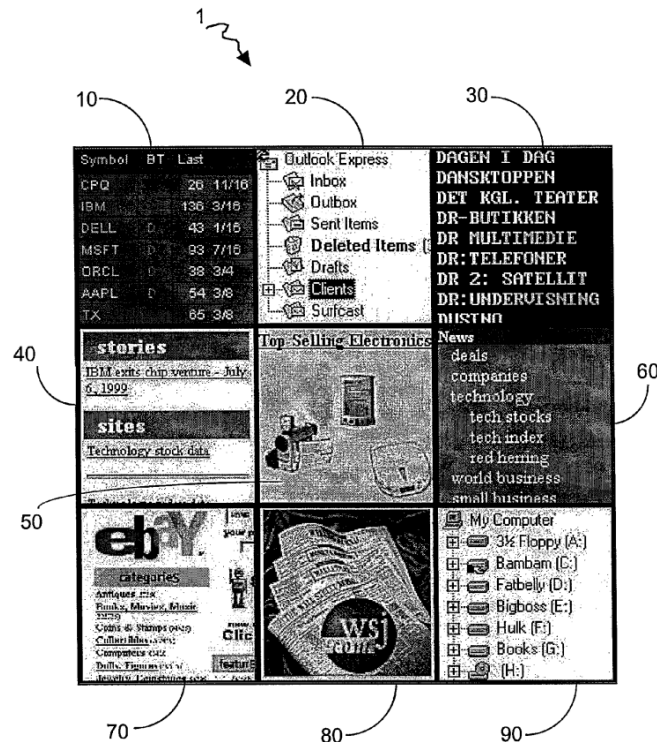


Figure 1 illustrates “a user interface comprising a grid of tiles as might be depicted on a display screen.” Ex. 1001, 6:25–27; *see also* Ex. 1001, 7:27–39 (describing the various tiles).

E. Illustrative Claim

Claims 1 and 3 are independent. Claim 1, reproduced below, is illustrative of the claimed invention.³

1. [1.a] A method executed by a device under the control of a program, the device including a memory for storing the program, the method comprising:

[1.b] partitioning a visual display rendered by the device into *an array of tiles*, [1.c] wherein each tile in the array of tiles is associated with an information source in a plurality of information sources, [1.d] wherein content of a second tile of the array of tiles depends upon content of a first tile of the array of tiles;

³ For ease of reference, we use Petitioner’s claim numbering scheme.

[1.e] assigning a first update rate to the first tile;

[1.f] *updating information from a first information source in the plurality of information sources presented to the first tile in accordance with the first update rate; and*

[1.g] *updating content of the second tile based on the information updated to the first tile.*

Ex. 1001, 30:23–38 (emphases added).

F. Prior Art and Asserted Grounds

Petitioner asserts that claims 1–4 would have been unpatentable on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–4	102(a), (b)	MSIE Kit ⁴
1–4	103(a)	MSIE Kit, Jones ⁵
1–4	103(a)	MSIE Kit, Miklos ⁶
1–4	103(a)	MSIE Kit, Miklos, Jones
1–4	102(a), (b)	Excel97 ⁷
1–4	103(a)	Excel97
1–4	103(a)	Excel97, Bhansali ⁸
1–4	103(a)	Excel97, Igra ⁹
1–4	103(a)	Excel97, Igra, Bhansali

⁴ Microsoft Press. (1998). *Microsoft Internet Explorer Resource Kit*. (Ex. 1010). All citations are to the native pagination.

⁵ U.S. Patent No. 6,819,345 B1, filed Feb. 17, 1998 (Ex. 1011)

⁶ U.S. Patent No. 5,226,117, issued July 6, 1993 (Ex. 1013).

⁷ Person, R. (1997). *Special Edition Using Microsoft Excel 97* (Ex. 1005). All citations are to the native pagination.

⁸ U.S. Patent No. 6,006,239, filed Mar. 15, 1996 (Ex. 1006).

⁹ U.S. Patent No. 6,701,485 B1, issued Mar. 2, 2004 (Ex. 1007).

Petitioner relies on the testimony of Henry Houh, Ph.D.. Ex. 1003; Ex. 1065. Dr. Houh was cross-examined. Ex. 2003.¹⁰

Patent Owner relies on the testimony of Glenn E. Weadock. Ex. 2001. Mr. Weadock was not cross-examined in this proceeding.

II. ANALYSIS

A. Legal Standard

A patent claim is unpatentable under 35 U.S.C. § 102 if “the four corners of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation.”

Advanced Display Sys., Inc. v. Kent State Univ., 212 F.3d 1272, 1282 (Fed. Cir. 2000). “A single prior art reference may anticipate without disclosing a feature of the claimed invention if such feature is necessarily present, or inherent, in that reference.” *Allergan, Inc. v. Apotex Inc.*, 754 F.3d 952, 958 (Fed. Cir. 2014). Moreover, the reference must also “disclose[] within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim.” *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1371 (Fed. Cir. 2008). However, “the reference need not satisfy an *ipsissimis verbis* test.” *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009).

¹⁰ Contrary to our rules, Patent Owner only filed excerpts of the cross-examination testimony. See 37 C.F.R. § 42.53(f)(7) (2021) (“The testimony *must* be filed as an exhibit.” (emphasis added)). Accordingly, we only consider the pages cited and do not, because we cannot, consider other pages even if cited by the parties. See Pet. Reply 9 (citing Ex. 2003, 191:5–18); PO Sur-reply 6 (citing Ex. 2003, 180:10–181:21).

B. Level of Ordinary Skill in the Art

Factors pertinent to a determination of the level of ordinary skill in the art include “(1) the educational level of the inventor; (2) type of problems encountered in the art; (3) prior art solutions to those problems; (4) rapidity with which innovations are made; (5) sophistication of the technology; and (6) educational level of active workers in the field.” *Envtl. Designs, Ltd. v. Union Oil Co. of Cal.*, 713 F.2d 693, 696 (Fed. Cir. 1983) (citing *Orthopedic Equip. Co. v. All Orthopedic Appliances, Inc.*, 707 F.2d 1376, 1381–82 (Fed. Cir. 1983)). “Not all such factors may be present in every case, and one or more of these or other factors may predominate in a particular case.” *Id.* at 696–97.

Petitioner argues that a person having ordinary skill in the art would have had “a Master’s degree in software engineering or computer science (or equivalent experience working in industry) and several years of experience designing, writing or implementing software products, either at the application or operating system level.” Pet. 12 (quoting Ex. 1003 ¶ 63). Petitioner further argues that a person having ordinary skill in the art “would have been familiar with various technological concepts, including those relating to user interfaces, operating systems and software applications, basic computer functionality, networking and data processing.” Pet. 12 (citing Ex. 1003 ¶ 63).

Patent Owner does not address the level of skill or Petitioner’s description of what a person having ordinary skill in the art would have been familiar with. *See* PO Resp.

Because Petitioner’s formulation of the level of ordinary skill in the art is consistent with the ’712 patent and the asserted prior art and is not challenged by Patent Owner, we adopt it and apply it in our analysis below.

C. Claim Construction

We apply the same claim construction standard used in the federal courts, in other words, the claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. § 282(b), which is articulated in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) (en banc). 37 C.F.R. § 42.100(b) (2021). Under the *Phillips* standard, the “words of a claim ‘are generally given their ordinary and customary meaning,’” which 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*, 415 F.3d at 1312–13.

The parties argue that we should construe five terms: “tile,” “information source,” “partitioning a visual display rendered by the device into an array of tiles,” “update rate,” and “presented to the first tile.” Pet. 12–21; PO Resp. 6–26. We construe three of those terms below. For all other limitations, we need not expressly construe any claim terms at this time. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (noting that “we need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

In IPR2013-00292, the Board construed a number of terms in the ’403 patent,¹¹ which is the “ultimate parent” of the ’434 patent through a chain of continuations and continuations in part. IPR2013-00292, Paper 93

¹¹ U.S. Patent No. 6,724,403.

(Ex. 1017, the “403 FWD”).¹² See Pet. 1. Because the ’403 patent is the ’434 patent’s “ultimate parent,” Petitioner submits that the 403 FWD constructions drive the proper constructions here. Pet. 10–19; Pet. Reply 1–11. Moreover, Petitioner argues, collateral estoppel bars Patent Owner from contesting constructions of the same terms in the ’434 patent.¹³ Pet. Reply 1 (citing *XY, LLC v. Trans Ova Genetics*, 890 F.3d 1282, 1294–95 (Fed. Cir. 2018)). Patent Owner argues that because the 403 FWD applied the “broadest reasonable interpretations,” it does not have preclusive effect here, where we construe claims using the *Philips* standard. PO Sur-Reply 1 (citing *SkyHawke Techs., LLC v. Deca Int’l Corp.*, 828 F.3d 1373, 1376 (Fed. Cir. 2016)). We need not resolve that dispute, because we conclude that to the extent the 403 FWD construed terms applicable in this proceeding, those constructions comport with the *Philips* standard.

1. *Tile(s)*

Petitioner argues that a “tile” is “a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source.” Pet. 12–18; Pet. Reply 1–8. The 403 FWD construed “tile” the same as Petitioner’s proposed construction here. Ex. 1017, 7–10.

Patent Owner submits that a “tile” is “a graphical representation of an associated information source capable of displaying refreshed content, the graphical representation being persistent and selectable to provide access to

¹² The Federal Circuit affirmed the 403 FWD’s unpatentability determinations. *SurfCast, Inc. v. Microsoft Corp.*, 639 F. App’x 651 (Fed. Cir. 2016).

¹³ Patent Owner does not dispute that the ’403 patent and ’434 patent specifications substantively match.

underlying information of the associated information source, but providing a representation of the underlying information that is more limited than the representation provided by a window.” PO Resp. 6 (emphasis omitted); PO Sur-Reply 1–6.

Claim 1 recites “partitioning a visual display rendered by the device into an array of *tiles*.” Ex. 1001, 30:27–28 (emphasis added). The context of the use of “tile” in the claims does not provide any assistance in determining its meaning.

The specification discusses “Tile Objects” at some length. Ex. 1001, 10:28–14:7. It states that “[a] tile presents content from any information source.” Ex. 1001, 10:31–32. Further, “[t]iles are selectable and live” and the specification explains that “tiles are live in that each contains real-time or near real-time information” and, when selected, “the tile instantly provides the user with access to the underlying information.” Ex. 1001, 12:3–11.

The specification frames tiles as contrasting with two other graphical user interface elements—icons and windows. Ex. 1001, 10:33–11:8. It presents tiles as “a third graphical representation of programs and files” and explains that “each tile is a viewer of a single information source.” Ex. 1001, 10:62–11:2. To distinguish tiles, the specification states that, unlike icons, a tile “contains continually refreshed content” and compared to windows, “a tile will typically be smaller in size than a window, allowing the user to view multiple tiles simultaneously if desired.” Ex. 1001, 11:3–8. Significantly, that comparison to windows uses exemplary characteristics without defining aspects applicable to all tiles. The specification asserts that “many tiles may be displayed simultaneously without overlapping with one another in the way that windows must necessarily do.” Ex. 1001, 11:13–16.

That said, the specification also gives an example of “expanding tile 406 to occupy the full area of the display” (Ex. 1001, 11:49–51), demonstrating that size does not define a tile or distinguish a tile from a window.

According to Patent Owner, a tile is a “graphical representation of an associated information source,” not merely a graphical user interface element. PO Resp. 7–10. Patent Owner submits that “a graphical user interface element,” as Petitioner proposes, “does not require a tile to be graphically displayed and does not require it to be a representation of anything.” PO Resp. 8. In Patent Owner’s view, while such an element is used for user interaction, it “need not be a representation of an information source or its underlying information.” PO Resp. 9. As Petitioner points out, however, other claim language requires tiles be displayed. Pet. Reply 2. We therefore do not agree with Patent Owner that Petitioner’s construction is deficient.

Moreover, in light of Petitioner’s unpatentability contentions for MSIE Kit discussed below, the graphical representation aspect of Patent Owner’s construction would not impact our conclusion. Patent Owner contends otherwise, in a general way, but does not explain that contention. *See* PO Resp. 10 (“These differences impact the prior art analysis.”), 39–45 (the cited discussion, which distinguishes MSIE Kit’s asserted tiles based only on providing the same representation “as any Internet Explorer window”).

Next, Patent Owner argues that a tile must provide “a representation of the underlying information that is more limited than the representation provided by a window.” PO Resp. 6, 10–14; *see also* Tr. 53:10–54:8. We do not agree.

While, as described above, the specification purports to distinguish tiles from windows, it does so with permissive terms rather than a restrictive definition. *See* Ex. 1001, 11:5–8. During the hearing, Patent Owner was unable to describe particular restrictions that would embody the limited representation. For example, Patent Owner asserted that degraded resolution would satisfy its proposed construction (Tr. 64:24–65:11) but that does not comport with a distinction from a window. A window may depict content at a variety of zooms, some of which would show an image with degraded resolution. *See* Tr. 68:6–15 (Patent owner discussing how pixels can be lost on a zoomed image). Patent Owner asserts that a window with zoom functionality lacks “a fundamentally or different in nature likeness or image.” Tr. 68:11–15. But that assertion is detached from Patent Owner’s proposed construction and unsupported by the specification. We conclude that the specification does not sufficiently distinguish a tile from a window to support Patent Owner’s proposed construction.

In fact, Patent Owner admits that the specification does not have a clear definition but insists that it nonetheless defines a tile “as something other than either an icon or a window.” Tr. 48:20–25. We do not agree. When identifying features that the specification describes to distinguish tiles from windows, Patent Owner points to other claim limitations, such as “[s]electability to provide access to the underlying information.” Tr. 49:7–10; *see also* Tr. 50:3–8 (asserting a tile must be refreshable). Although such limitations may capture aspects that the specification uses to distinguish tiles from other graphical interface elements, they do not support further construing “tile” narrowly as Patent Owner asserts. Stated otherwise, the specification’s distinctions for tiles over icons or windows already appear as claim limitations and do not counsel in favor of further limiting “tile.”

Further, Patent Owner's construction is unclear whether a tile must provide a graphical representation of its associated information source or of the information underlying that source. The proposed construction first requires a tile represent the source but then additionally requires it "provid[e] a representation of the underlying information," seemingly allowing no room for a tile that represents only the information source. PO Resp. 11. Those competing requirements would not comport with the specification. The exemplary tiles do not necessarily represent a source's underlying information, but instead may relate to the source itself. *See* Ex. 1001, Fig. 4 (tile 410, displaying the name of a broadcast signal; tile 408, displaying an icon indicating "New Mail!"), 11:51–55 (describing tile 408), 11:61–63 (describing tile 410). Thus, Patent Owner's proposed addition regarding the nature of a tile's representation would create an internal inconsistency in the meaning of a tile. We do not adopt Patent Owner's proposed restriction on the nature of a tile's representation.

Next, Patent Owner attempts to distinguish a tile "whose content may be refreshed" from one "capable of displaying refreshed content." PO Resp. 14–15. In this regard, Patent Owner distinguishes Petitioner's construction, which Patent Owner asserts "does not require that [tile] element to be capable of displaying the refreshed content." PO Resp. 14–15. We agree with Petitioner that the parties' different language regarding refreshed content does not implicate any aspect of our unpatentability analysis. *See* Pet. Reply 5.

Finally, Patent Owner contends that a tile must be "selectable to provide access to underlying information of the associated information source," not just an element that, "when selected, provides access to an information source." PO Resp. 15–18. As Patent Owner explains, it seeks a

distinction that “tiles themselves are selectable to provide access to underlying information of associated information sources, rather than access being provided by selecting the contents of a tile.” PO Resp. 16. Patent Owner argues that Petitioner’s construction, referring to an element “that, when selected, provides access to an information source,” does not require the tile itself be selectable. PO Resp. 17–18. Patent Owner relies primarily on the specification’s description that “[t]iles are selectable and live” and that, “[w]hen selected, whether by mouse click or otherwise, the tile instantly provides the user with access to the underlying information.” PO Resp. 15–16 (quoting Ex. 1001, 12:3–5). Petitioner relies on that same specification disclosure to argue that we should not restrict the manner of selecting a tile. Pet. Reply 6. The specification indicates that a tile may be selected “by mouse click or otherwise.” Ex. 1001, 12:3–4.

Petitioner points out that the 403 FWD concluded that when “a user selects a link *included* in an Active Desktop item, the user necessarily selects the Active Desktop item.” Ex. 1017, 36. That conclusion, which was part of a decision affirmed on appeal, *Surfcaster*, 639 F. App’x 651, indicates that Patent Owner’s proposed claim construction here would not preclude the claims from reading on MSIE Kit, because selecting a link within an item selects the item itself. Thus, Patent Owner’s construction would not affect the outcome here. Regardless, we agree with Petitioner that, when the specification discloses a tile may be selected “by mouse click or otherwise,” it indicates a broader range of selection mechanisms than proposed by Patent Owner. *See* Pet. Reply 6–7.

Although Patent Owner asserts that its proposed construction alone focuses on tiles themselves being selectable, we do not view the two constructions as supporting that distinction. As Petitioner points out, its

proposed construction requires that a tile, “when selected, provides access to an information source” and therefore requires “that tiles can be selected.”

Pet. Reply 8. Although Patent Owner seeks a construction that would not permit selection through activation of a link within a tile, we do not read the specification as so restrictive.

Based on the foregoing, and consistent with the Board’s prior construction, we construe “tile” as “a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source.”

2. *“Partitioning . . . at Least a Portion of the Visual Display into an Array of Tiles”*

a) *Arguments of the Parties*

Petitioner argues that “partitioning . . . at least a portion of the visual display into an array of tiles” means “dividing a display or window into two or more tiles.” Pet. 18–19 (quoting Ex. 1016, 12–13). According to Petitioner, this construction “represents the ordinary meaning of the term, as it is consistent with the description of tiles in the specification.” Pet. 19 (citing Ex. 1001, 7:27–39, Fig. 1).

Patent Owner argues that the phrase means “dividing some or all of a display into multiple tiles displayed in an orderly fashion.” PO Resp. 19. Specifically, Patent Owner argues “that ‘partitioning’ and ‘arranging’ mean ‘dividing[]’ and ‘array of tiles’ means ‘multiple tiles displayed in an orderly fashion.’” PO Resp. 19.

Patent Owner further argues that “Petitioner’s attempt[] to redefine the ‘visual display’ recited by the claims to refer to ‘a display or window’ is inconsistent with the specification.” PO Resp. 19 (emphasis omitted); *see also* PO Sur-reply 6–7 (citing Ex. 1001, 3:48–49). Patent Owner further

argues that the '712 patent draws a distinction between a window and a portion of the visual display:

The specification also distinguishes between a window and an area of a visual display. For example, “while a window may be resized as appropriate, it will frequently occupy the full display area . . .” (EX1001, 3:47-48; EX2001, ¶ 100.) This distinction is important to the tile technology introduced by the '712 Patent.

PO Resp. 20. According to Patent Owner, placing tiles in a window “will fail to provide the uniformity of appearance realized by dividing a visual display into an array of tiles” and “cannot provide a replacement for a desktop.” PO Resp. 20 (citing Ex. 1001, 4:7–43, 4:65–5:10, 6:3–11, 11:23–27, 14:15–17, 15:17–19; Ex. 2001 ¶¶ 91–92, 99–101, 123–126); *see also* PO Sur-reply 6–7. Patent Owner also argues that the fact that a window can occupy some or all of the visual display reinforces the idea that they are separate elements. PO Sur-reply 7–8.

With regard to “array,” Patent Owner argues it must mean something more than two or more tiles, as that is already captured in the use of the term “tiles.” PO Resp. 20–21. According to Patent Owner, in order “[f]or different tiles to be first *in an array* and second *in an array* and to display information from different sources, they must be ordered, *i.e.*, displayed in an orderly fashion.” PO Resp. 21. Patent Owner also argues this is consistent with the specification, which shows tiles displayed in an orderly fashion. PO Resp. 21–22 (citing Ex. 1001, 11:41, 11:49–51, Fig. 4). Specifically, Patent Owner directs us to Figures 7 through 11, which, according to Patent Owner, each show the tiles arranged in an orderly fashion. PO Resp. 22–24 (citing Ex. 1001, Figs. 7–11, 14:17–19, 16:2, 16:8–10, 16:18–52).

Patent Owner also argues that the specification “criticizes the state of the art as forcing users to ‘contend with a wide range of icons and program windows that may occupy space on a user’s display screen.’” PO Resp. 24 (quoting Ex. 1001, 3:23–25). Patent Owner argues that the claimed invention solves this problem by “standardiz[ing] the ways in which different types of information are presented to the user.” PO Resp. (quoting Ex. 1001, 3:27–28). According to Patent Owner, “[c]onstruing an array to merely refer to tiles without also requiring the tiles to be displayed in an orderly fashion, would recreate the problems criticized by the specification.” PO Resp. 25.

Petitioner responds by pointing out that the Board’s construction in the Institution Decision¹⁴ essentially adopted the construction from the Maine proceeding. Pet. Reply 9 (citing Inst. Dec. 11–12; Pet. 18–19). However, Petitioner argues that adopting Patent Owner’s position that the claim “cannot be satisfied by dividing the area *within a window* into multiple tiles” would be legal error. Pet. Reply 9. According to Petitioner, because “[a] window displayed on a computer display obviously occupies some or all of that display, as the 712 Patent itself recognizes, . . . dividing some or all of the window is necessarily dividing some or all of the display.” Pet. Reply 9–10 (citing Ex. 1001, 3:48–49). Petitioner also argues it is inconsistent with the Board’s prior decision in the 403 FWD. Pet. Reply 10–12.

¹⁴ In the Institution Decision, we adopted Patent Owner’s proposed construction of “dividing some or all of a display into multiple tiles displayed in an orderly fashion.” Inst. Dec. 11–12. We further noted that “[i]n doing so, any array that is similar to that shown in a figure of the ’712 patent would be orderly.” Inst. Dec. 12.

b) Our Analysis

As noted in footnote 14, we preliminarily construed this limitation to mean “dividing some or all of a display into multiple tiles displayed in an orderly fashion” and that “any array that is similar to that shown in a figure of the ’712 patent would be orderly.” Inst. Dec. 11–12. Although Petitioner proposed a different construction in the Petition, Petitioner did not maintain its construction in its Reply or argue that we erred. Accordingly, for the reasons given in the Institution Decision, which we incorporate by reference, we reach the same construction in this Decision.

However, the real dispute between the parties does not focus explicitly on our construction, but whether it implicitly excludes placing the array of tiles in a window.¹⁵ Based on the record, we agree with Petitioner that the claim limitation does not preclude having the array of tiles located within a window on the video display.

We begin, as always, “with the words of the claim themselves.” *Allergan Sales, LLC v. Sandoz, Inc.*, 935 F.3d 1370, 1373 (Fed. Cir. 2019) (quoting *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 457 F.3d 1293, 1301 (Fed. Cir. 2006)). The claim is silent as to which part of the visual display will contain the array of tiles. *See* Ex. 1001, 30:27–28. It is not limited to, as Patent Owner argues (PO Resp. 20), a replacement for a desktop. Nor, as Patent Owner also argues (PO Resp. 20), is there anything in the claim or our construction of tiles that requires the tiles to be presented “in a consistent

¹⁵ This issue is not relevant to the instant proceeding. However, it is relevant to IPR2022-00590, decided concurrently. Because the parties agree that the terms should have the same construction in all four pending proceedings (Tr. 11:1–8 (Petitioner), 54:11–17 (Patent Owner)), we address the dispute here.

manner” and be capable of “run[ning] on any device.” Rather, the claim simply states “partitioning . . . a portion of the visual display into an array of tiles” without any other limitations. *See* Ex. 1001, 30:27–28.

Our construction is further supported by the specification of the ’712 patent. The specification makes it clear that windows are a part of the visual display. For example, the background section describes how a window is on the visual display: “Thus, while a window may be resized, it will frequently occupy the full display area, effectively limiting the user to a view of a single program.” Ex. 1001, 3:48–50; *see also* Ex. 1001, 10:49–50.

Additionally, the ’712 patent describes how a window has “a display area 354.” Ex. 1001, 10:50–51. Thus, so long as the window is shown on the video display, the claim limitation is broad enough to encompass partitioning the portion of the video display where there is a window into an array of tiles.

Although we agree with Patent Owner that the video display and the window are two different elements (PO Resp. 19–20; PO Sur-reply 7–8), that fact does not require us to adopt Patent Owner’s construction. Because the window is shown on the video display, partitioning a window is necessarily also partitioning a video display.

Moreover, the portion of the specification cited by Patent Owner does not support its construction. The specification simply states “[t]hus, while a window may be resized as appropriate, it will frequently occupy the full display area, effectively limiting the user to a view of a single program.” Ex. 1001, 3:47–49 (cited by PO Resp. 20). That section provides no guidance as to whether there is a difference between partitioning a display and partitioning a window.

Accordingly, for the reasons discussed above, “partitioning . . . at least a portion of the visual display into an array of tiles” means dividing some or all of a display into multiple tiles displayed in an orderly fashion and that any array that is similar to that shown in a figure of the ’712 patent would be orderly. Additionally, the claim is broad enough to encompass partitioning a window that is located on the video display.

3. *Presented to the First Tile*

Petitioner argues that “presented to the first tile” means “displayed within the first tile.” Pet. 20–21. According to Petitioner, “‘tiles’ are graphical structures on a computer display, so the phrase ‘presented to’ in this claim language cannot be meaningful if interpreted in a physical sense, and there is no disclosed functionality that could be an example presenting information to a tile, other than displaying that information within the tile.” Pet. 20–21 (citing Ex. 1001, 7:26–39, Fig. 1; Ex. 1003 ¶ 93). Patent Owner agrees with this construction. PO Resp. 26 (adopting Petitioner’s construction); *see also* PO Resp. 47–48 (arguing Petitioner’s construction is correct).

This phrase appears in the following limitation: “updating information from a first information source in the plurality of information sources *presented to the first tile* in accordance with the first update rate.” Ex. 1001, 30:34–36 (emphasis added). In the Institution Decision, we held that “although the claim requires updating information to the first tile, the claim does not recite displaying the updated information.” Inst. Dec. 27 (citing Ex. 1001, 30:34–36); *see also* PO Resp. 47–48 (acknowledging implicit construction in the Institution Decision); Pet. Reply 16 (same). Based on the record of the full trial, we maintain that construction.

We begin, as always, “with the words of the claim themselves.” *Allergan Sale*, 935 F.3d at 1373 (quoting *Amgen*, 457 F.3d at 1301). Although the claim limitation recites that updated information be “presented to the first tile,” nothing in the words of the claim requires that updated information to be displayed or presented *by* the first tile. Ex. 1001, 30:34–36 (emphasis added). That is, the claim simply requires “updating information . . . presented to the first tile” without any discussion of updating what information is displayed. Ex. 1001, 30:34–36. This stands in contrast to the next limitation, which requires “updating *content* of the second tile,” which connotes updating the displaying content. *See* Ex. 1001, 30:34–38 (emphasis added).

The parties do not direct us to any language in the claim that requires the first tile to display the updated information. *See* Pet. 20–21; PO Resp. 26, 47–48. That is because nothing in the language explicitly or implicitly requires that the updated information be displayed. *See* Ex. 1001, 30:34–36.

The section of the specification cited by the parties does not support their proposed construction. That section describes Figure 1, which shows various tiles on a display. Ex. 1001, 7:26–39. Nothing in the cited sections discusses updating the title. Ex. 1001, 7:26–39. Nor does it use the word “presented.” Ex. 1001, 7:26–39.

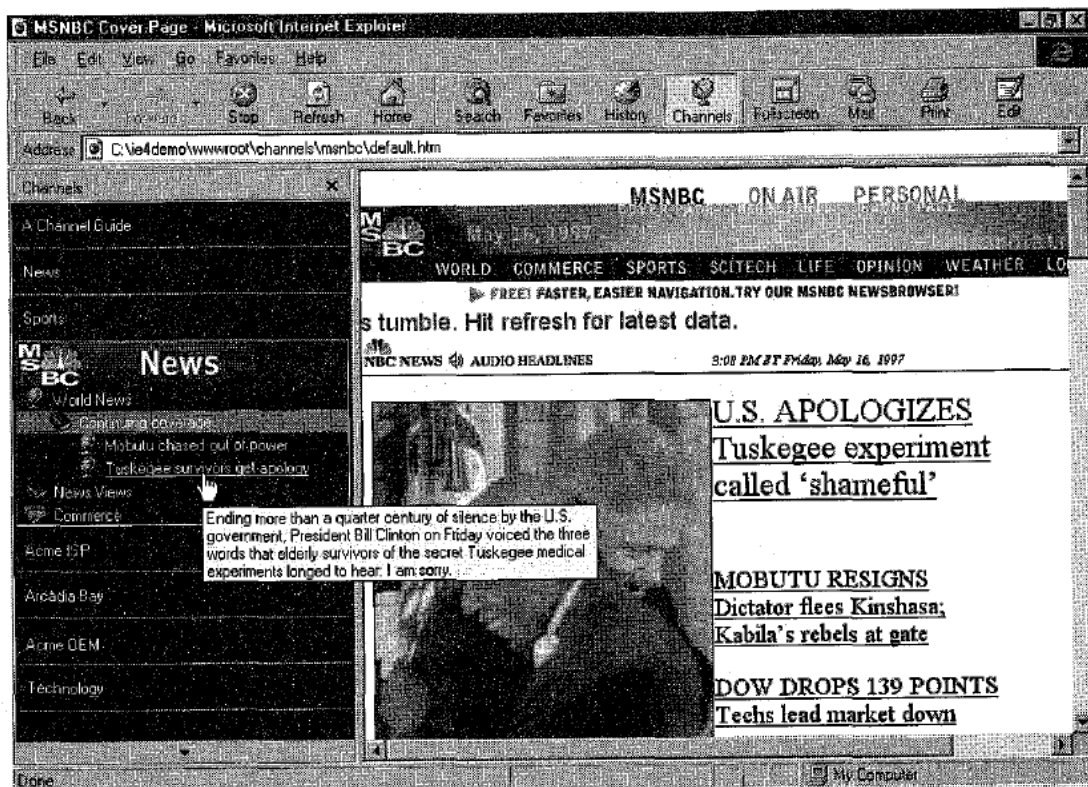
D. Asserted Anticipation by MSIE Kit

1. Summary of MSIE Kit

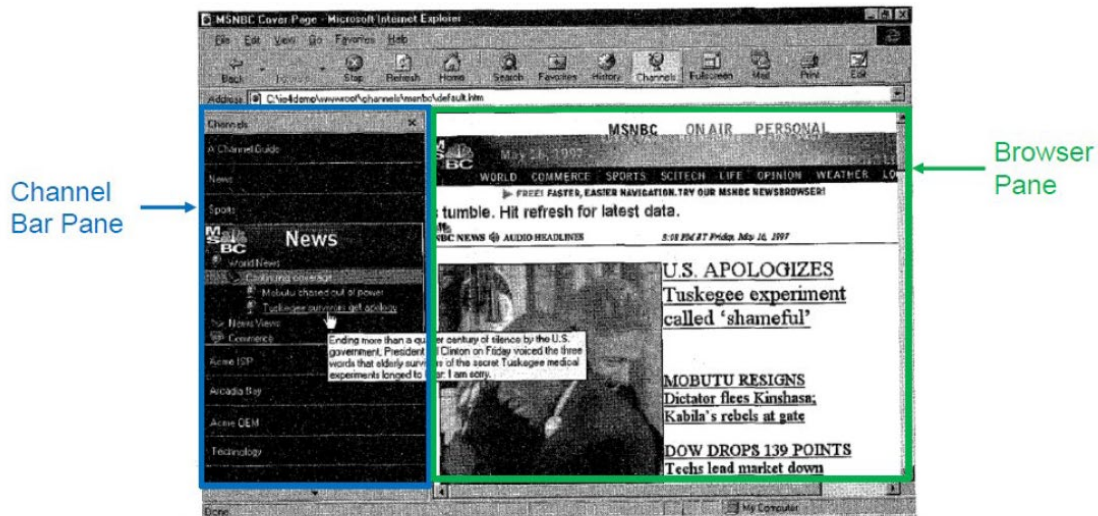
MSIE Kit describes features of Microsoft Windows Internet Explorer 4, including Microsoft Active Desktop functionality in conjunction with Windows 98 or Windows NT. Ex. 1010, 174, 180, 183. Specifically, MSIE Kit describes how a user may subscribe to “publisher-specified Active

Channels” which “delivers a defined range of Web content.” Ex. 1010, xxxiv. “Users can check for updates on specific types of content and can accept a publisher’s predefined update schedule or specify their own custom schedule.” Ex. 1010, xxxiv. “Active Channels allow Web site authors to optimize, personalize, and more fully control how a site is Webcast, and adding a Channel Definition Format (CDF) file is the only step required to convert any existing Web site into an Active Channel.” Ex. 1010, xxxiv.

“After a user subscribes to an Active Channel, Internet Explorer will automatically add the subscribed channel logo to the Channel bar on the Active Desktop and in the browser, making the Web site more prominent and more easily accessible.” Ex. 1010, xxxv. MSIE Kit shows a sample desktop, which is reproduced below, and referred to as Figure xxxvi.



Ex. 1010, xxxvi. Figure xxxvi shows an “Active Channel bar inside Internet Explorer 4.” Ex. 1010, xxxvi. Reproduced below is a version of Figure xxxvi annotated by Petitioner to highlight various elements.



Pet. 25 (annotating Ex. 1010, xxxvi). The annotated version of Figure xxxvi shows a “Channel Bar Pane” on the left (annotated in blue) with a “Browser Pane” on the right (annotated in green). Pet. 25; Ex. 1010, xxxvi, 212, 694.

2. Analysis of Claim 1

a) Limitation 1.a: “A Method Executed by a Device under the Control of a Program, the Device Including a Memory for Storing the Program, the method comprising.”

The preamble of claim 1 recites “[a] method executed by a device under the control of a program, the device including a memory for storing the program, the method comprising.” Ex. 1001, 30:24–26. Petitioner argues that MSIE Kit discloses the preamble. Pet. 24. More specifically, Petitioner argues MSIE Kit discloses “the Active Desktop and Active Channel interfaces available on computers running the Windows and Internet Explorer 4 programs” and that “computers necessarily include a processor to perform operations implemented by stored software in a

memory.” Pet. 24 (citing Ex. 1010,¹⁶ 4, 174, 176, 179, 180; Ex. 1028, 515; Ex. 1003 ¶¶ 103–104, 170).

After reviewing Petitioner’s arguments and information regarding the preamble, including the Houh Declaration, which Patent Owner does not address separately (*see* PO Resp.), we are persuaded that Petitioner sufficiently demonstrates that MSIE Kit discloses the preamble.¹⁷

b) Limitation 1.b: “Partitioning a Visual Display Rendered by the Device into an Array of Tiles”

Claim 1 further recites “partitioning a visual display rendered by the device into an array of tiles.” Ex. 1001, 30:27–28. In analyzing this claim limitation, we initially discuss whether MSIE Kit discloses tiles. Then we address whether MSIE Kit discloses partitioning a visual display rendered by the device into an array of tiles.

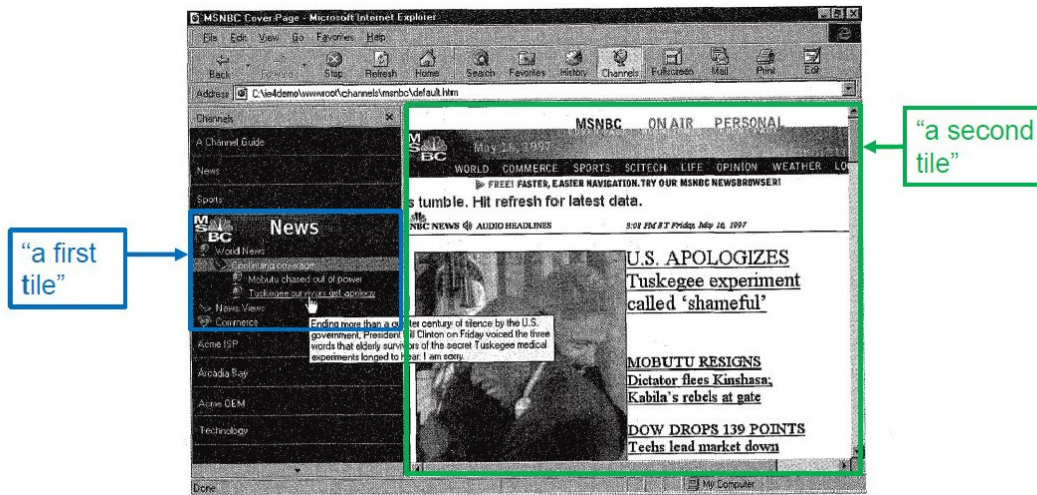
(1) “Tile”

Petitioner argues MSIE Kit discloses tiles, specifically a first tile and a second tile. Pet. 25–29; Pet. Reply 13–14. For the reasons set forth below, we are sufficiently persuaded by Petitioner’s arguments.

MSIE Kit discloses an example of an internet explorer display with a Channel Bar Pane and a Browser Pane. Ex. 1010, xxxvi, 212, 694; Ex. 1003 ¶ 114. Figure xxxvi depicts a Channel Bar Pane including various Active Channel elements. *See* Ex. 1010, xxxvi; Ex. 1003 ¶ 114. This is illustrated in the annotated version of Figure xxxvi below.

¹⁶ Petitioner incorrectly cited Exhibit 1006. That is a typographical error, which we corrected.

¹⁷ Because we find that MSIE Kit discloses the preamble, we need not decide whether the preamble is limiting. *See Nidec*, 868 F.3d at 1017.



Pet. 26 (annotating Ex. 1010, xxxvi). Figure xxxvi depicts a sample desktop with an internet explorer window divided into an Active Channel Bar Pane (on the left) which includes a number of Active Channel elements, one of which is expanded and highlighted in blue and annotated with the caption “a first tile.” Ex. 1010, xxxvi; Ex. 1003 ¶ 114. The right-side of Figure xxxvi shows a browser pane displaying a webpage and has been highlighted in green and annotated with the caption “a second tile”. Ex. 1010, xxxvi; Ex. 1003 ¶ 114.

As discussed in detail below, the Active Channel element satisfies our construction of “tile” and is a first tile. First, the Active Channel element is a graphical user interface element. Ex. 1003 ¶ 115. The Active Channel element is an area of the display which is separate from the rest of the display (as shown by the lines shown on Figure xxxvi dividing them), displays logos, links and/or content of an associated website, and which can be manipulated by a user. Ex. 1003 ¶ 115; Ex. 1010, xxxv–xxxvi, 212, 690. Accordingly, the Active Channel element acts as an interface to the software and computer system. Ex. 1003 ¶ 115. Such Active Channel elements are also similar to various tiles identified in the ’712 patent. *See* Ex. 1001,

Figs. 1 (middle left and bottom left tiles), 4 (Element 404), 11:45–46 (describing the tile as “a portion of . . . text of a world-wide web page”).

Second, the Active Channel element’s content can be refreshed.

Ex. 1003 ¶ 116. Specifically, MSIE Kit describes how the Active Channel elements can be refreshed according to an assigned rate. Ex. 1003 ¶ 116; Ex. 1010, 185, 213, 215, 223. For example, MSIE Kit states that “[c]hannel updates use scheduled Web crawls. Users can accept the publisher’s schedule (specified in the CDF file) for updates or specify custom update schedule.” Ex. 1010, 213. A red gleam is then used to indicate that one of the elements has updated data. Ex. 1010, 213. MSIE Kit also states that “[p]ublishers can specify a schedule using the SCHEDULE element as a child element in the first CHANNEL element. All subchannels and items in a CDF file are updated according to this schedule.” Ex. 1010, 223.

Third, an Active Channel element can be selected to provide access to an information source. Ex. 1003 ¶ 117. Specifically, Active Channel elements can be selected by clicking on an element, which provides access to the underlying website or page, which Petitioner maps to the information source. Ex. 1003 ¶ 117; Ex. 1010, 212, 220, 694, 696. For example, MSIE Kit states that “[w]hen a user clicks the top-level channel, the lower-level items appear. Each item typically represents a Web page, but can represent any URL.” Ex. 1010, 212. “Similarly, as shown in the figure above, pointing to a hyperlink displayed in the Active Channel Bar selects the Channel associated with the hyperlink and displays a summary of the linked page.” Ex. 1003 ¶ 117; *see also* Ex. 1010, 694 (The summary page “provide[s] a brief description of available updates and provide[s] hyperlinks to the corresponding notification page for each update.”), 696 (“When users

select the channel on the Channel bar or in the Favorites menu, the summary page appears in the browser's right pane.” (emphasis omitted)).

Petitioner has also sufficiently shown that the browser pane is also a tile, specifically the second tile. First, because the browser pane is a separate area of the display that can be manipulated by the user, it is a graphical user interface element. Ex. 1003 ¶ 119. For example, the user can select one of the hyperlinks displayed on the page in the browser pane. Ex. 1003 ¶ 121.

Second, the browser pane can be refreshed. Ex. 1003 ¶ 120. The refresh can be done by clicking one of the Active Channel elements, clicking the refresh button on the browser, or pressing F5 on the keyboard. *See* Ex. 1003 ¶ 120; Ex. 1010, 140, 212, 694, 696. Specifically, MSIE Kit states that “[w]hen a user clicks an item in the Channel bar hierarchy, the corresponding Web page displays in the browser.” Ex. 1010, 212. Similarly, MSIE Kit explicitly describes refreshing a webpage by clicking the refresh button (Ex. 1010, 133)¹⁸ or by pressing the F5 key (Ex. 1010, 558).¹⁹ Ex. 1003 ¶ 120.

Third, the browser pane can be selected to provide access to an information source. *See* Ex. 1003 ¶ 121. As discussed with regard to the graphical user interface element requirement, a user can click on a hyperlink located in the browser pane. Ex. 1003 ¶ 121 (citing Ex. 1010, 136, 137, 776). “Such a selection provides the user access to the information from the

¹⁸ “[Y]ou can always manually update the cache while browsing Web pages by clicking the **Refresh** button on the browser toolbar to see any changes to the page.” Ex. 1010, 133.

¹⁹ Stating that F5 is the shortcut key to “[r]efresh the current page.” Ex. 1010, 558.

associated website.” Ex. 1003 ¶ 121; *see also* Ex. 1010, 177 (“Therefore, information in desktop items often includes hyperlinks or hot spots, so users can click designated area to open a browser window and obtain the details they want.”), 211 (describing how clicking on a hyperlink takes you to an information source).

Patent Owner argues that neither the Active Channel element nor the browser pane is a tile. PO Resp. 35–39. For the reasons discussed below, we do not agree with Patent Owner’s arguments.

First, Patent Owner argues that “[t]he browser pane relied upon by Petitioner is nothing less than a complete Internet Explorer window.” PO Resp. 35. Accordingly, to Patent Owner, it is therefore not a tile. PO Resp. 35; *see also* PO Resp. 35–36. However, that argument is premised on a claim construction that we rejected. *See* Section II.C.1., *supra*. Because the argument is not commensurate with the scope of the claim, it is inapposite.

Second, Patent Owner argues that the Active Channel elements cannot be refreshed. PO Resp. 36–39. Specifically, Patent Owner argues that although “CDF files allow a type of updating relating to the URLs associated with Active Channel elements and the schedule tag of the CDF file, . . . this updating does not display refreshed content in Active Channel elements.” PO Resp. 36 (citing Ex. 1010, 190–91, 211, 213, 315–16; Ex. 2001 ¶¶ 112, 129, 132, 138, 141–146). According to Patent Owner, that “updated information is displayed in the browser pane, never in the Active Channel element.” PO Resp. 36.

As support, Patent Owner directs us to the portions of MSIE Kit that describe how the CDF file is used in channel updating. PO Resp. 36–37. Patent Owner then argues that “[t]he channel updates relied upon by

Petitioner do not update the displayed table of contents.” PO Resp. 38.

Patent Owner also argues that “[t]hese channel updates use scheduled web crawls that check a website for updated content and may download the updated content to the user’s cache to provide offline accessibility.” PO Resp. 38 (citing Ex. 1010, 190-91, 213; Ex. 2001 ¶¶ 132, 138, 144).

According to Patent Owner, “[t]he web crawls do not display the updated content in the Active Channel element,” but instead display a notification to the user—a red gleam in the left corner of the icon for the top-level channel. PO Resp. 38 (citing Ex. 1010, 190–91, 213; Ex. 2001 ¶¶ 139–139, 144).

Because of this, Patent Owner argues, “the Active Channel element is not configured to or capable of displaying refreshed content—it merely notifies the user that refreshed content is available from a website or a local cache of that website.” PO Resp. 38.²⁰

Patent Owner’s description is correct, as far as it goes. MSIE Kit describes how it retrieves information from a web server and that the information can be downloaded to provide offline access. Ex. 1010, 190–91, 213. MSIE Kit also describes how it uses a red gleam to notify the user when updated content is available for a channel. Ex. 1010, 213.

Furthermore, that “red gleam appears in the left corner of the icon for the top-level channel” and “does not appear for individual channel items or subchannels.” Ex. 1010, 213.

²⁰ Patent Owner also argues that a person having ordinary skill in the art would not modify MSIE Kit to make the Active Channel elements refreshable. PO Resp. 38–39. Although that is relevant to Petitioner grounds based on obviousness, we need not address it in this anticipation ground.

However, Patent Owner does not discuss what happens next, and in doing so, misses the refreshed information. Once the red gleam appears, the user can click on the Active Channel element and expand it to see the updated information. Ex. 1003 ¶ 151; Ex. 1010, xxxvi (showing an expanded Active Channel element with updated URL links), 212 (“When a user clicks the top-level channel, the lower-level items appear. Each item typically represents a Web page, but can represent any URL.”), 220 (showing example of a CDF file of a news channel with updated articles). Such refreshed updating is explicitly described in MSIE Kit’s hypothetical scenarios of using the system with Active Channels with webcasting:

System administrators can use managed Webcasting to provide a wide variety of information delivery solutions. Possible scenarios include:

. . . .

A credit manager subscribes to an external (fee-based) Active Channel that provides a personalized desktop ticker that delivers news about significant changes in customer credit ratings. . . .

An executive subscribes to Active Channels providing industry news. Some channels are supplied by news providers, while other channels are fed by several electronic news feeds, brought in-house, filtered and categorized, and published internally. When notified that something new has arrived, the executive can scan headlines and decide what to read first.

Ex. 1010, 211. Such tickers and updated headlines show that the Active Channel element is refreshed and new data is displayed.

The implausibility of Patent Owner’s argument that the Active Channel element cannot be refreshed is shown by Figure xxxvi. The Active Channel element in Figure xxxvi is for MSNBC news and has links for various world news articles. If Patent Owner was correct and the Active Channel element

can never be refreshed, then the news stories would never change. That is, the same “news” stories would be shown every day, year after year. That defies common sense.

(2) Partitioning a Visual Display . . . into an Array of Tile

Petitioner argues that MSIE Kit discloses “partitioning a visual display rendered by the device into an array of tiles” as recited in claim 1. Pet. 28, 29; Pet. Reply 13–14. For the reasons set forth below, we are sufficiently persuaded by Petitioner’s arguments.

As shown in Figure xxxvi, the Active Channel elements and Browser Pane are displayed as a grid within an Internet Explorer window on the video display. Ex. 1010, xxxvi; Ex. 1003 ¶ 122. That grid is an orderly arrangement of tiles with multiple tiles (Active Channel elements) in the first column and one tile (the Browser Pane) in the second column. Ex. 1010, xxxvi; Ex. 1003 ¶ 130. Both columns of tiles have the same height. Ex. 1010, xxxvi; Ex. 1003 ¶ 130. This is similar with what is shown in Figure 9 of the ’712 patent. That is, Figure 9 shows elements 802-1-1, 802-2-1, and 802-1-2 arranged as a grid of multiple columns each having the height and with one column having multiple tiles and the second column having a single tile. Ex. 1001, Fig. 9; *see also* Ex. 1001, 16:18–37 (stating that not all tiles need to be the same size). Accordingly, MSIE Kit discloses this limitation.

Patent Owner argues that “Petitioner’s argument fails because the element allegedly partitioned into an array of tiles is a *window*, not a *visual display*.” PO Reps. 34 (citing Ex. 1010, xxxvi, 104, 108; Ex. 2001 ¶¶ 97–101, 109, 122–126). According to Patent Owner, “[a]lthough a window may appear on a visual display, the two elements are distinct. This distinction is disclosed by the specification and understood by a person of skill in the art.

This distinction has important consequences.” PO Resp. 34 (citation omitted); *see also* PO Resp. 34 (describing the advantages of uniformity of appearance).

We do not agree with Patent Owner’s argument. Patent Owner’s argument is premised on a claim construction that we rejected. *See* Section II.C.2., *supra*. Because the argument is not commensurate with the scope of the claim, it is inapposite.

c) Limitation 1.c: “Wherein Each Tile in the Array of Tiles Is Associated with an Information Source in a Plurality of Information Sources”

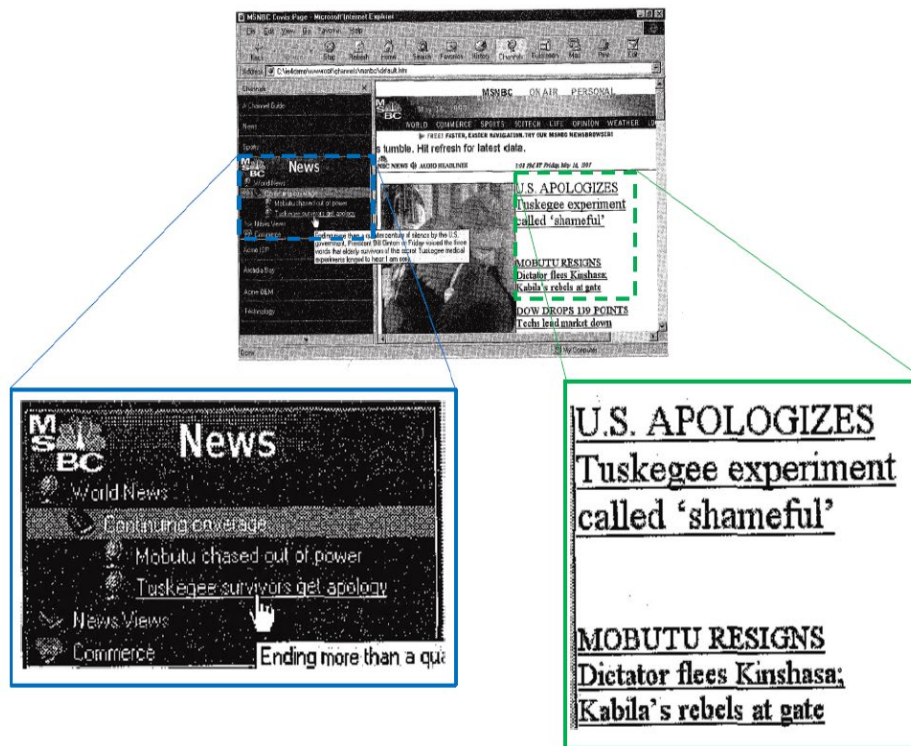
Claim 1 further recites “wherein each tile in the array of tiles is associated with an information source in a plurality of information sources.” Ex. 1001, 30:28–30. Petitioner argues MSIE Kit discloses that limitation. Pet. 29–30. Specifically, Petitioner argues that “[t]he disclosed system stores a link, such as a URL, which associates an Active Channel element with an information source, such as a website.” Pet. 29 (citing Ex. 1010, 111, 212). Petitioner also argues that “the browser pane of the Internet Explorer window can be associated with an ‘information source,’ *e.g.*, the web page it is displaying at any point in time, by the system using the URL of that web page to obtain the information to be displayed in the browser pane.” Pet. 29 (emphasis omitted) (citing Ex. 1010, xxxv, 111, 188, 212, 220, 690; Ex. 1003 ¶ 132). Petitioner also argues that “Active Channel elements and the browser pane may be associated with any of the plurality of websites and web pages available on the Web because they can include any web content supported by Internet Explorer.” Pet. 30 (citing Ex. 1010, 212, 221; Ex. 1003 ¶ 133).

After reviewing Petitioner’s arguments and information regarding this limitation, including the Houh Declaration, which Patent Owner does not address separately (*see* PO Resp.), we are persuaded that Petitioner sufficiently demonstrates that MSIE Kit discloses this limitation.

d) Limitation 1.d: “Wherein Content of a Second Tile of the Array of Tiles Depends upon Content of a first tile of the Array of Tiles”

Claim 1 further recites “wherein content of a second tile of the array of tiles depends upon content of a first tile of the array of tiles.” Ex. 1001, 30:30–32. Petitioner argues MSIE Kit discloses this limitation. Pet. 30–31; Pet. Reply 14–16. For the reasons set forth below, we are sufficiently persuaded by Petitioner’s arguments.

MSIE Kit discloses that when a user selects an Active Channel element, it both expands to display a summary notification and causes the browser to display the same. *See* Ex. 1003 ¶ 136; Ex. 1010, xxxvi, 212, 694, 696. Reproduced below is an annotated and modified version of Figure xxxvi.



Pet. 31 (citing Ex. 1010, xxxvi). Annotated and modified Figure xxxvi above shows one Active Channel element expanded and a portion of the Browser Pane expanded. Pet. 31; Ex. 1010, xxxvi. Two of the items in the Active Channel element are “Mobulu chased out of power” and “Tuskegee survivors get apology.” Pet. 31; Ex. 1010, xxxvi. The expanded portion of the browser pane says “U.S. APOLOGIZES Tuskegee called ‘shameful’” and “MOBUTU RESIGNS Dictator fees Kinshasa; Kabila’s rebels at gate.” Pet. 31; Ex. 1010, xxxvi. Although the words in the Active Channel element are not identical to those in the browser pane, they describe the same news article. This confirms that selecting an Active Channel element (first tile) will affect what is shown on the browser pane. *See* Ex. 1003 ¶ 137; Ex. 1010, 694 (“The top-level notification page is the Web page users see when they click on the top-level Channel bar. By default, notification pages appear in the browser window . . .”), 696 (“When users select the channel

on the Channel bar or in the Favorites menu, the summary page appears in the browser's right pane.” (emphasis omitted)). Or, stated differently, the content of the Browser Pane (second tile) depends on the content of the selected Active Channel element (first tile). Ex. 1003 ¶¶ 137–138.

Moreover, MSIE Kit describes how the content in the Browser Pane can be changed based on clicking an element in an Active Channel item. *See* Ex. 1010, 212 (“When a user clicks an item in the Channel bar hierarchy, the corresponding Web page displays in the browser.”).

Patent Owner argues that MSIE Kit does not disclose this limitation. *See* PO Resp. 40–47; PO Sur-reply 10–11. As discussed below, we do not agree with those arguments.

First, Patent Owner argues that what Petitioner identifies as the first and second tile do not display the same summary notification page. PO Resp. 41–46. We find this argument inapposite. Nothing in the claim requires that the content be identical. All that is required is the content of the second tile depends on the content of the first tile. And, as discussed above, a user can select the content of the Browser Pane (second tile) by selecting either an Active Channel item (first tile) or a portion of the content of the Active Channel item (first tile). *See* Ex. 1010, 212, 694, 696; Ex. 1003 ¶ 137. Thus, the content of the Browser Pane depends on the content of the Active Channel element.

Second, Patent Owner argues the content of the Browser Pane “always depends on the content of the Web page URL, not on the content displayed in an Active Channel element (the alleged first tile).” PO Resp. 42 (citing Ex. 1010, 108; Ex. 2001 ¶¶ 140–146); *see also* PO Sur-reply 10. According to Patent Owner, “[w]hile a user may select a hyperlink in the Active Channel element to navigate the browser pane to a URL, the content

of that URL is *not* displayed by the Active Channel element.” PO Resp. 42 (citing Ex. 1010, 108; Ex. 2001 ¶¶ 140–146). “Rather,” Patent Owner argues, relying on the testimony of Mr. Weadock, “the content displayed by the Active Channel element is defined by a different source.” PO Resp. 42 (citing Ex. 1010, 108; Ex. 2001 ¶¶ 140–146).

We do not agree with the conclusions of Patent Owner or Mr. Weadock. The claim does not require that the content of the first tile is used to generate the content of the second tile. Instead, the claim simply requires that the “content of a second tile . . . depends upon content of a first tile.” Because the content of the Browser Pane (second tile) depends on what the user selects for the Active Channel element, MSIE Kit discloses the limitation. It does not matter that the content of the browser pane comes directly from a website and not the Active Channel element. Nothing in the claim requires it to do so.

Third, Patent Owner makes various arguments regarding the CDF, title tags, and how they operated. *See* PO Resp. 42–43, 46–47; PO Sur-reply 10–11. Those arguments are inapposite as we do not rely on either the CDF or title tags in reaching our findings.

Importantly, neither Patent Owner nor Mr. Weadock address the clear disclosure of MSIE Kit pages 212, 694, and 696 which describe how a user selecting either the Active Channel element (first tile) or an item in the Active Channel element (first tile) controls what is displayed in the browser pane (second tile). *See* Ex. 2001 ¶¶ 141–146; PO Resp. 40–47; PO Resp. 10–11. That un rebutted evidence, cited at Petition pages 30 and 31 and by Dr. Houh in paragraph 137, is sufficiently persuasive to show that MSIE Kit discloses the limitation.

e) Limitation 1.e: “Assigning a First Update Rate to the First Tile”

Claim 1 further recites “assigning a first update rate to the first tile.”

Ex. 1001, 30:33. Petitioner argues MSIE Kit discloses that limitation.

Pet. 31–32. Specifically, Petitioner argues that MSIE Kit discloses that

each Active Channel element may be updated based on a programmed subscription schedule, EX1010, 185, 200, 211, 213, 215, 223, when the user indicates the Channel should be updated, EX1010, 133, 140, 220, 558, 694, or when the user clicks on the Channel and thereby expands the element to display a detailed map of the Channel, EX1010, 220, 212, xxxvi; EX1003, ¶151.

Pet. 31–32.

After reviewing Petitioner’s arguments and information regarding this limitation, including the Houh Declaration, which Patent Owner does not address separately (*see* PO Resp.), we are persuaded that Petitioner sufficiently demonstrates that MSIE Kit discloses this limitation.

f) Limitations 1.f and 1.g: Updating Tiles

Claim 1 recites “updating information from a first information source in the plurality of information sources presented to the first tile in accordance with the first update rate” and “updating content of the second tile based on the information updated to the first tile.” Ex. 1001, 30:34–38. Petitioner argues that MSI Kit discloses these limitations. Pet. 32–33; Pet. Reply 16–19.

With regard to the first tile, as discussed above in Sections II.D.2.(b)(1) and II.D.2.(e), a user can assign an update rate to each Active Channel Element. *See also* Ex. 1003 ¶¶ 116, 150–151, 155 (citing relevant portions of MSIE Kit). This will result in the Active Channel element obtaining updated information. Ex. 1003 ¶ 155; Ex. 1010, 211 (describing examples with updated displays), 213 (discussing updates), 215 (scheduling

updates), 223 (“All subchannels and items in a CDF file are updated according to this schedule”), 694 (“Since only top-level channel shows the update gleam, you should use top-level notification pages to provide a summary of all available updated. The top-level notification page is the Web page users see when they click on the top-level Channel bar. . . . The summary page could provide a brief description of available updates and provide the hyperlinks to the corresponding notification page for each update.”).

As discussed above in the claim construction section, nothing in these limitations requires that the updated information presented to the first tile be displayed. *See* Section II.C.3. That said, although not required by the claim, MSIE Kit discloses displaying the updated information. *See* Ex. 1010, 213 (providing a red gleam), 694 (discussing updates to the summary page). Additionally, the updated information can be displayed by clicking an Active Channel element and causing it to expand, thus displaying the updated information. Ex. 1001 ¶ 156; Ex. 1010, 220 (“When expanded, this channel appears in the Internet Explorer Channel bar with the following structure.”), 212 (“When a user clicks the top-level channel, the lower-level items appear.”), 694 (“The top-level notification page is the Web page users see when they click on the top-level Channel bar.”).

With regard to the second tile, MSIE Kit discloses that the content displayed by the second tile (Browser Pane) is updated based on the updated content in the first tile (Active Channel element). *See* Ex. 1003 ¶¶ 159–161. Specifically, a user clicking an Active Channel element will expand the element to show the notification or summary page. Ex. 1003 ¶ 159; Ex. 1010, xxxvi (showing expanded notification page for the “news” element), 212 (“When a user clicks the top-level channel, the lower-level

items appear.”), 220, 221 (“Keep in mind that the Channel bar displays a navigable outline of the URLs you specify in a CDF file. The exposed hierarchy of the channel helps users efficiently navigate through a channel to find the content that most interests them.”), 694. Doing so causes the Browser Pane to be updated to also display the notification page associated with the expanded Active Channel element. *See* Ex. 1003 ¶¶ 160–161; Ex. 1010, xxxvi, 212, 694, 696.

Patent Owner argues that MSIE Kit does not disclose these limitations. PO Resp. 47–51; PO Sur-reply 12–13. For the reasons set forth below, we do not agree with Patent Owner’s arguments.

First Patent Owner argues that we erred in the Institution Decision when we held that the claim limitation did not require the tile to display the updated information. PO Resp. 47–48; PO Sur-reply 13; *see also* Inst. Dec. 27 (“Moreover, although the claim requires updating information to the first tile, the claim does not recite displaying the updated information.” (citing Ex. 1001, 30:34–36)). However, we addressed and rejected those arguments in the claim construction section.

Regardless, although we hold that the claims do not require the first tile to display the updated information, as discussed above, we find that MSIE Kit discloses the Active Channel element (the first tile) displaying the updated information.

Second, Patent Owner argues that “expanding an Active Channel element simply displays more of the table of contents and does not update the element with information from a website.” PO Resp. 50; *see also* PO Resp. 48–50, PO Sur-reply 12–13. However, Patent Owner misunderstands Petitioner’s arguments, which we adopt in this Decision. We do not find that simply expanding the Active Channel element updates

the element. Instead, as discussed above, we rely on MSIE Kit’s explicit disclosure of updating the information based on a schedule. We simply point to expanding of the Active Channel element as one way of displaying that updated information. *See, e.g.*, Ex. 1010, xxxvi, 212, 694.

Third, Patent Owner argues that “the Active Channel element (allegedly the first tile) is not updated by clicking a hyperlink.” PO Resp. 50 (citing Pet. 26–27). But that has nothing to do with our findings, which are not based on clicking a hyperlink.

Fourth, Patent Owner argues that although MSIE Kit discloses that updates are done, “the graphical Active Channel element is not updated with and does not display this website information.” PO Resp. 50 (citing Ex. 1010, 213, 216, 450). Instead, Patent Owner argues that the only update is a red gleam, which is not information from a website. PO Resp. 50–51 (citing Ex. 1010, 213; Ex. 2001 ¶¶ 138–139, 142–143).

Although the specific pages cited by Patent Owner do not discuss the updated information being displayed, other pages do. *See, e.g.*, Ex. 1010, 212, 694; Ex. 1003 ¶¶ 160–161. Patent Owner does not address those disclosures, which we have relied on.

Fifth, Patent Owner argues that because the first tile is not updated, the updates to the second tile cannot be based on updates to the first tile. PO Resp. 51. However, as discussed above, the foundation of Patent Owner’s argument is incorrect. Contrary to Patent Owner’s assertion, for the reasons discussed above, the Active Channel element (first tile) is updated.

Sixth, relying on its argument that Petitioner has not shown that MSIE Kit discloses the limitation “wherein content of a second tile of the array of tiles depends upon content of a first tile of the array of tiles,”

Patent Owner argues that at most, “[Petitioner] has shown that CDF Files specify the content displayed in the browser pane separately and independently from the content displayed in the Active Channel elements.” PO Sur-reply 13 (incorporating arguments for “wherein content of a second tile of the array of tiles depends upon content of a first tile of the array of tiles”). We do not agree with those arguments for the reason set forth in Section II.D.2.(c).

g) Conclusion Regarding Claim 1

For the reasons set forth above, Petitioner has shown by a preponderance of the evidence that claim 1 is anticipated by MSIE Kit.

3. Analysis of Claims 2–4

Petitioner has demonstrated that MSIE Kit discloses all of the limitations set forth in claims 2–4. *See* Pet. 34–37.

Besides the arguments discussed above with regard to claim 1, Patent Owner does not dispute in this proceeding Petitioner’s argument regarding claims 2–4. *See* PO Resp. 33–51.

Based on the evidence and arguments presented in the Petition, which are not otherwise disputed by Patent Owner, we determine that Petitioner has demonstrated by a preponderance of the evidence that the subject matter of claims 2–4 was anticipated by MSIE Kit. *See Incept LLC v. Palette Life Scis., Inc.*, 77 F.4th 1366, 1375 (Fed. Cir. 2023) (“Where a party ‘does not raise any arguments with respect to any other claim limitation, nor does it separately argue [the] dependent claim,’ ‘[the] dependent claim . . . stands or falls together with [the] independent claim.’” (quoting *Genentech, Inc. v. Hospira, Inc.*, 946 F.3d 1333, 1340 (Fed. Cir. 2020))).

E. Other Grounds

In addition to the ground discussed above based on anticipation by MSIE Kit, Petitioner argues the claims are unpatentable under additional grounds. Pet. 8–9. Some of those grounds are based on the claims being obvious over MSIE Kit with additional references. Pet. 8. Others are based on Excel97 with or without an additional reference. Pet. 8–9. Because we determine that claims 1–4 are anticipated by MSIE Kit, we do not address the parties’ arguments regarding those alternate grounds. *See Boston Scientific Scimed, Inc. v. Cook Gp. Inc.*, 809 F. App’x 984, 990 (Fed. Cir. 2020) (“We agree that the Board need not address issues that are not necessary to the resolution of the proceeding.”).

III. CONCLUSION²¹

For the foregoing reasons, we conclude that Petitioner has demonstrated by a preponderance of the evidence the unpatentability of claims 1–4 of the ’712 patent as anticipated by MSIE Kit.

²¹ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

In summary:

Claims	35 U.S.C. §	Reference(s)/Basis	Claims Shown Unpatentable	Claims Not shown Unpatentable
1–4	102(a), (b)	MSIE Kit	1–4	
1–4	103(a)	MSIE Kit, Jones ²²		
1–4	103(a)	MSIE Kit, Miklos ²³		
1–4	103(a)	MSIE Kit, Miklos, Jones ²⁴		
1–4	102(a), (b)	Excel97 ²⁵		
1–4	103(a)	Excel97 ²⁶		
1–4	103(a)	Excel97, Bhansali ²⁷		

²² As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²³ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²⁴ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²⁵ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²⁶ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²⁷ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

1–4	103(a)	Excel97, Igra ²⁸		
1–4	103(a)	Excel97, Igra, Bhansali ²⁹		
Overall Outcome			1–4	

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that, Petitioner has shown by a preponderance of the evidence that claims 1–4 of the '712 are unpatentable; and

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.

²⁸ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

²⁹ As explained above, because we determine that claims 1–4 are unpatentable as anticipated by MSIE Kit, we decline to address those claims on this ground.

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