

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**HP INC.; DELL TECHNOLOGIES INC.; DELL INC.;
ASUSTEK COMPUTER INC.; and ASUS COMPUTER INTERNATIONAL,**
Petitioner

v.

LITL LLC,
Patent Owner

IPR2024-0404
U.S. Pat. No. 8,624,844

REPLY TO PATENT OWNER PRELIMINARY RESPONSE

I. INTRODUCTION

In its April 1st email, the Board authorized this Reply to address only discretionary denial issues raised in the Patent Owner Preliminary Response (POPR) and denied Petitioner's request to address the POPR's assertion of inoperability of the Lane-Pogue combination.¹

II. THE PARTIES' AGREEMENT REGARDING GENERAL PLASTIC/VALVE AND ROADMAPPING ISSUES

During their meet and confer for this Reply, and as stated in Petitioner's March 29th email using language specified by Patent Owner ("PO"), the parties agreed that "the *General Plastic/Valve* roadmapping bases for discretionary denial raised by Patent Owner in the POPR are not appropriate here given the Director's recent *Neo Wireless* decisions make clear that a 'substantial relationship' is required for *Valve* to apply and no such substantial relationship is present between Lenovo and Petitioners here." In reliance on this agreement and the Board's direction in its April 1st email, this Reply does not further address Sections IV.B and IV.C of the POPR, and the Board should disregard those arguments.

¹ Petitioner stands ready to proffer expert testimony and documentary evidence including prior art patents and commercially available touchscreen documentation that show that touchscreens can and did work with Windows XP as disclosed in Pogue to refute the POPR's unsupported attorney arguments of inoperability.

III. PO'S §325(d) ARGUMENTS ARE CONTRARY TO THE EVIDENCE

As explained in the Petition, the examiner made a clear material error during reexamination of claims 10 and 16 of the '844 patent. The central issue in that reexamination was the “display a first/second content mode” limitations. The examiner initially relied on the Ledbetter reference for these limitations based on a misunderstanding of their meaning. Once PO explained their meaning and that they could be satisfied by displaying “a ‘desktop’ and icon configuration,” the examiner should have recognized that these limitations read on the Windows XP desktop and folder icons as disclosed in Pogue. But she did not, and withdrew her rejection instead. That this decision was clearly wrong is magnified by the absence of any attempt in PO's 70-page POPR to explain why it was not.

A. PO's Construction of the “Content Mode” Limitations Includes Pogue's Desktop Folder Icons

PO's construction of the “content modes” limitations in the reexam undeniably reads on Pogue's desktop folder icons as explained in the Petition at 9-10. PO explained to the examiner that the content mode limitations require “displaying some information that represents a higher-level construct into which content is grouped” and that “[t]his recitation is distinct from merely displaying individual things (e.g., applications) that may be grouped into a content mode.” EX1005, 6. PO also explained each of the five “bars” (Apps, Media, Connect, Web, Channels) in Figs. 12 and 17 of the '844 patent is itself a content mode.

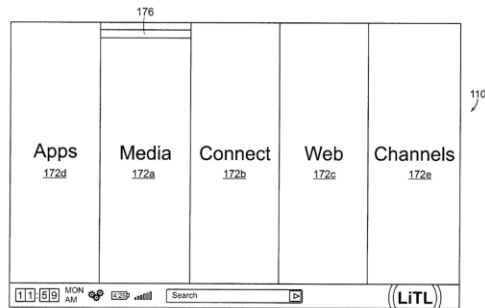


FIG. 12

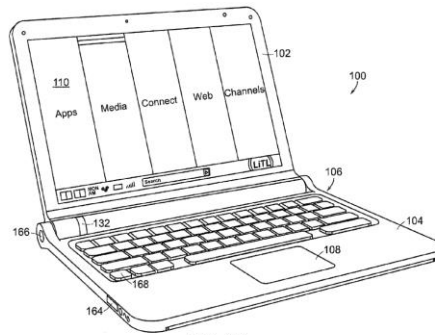


FIG. 17

See, e.g., EX1005, 107 (referring to “‘media’ content mode 172a”). PO further explained that the form of a “content mode” is not limited to the bars of Fig. 12 and also includes “a ‘desktop’ and icon configuration.” EX1005, 101 (citing ’844 patent, EX1001, at 12:11-17; see also Petition at 10.

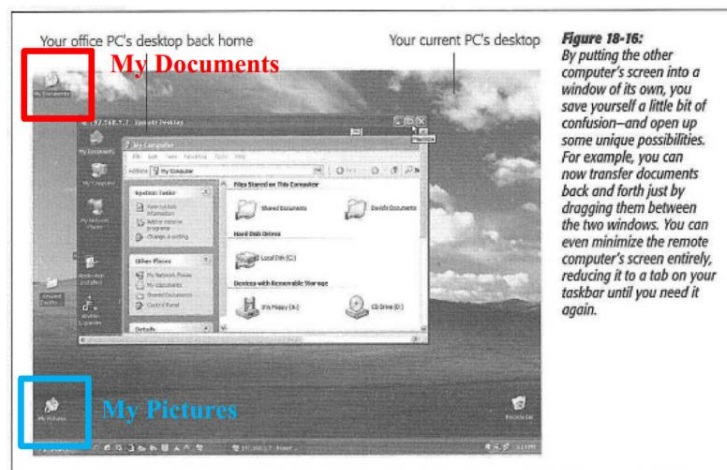
PO did not stop with those explanations. PO went on to explain precisely what claim 10 required and did not require with respect to the display of content modes. Claim 10 recites “the laptop mode is configured to display . . . a first content mode having a first content display orientation” and “the easel mode is configured to display . . . a second content mode having a second content display orientation.” A natural reading of this language requires that what is displayed in the laptop and easel mode must be different (e.g., something like the bars in Figs. 12 and 17 of the ’844 patent in the laptop mode and something different such the display in Fig. 13 in the easel mode). To preclude this construction, PO explained that nothing in claim 10 requires *or precludes* simultaneously displaying the first and second content modes, and that nothing in claim 10 requires the first content mode to be “particular to the orientation of laptop mode.” EX1005, 111.

B. The Examiner's Failure to Recognize Pogue's Disclosure of the Content Mode Limitations Was Material Error

The import of these statements is unmistakable, albeit not intuitive:

displaying the exact same 5 bars of Figs. 12 and 17, or any two of them, in both the laptop and easel modes satisfies these content mode limitations. This is because any one bar (e.g., Apps) could constitute the first content mode and any second bar (e.g., Media) could constitute the second content mode, and nothing in claim 10 precludes displaying the two content modes simultaneously. Petition at 10.

In light of PO's explanation that content modes include desktop and icon configurations, the examiner should have recognized that Pogue discloses these limitations. Folders are clearly a higher level data structure into which content is grouped, and as shown in the POPR itself, Pogue clearly discloses the display of a desktop including both My Documents and My Pictures folder icons that represent folders into which content (documents and pictures) is grouped:



POPR at 15, citing EX2009 at 552. Thus, Pogue discloses displaying a first content

mode, the My Documents folder icon, and a second content mode, the My Pictures folder icon, under PO's construction. This failure to recognize that this was error was discussed in detail in the Petition at 68-70.

Notably, nowhere in the POPR does PO dispute that Pogue's display of a desktop with the My Documents and My Pictures folder icons satisfies the content mode limitations of claim 10. Instead, PO asserts that the examiner was aware of the unpatentability assertion based on the Lenovo IPR, obliquely acknowledges that the Lenovo IPR relied on a different disclosure in Pogue, and then asserts that the "the more reasonable reading of the record is that the examiner did not believe that a rejection over Lane and Pogue was proper." POPR at 21-22. But that bald assertion simply does not hold up in view of the mountain of evidence and analysis presented in the Petition at 9-10 and 68-70. And even if PO's assertion were true, the evidence establishes that such a belief by the examiner would have been error.

The examiner's error was undeniably material. The focus of the reexam was the content mode limitations. There was no argument by PO in the reexamination that Lane fails to disclose the limitations of claim 10 other than the content mode limitations (*e.g.*, EX1005, 3475-3514). And, as discussed in the Petition at 69, the examiner *specifically* identified the content mode limitations, and specifically identified *only* those limitations, as missing from the prior art of record. EX1005, 6. Thus, the Petition establishes material error under step 2 of *Advanced Bionics*.

Dated: April 8, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies pursuant to 37 C.F.R. §§ 42.6(e) and 42.105 that on April 8, 2024, a true and correct copy of the **REPLY TO PATENT OWNER PRELIMINARY RESPONSE** was served by emailing a copy of same (by agreement) to the following attorneys of record for the Patent Owner:

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Respectfully submitted,

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