

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION
Petitioner,

v.

SURFCAST, INC.
Patent Owner.

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
Patent 6,724,403

Before MICHAEL P. TIERNEY, JONI Y. CHANG, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

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IPR2013-00294, and IPR2013-00295
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I. INTRODUCTION

Microsoft Corporation (“Microsoft”) filed four petitions requesting *inter partes* review of claims 1-52 of U.S. Patent No. 6,724,403 B1 (Ex. 1001, “the ’403 patent”). The patent owner, SurfCast, Inc. (“SurfCast”), filed a preliminary response in each of the four proceedings:

Case No.	Claims	Petition Paper No.	Preliminary Response Paper No.
IPR2013-00292	1-13, 15-21	Paper 6 (“292 Pet.”)	Paper 18 (“292 Prelim. Resp.”)
IPR2013-00293	22-45	Paper 5 (“293 Pet.”)	Paper 13 (“293 Prelim. Resp.”)
IPR2013-00294	46-52	Paper 4 (“294 Pet.”)	Paper 13 (“294 Prelim. Resp.”)
IPR2013-00295	1-3, 5-8, 11-17, 19-22, 25, 27, 28, 30, 32, 34, 37-40, 43-47, 50-52	Paper 3 (“295 Pet.”)	Paper 13 (“295 Prelim. Resp.”)

To administer the proceedings more efficiently, we exercise our authority under 35 U.S.C. § 315(d) to consolidate the four proceedings and conduct the proceedings as one trial for the reasons discussed below.

We have jurisdiction under 35 U.S.C. § 314. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which provides as follows:

THRESHOLD.—The Director may not authorize an *inter partes* review to be instituted unless the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.

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Upon consideration of the petitions and SurfCast's preliminary responses, we determine that the information presented by Microsoft establishes that there is a reasonable likelihood that Microsoft would prevail in showing unpatentability of claims 1-52 of the '403 patent. Accordingly, pursuant to 35 U.S.C. § 314, we institute an *inter partes* review for claims 1-52 of the '403 patent.

A. Related Proceedings

Microsoft indicates that the '403 patent is involved in co-pending litigation captioned *SurfCast, Inc. v. Microsoft Corp.*, No. 2:12-cv-00333 (D. Me), filed October 30, 2012. Pet. 1-2.¹

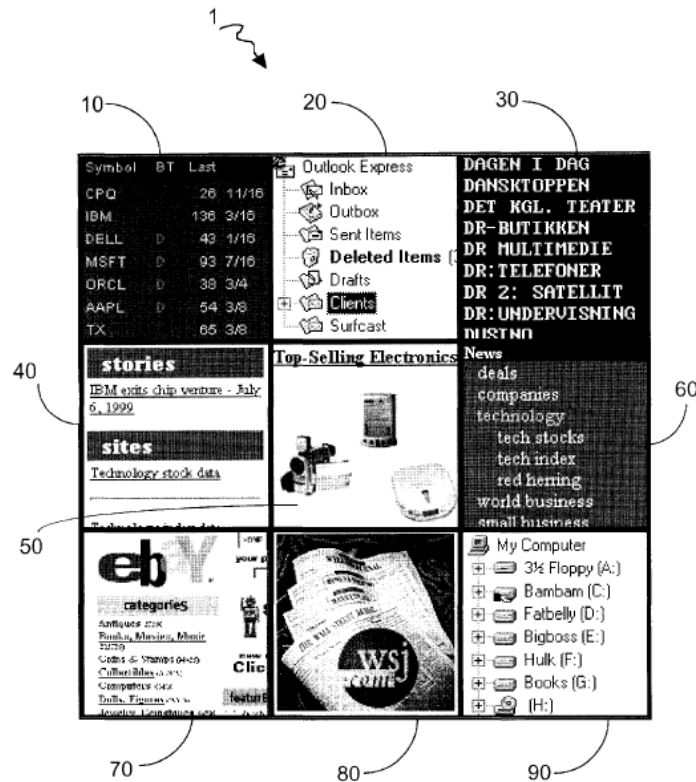
B. The '403 Patent

The subject matter of the '403 patent relates 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, Abstract. As described in the "Background of the Invention," 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, 4:24-31. In response to this need, the '403 patent describes a graphical user interface comprising a grid of tiles that resides on the user's computer desktop. *Id.* at 4:37-38. The grid of tiles provides a uniform graphical environment in which a user can access, operate,

¹ For the purpose of clarity and expediency, IPR2013-00292 is representative. All citations to "Pet." are to IPR2013-00292, unless otherwise noted. All citations to "Ex." are to exhibits to IPR2013-00292, unless otherwise noted.

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and/or control multiple data sources on electronic devices. *Id.* at 4:37-41. Figure 1 illustrates an embodiment of the graphical user interface, and is reproduced below:



C. Exemplary Claims

Of the challenged claims, claims 1, 22, and 46 are independent claims. Claims 2-9 and 11-21 depend from claim 1; claim 10 depends from claim 9. Claims 23-41 and 43-45 depend from claim 22; claim 42 depends from claim 41. Claims 47, 48, and 50-52 depend from claim 46; claim 49 depends from claim 48. Claims 1 and 22 are representative and are reproduced below:

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

selecting a plurality of information sources;

partitioning a visual display of the device into an array of tiles,
wherein each tile in said array of tiles is associated with an
information source in said plurality of information sources;

assigning a first refresh rate to a first tile of said array of tiles
and a second refresh rate to a second tile of said array of tiles;

updating information from a first information source in said
plurality of information sources presented to said first tile in
accordance with said first refresh rate; and

simultaneously updating information from a second information
source in said plurality of information sources presented to said
second tile in accordance with said second refresh rate.

22. An electronic readable memory to direct an electronic device to
function in a specified manner, comprising:

a first set of instructions to control simultaneous
communication with a plurality of information sources;

a second set of instructions to arrange a display into an array of
tiles;

a third set of instructions to associate a first information source
of said plurality of information sources to a first tile of said array of
tiles and a second information source of said plurality of information
sources to a second tile of said array of tiles;

a fourth set of instructions to retrieve information from said
first information source in accordance with a first retrieval rate and
retrieve information from said second information source in
accordance with a second retrieval rate; and

a fifth set of instructions to present information to said first tile
in accordance with said first retrieval rate and present information to
said second tile in accordance with said second retrieval rate.

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D. Prior Art Relied Upon

Microsoft relies on the following prior art references, as well as the declaration of David R. Karger (Ex. 1003):

Chen	US 5,432,932	July 11, 1995	Ex. 1015
Miller	US 5,550,968	Aug. 27, 1996	Ex. 1027
DorEl	US 5,721,951	Feb. 24, 1998	Ex. 1025
Farber	US 5,819,284	Oct. 6, 1998	Ex. 1016
Jambhekar	US 5,848,356	Dec. 8, 1998	Ex. 1031
Crawford	US 5,901,228	May 4, 1999	Ex. 1029
Duhault (“Duhault I”)	US 6,118,493	Sept. 12, 2000	Ex. 1013
Haddock	US 6,104,700	Aug. 15, 2000	Ex. 1024
Brown	US 6,278,448	Aug. 21, 2001	Ex. 1030
Duhault (“Duhault II”)	US 6,456,334 B1	Sept. 24, 2002	Ex. 1014
Duperrouzel	US 6,832,355 B1	Dec. 14, 2004	Ex. 1011
MSIE Kit	<i>Microsoft Internet Explorer Resource Kit, Microsoft Press (1998)</i>	Oct. 1998	Exs. 1006, 1007, 1008, 1009, 1010

E. The Alleged Grounds of Unpatentability

Microsoft alleges that the challenged claims are unpatentable based on the following grounds:

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Reference[s]	Basis	Claims challenged
Duhault I	§ 102	1, 3-5, 7-13, 18, 19, 21-24, 26, 27, 30-33, 35-37, 40-43, 46-50
Duhault I and Miller	§ 103	29
Duhault I and Brown	§ 103	38
Duhault II	§ 102	1-13, 17-28, 30-33, 35-37, 39-43, 46-50
Chen	§ 102	1-3, 6-13, 19, 22, 23, 27, 30, 39-43, 46-50
Chen	§ 103	21, 34
Chen and Haddock	§ 103	4, 31
Chen and MSIE Kit	§ 103	15, 16, 29, 44, 45, 51, 52
Chen and Crawford	§ 103	15, 16, 44, 45, 51, 52
Chen and DorEl	§ 103	18, 26
Chen and Duhault I	§ 103	24, 33
Chen and Miller	§ 103	29
Chen and Brown	§ 103	38
Farber	§ 102	1, 17, 20, 22, 25, 28
Farber and MSIE Kit	§ 103	1, 17, 20, 22, 25, 28
Farber and Jambhekar	§ 103	17, 25
MSIE Kit	§ 102	1-3, 5-8, 11, 12, 14-16, 19, 21, 22, 27, 30, 32, 34, 37-40, 43-47, 50-52
MSIE Kit and Duperrouzel	§ 103	2, 11, 15, 16, 43-45, 50-52

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MSIE Kit and Dunhault I	§ 103	5, 32
MSIE Kit and Dunhault II	§ 103	5, 32
MSIE Kit and Brown	§ 103	17, 20, 25, 28
MSIE Kit and Jambhekar	§ 103	17, 25
Duperrouzel	§ 102	1-3, 5-8, 12-14, 19, 21, 22, 27, 30, 32, 34, 37-40, 46, 47
Duperrouzel and Duhault I	§ 103	5, 32
Duperrouzel and Brown	§ 103	17, 20, 25, 28
Duperrouzel and Farber	§ 103	17, 25
Duperrouzel and Jambhekar	§ 103	17, 25

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48766 (Aug. 14, 2012). Also, 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).

Microsoft and SurfCast identify twenty-two claim terms for construction. 292 Pet. 5-20; 293 Pet. 5-19; 294 Pet. 4-15; 295 Pet. 5-19; 292 Prelim. Resp. 9-37; 293 Prelim. Resp. 9-30; 294 Prelim. Resp. 9-28; 295 Prelim. Resp. 9-38.

For this decision, we make explicit the construction of thirteen of those terms that we determine necessary to decide on whether to institute a review. The resolution of the other nine terms is not necessary to this decision.

1. “tile” (claims 1-5, 9, 12, 13, 15, 16, 22, 25-30, 32-38, 41, 44, 45, 46, 48, 51, 52)

Microsoft’s Proposal	SurfCast’s Proposal
a visual element (including a window or icon) that occupies less than the entire display, and may contain active areas or control elements (Pet. 6-9)	a graphical representation of an associated information source capable of displaying refreshed content, the graphical representation being persistent, and selectable to provide access to underlying information of the associated information source (Prelim. Resp. 10-17)

On this record, we determine that the broadest reasonable interpretation for “tile” in the context of the specification of the ’403 patent is “*a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source.*”

SurfCast contends that “tile” has a special meaning within the context of the ’403 patent. Prelim. Resp. 10. The ’403 patent explains that “[a] tile is associated with a program, file or datastream, in the same way that an icon and a window are.” Ex. 1001, 8:57-58. However, a “tile” is unlike “existing elements of graphical user interfaces,” particularly icons and windows. *Id.* at 7:62-64. “A tile presents content from any information source.” *Id.* at 7:64-65. “Tiles are selectable and live.” *Id.* at 9:25. With respect to being “selectable,” the ’403 patent explains that “[w]hen a tile is selected, whether by mouse click or otherwise,

the tile instantly provides the user with access to the underlying information.” *Id.* at 9:25-27. With respect to being “live,” the ’403 patent explains that “[t]he tiles are live in that each contains real-time or near-real-time information.” *Id.* at 9:32-33; *see also id.* at 8:36-38 (“A tile is different from an icon because it provides a real-time or near-real time view of the underlying information in that it contains continually refreshed content.”). The content presented in a “tile” can be refreshed, e.g., once per day. *Id.* at 12:56-58 (describing a tile containing infrequently updated HTML data from the Internet to refresh at a certain time each day). Alternatively, the content presented in a “tile” can be refreshed multiple times per second. *Id.* at 12:58-65 (“At the other extreme, a user might configure an active tile to display a television channel at a refresh rate of 29 frames per second, while at the same time configuring inactive tiles to display different channels at a refresh rate of once every five seconds. In this way, a user could monitor many channels until program content of interest appeared in one of the tiles without the burden of actively refreshing each tile.”).

Microsoft’s contention that “tile” be interpreted to cover an “icon” is overbroad. An icon, unlike a “tile,” is not refreshed. *Id.* at 8:36-38. Microsoft’s contention that “tile” be interpreted to cover a “window” is not as problematic. The ’403 patent does not draw the same distinction between a “tile” and a window, stating only that “a tile will *typically* be smaller in size, allowing the user to view multiple files simultaneously if desired.” *Id.* at 8:38-41 (emphasis added). The ’403 patent also states that “[a] tile . . . does not *necessarily* have the large number of active areas associated with windows such as title bar, menu bar and scroll bars.” *Id.* at 8:42-45 (emphasis added). These distinctions suggest that some

embodiments of a “tile” *may* be the same size as a window or *may* have the active areas associated with windows. As a result, on this record, we agree that the broadest reasonable interpretation of “tile” encompasses a window.

SurfCast’s contention that “tile” be construed to require “being persistent” is overbroad. Prelim. Resp. 12-13. SurfCast’s reliance on column 15 of the specification improperly attempts to import a limitation from what the specification describes as merely a “preferred embodiment.” Ex. 1001, 14:27. SurfCast’s reliance on the use of “resides” at column 4, lines 37 to 38, also is unavailing because it is unclear in that sentence whether “resides” modifies the “tiles” or the “grid.”

2. “array of tiles” (claims 1-3, 9, 13, 15, 16, 22, 25-29, 32, 35, 36, 38, 41, 44, 45, 46, 48, 51, 52)

Microsoft’s Proposal	SurfCast’s Proposal
any arrangement on a display of one or more tiles (Pet. 9-10)	multiple tiles displayed in an orderly fashion (Prelim. Resp. 17-19)

On this record, we determine that the broadest reasonable interpretation for “array of tiles” in the context of the specification of the ’403 patent is “*an ordered set of two or more tiles.*”

The ’403 patent does not define explicitly “array of tiles.” Outside of the Summary of Invention and the Claims, that phrase is used only twice. In one instance, the ’403 patent refers to tile 406 as displaying “a further array of tiles that may be displayed in full by expanding tile 406 to occupy the full area of the display.” Ex. 1001, 9:8-10. In the other instance, the ’403 patent describes a tile being “partitioned into a further array of tiles” by using the grid configuration

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wizard. *Id.* at 13:59-60. Nevertheless, we agree with SurfCast that the term “array of tiles” as used in the specification of the ’403 patent connotes order. Prelim. Resp. 17-18; *see, e.g.*, Ex. 2001 (“[a]n orderly, often imposing arrangement” and “a rectangular arrangement of quantities in rows and columns, as in a matrix”). Claims 3, 8, 12, 13, 30, and 40 further define limitations of the array of tiles. While we agree with Microsoft that the limitations of the dependent claims 3, 8, 12, 13, 30, and 40 should not be imported into the term “array of tiles,” Microsoft’s proposal to interpret the term to mean “any arrangement” would read out any requirement of order.

In addition, Microsoft’s contention that an “array of tiles” can include only one tile is overbroad. Claim 1 requires “a first tile” and “a second tile.” Thus, the recited “array of tiles” must have at least the recited first and second tiles. The ’403 patent’s description of an embodiment in which a “grid” can contain only one tile does not compel a different result. The “array” recited in claim 1 is broader than the “grid” recited in claim 12. An array may “comprise[] a grid,” as required by claim 12, and nevertheless include at least two tiles if, for example, the array comprised more than one grid.

3. “partitioning a visual display of the device into an array of tiles” (claim 1) / “arrange a display into an array of tiles” (claims 22, 46)

Microsoft’s Proposal	SurfCast’s Proposal
a presentation of two or more tiles within a portion or region of the display, including within a window (Pet. 11-12)	dividing some or all of a display into a non-overlapping array of tiles (Prelim. Resp. 19-22)

On this record, we determine that the broadest reasonable interpretation for “partitioning a visual display of the device into an array of tiles” in the context of the specification of the ’403 patent is “*dividing a display or window into two or more tiles.*”

The parties do not dispute that the partitioning may be within only “some” or “a portion or region” of a display. The parties’ sole dispute is whether the tiles may be overlapping. SurfCast contends that Microsoft’s proposed interpretation improperly encompasses a display of tiles in which the tiles overlap. Prelim. Resp. 19-22. SurfCast argues that the requirement in claims 3 and 30 that the tiles be “non-overlapping” does not compel claims 1 and 22 to encompass overlapping tiles because claims 3 and 30 include other additional limitations. Prelim. Resp. 20-21. SurfCast also notes that there are no embodiments of overlapping tiles in the specification or drawings of the ’403 patent. *Id.* While we acknowledge that no embodiments of overlapping tiles are disclosed in the ’403 patent, we also do not find any affirmative disclaimer of overlapping tiles. In one of two instances addressing overlap, the ’403 patent states that tiles “may”—not must—“be displayed simultaneously without overlapping with one another in the way that windows necessarily do.” Ex. 1001, 8:46-49. In the other instance, the ’403 patent’s disclosure that “the tiles are not permitted to overlap” refers only to “a preferred embodiment.” *Id.* at 11:63-12:6. Neither disclosure precludes an embodiment in which tiles overlap. As a result, we decline to import this limitation into the construction of the claim phrase.

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4. “refresh rate” (claims 1, 4, 6, 7, 10, 11) / “retrieval rate” (claims 22, 31, 33, 39, 42, 43, 46, 49, 50)

Microsoft’s Proposal	SurfCast’s Proposal
a recurring time interval at which information displayed in a tile is refreshed or retrieved (Pet. 12-13)	criteria for updating (Prelim. Resp. 29-31)

On this record, we determine that the broadest reasonable interpretation for “[refresh/retrieval] rate” in the context of the specification of the ’403 patent is “*a recurring time interval at which information displayed in a tile is refreshed or retrieved.*”

The ’403 patent states “[i]n a preferred embodiment, according to priorities that may be applied to individual tiles on a tile-by-tile basis if desired, the grid manages the refresh rate of each tile in the grid.” Ex. 1001, 12:50-53. As examples of the grid managing the “refresh rate of each tile,” the ’403 patent describes configuring “tiles containing infrequently updated HTML data from the Internet to refresh at a certain time each day,” or configuring “an active tile to display a television channel at a refresh rate of 29 frames per second, while at the same time configuring inactive tiles to display different channels at a refresh rate of once every five seconds.” *Id.* at 12:56-62. Thus, Microsoft’s proposed construction is consistent with the specification of the ’403 patent.

SurfCast contends that Microsoft’s proposal (1) improperly excludes the embodiment in which a tile is configured “to refresh only when the underlying data is written to the local hard drive” and (2) is inconsistent with the plain and ordinary meaning of “rate.” Prelim. Resp. 29-31 (quoting Ex. 1001, 12:54-56). As an

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initial matter, Microsoft’s proposal does not exclude embodiments in which underlying data is written to the local hard drive at a recurring time interval. Moreover, a claim need not be construed to encompass every disclosed embodiment when the claim language is clearly limited to one or more embodiments. *TIP Systems, LLC v. Phillips & Brooks/Gladwin, Inc.*, 529 F.3d 1364, 1373 (Fed. Cir. 2008) (citing *PSN Ill., LLC v. Ivoclar Vivadent, Inc.*, 525 F.3d 1159, 1167 (Fed. Cir. 2008)). In addition, we are not persuaded by the extrinsic evidence cited by SurfCast. Although SurfCast has cited a dictionary defines “rate” in a manner not based on time, the example following the definition—“a rate of speed of 60 miles an hour”—is based on time. Ex. 2001. At best, this evidence is ambiguous as to whether a person of ordinary skill in the art would understand “rate” to imply time. On this record, we decline to construe “[refresh/retrieval] rate” to encompass “criteria for updating” other than time.

5. “simultaneously updating information from a second information source . . . in accordance with said second refresh rate” (claim 1) / “control simultaneous communication with a plurality of information sources” (claims 22 and 46)

Microsoft’s Proposal	SurfCast’s Proposal
[No proposal]	performing the repetitive process of updating information presented to the second tile and waiting for the next time at which the update is to occur as set by the refresh rate assigned to the second tile at the same time or nearly the same time as said updating information from said first information source (Prelim. Resp. 32-35)

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Microsoft does not assert a different interpretation but contends that SurfCast’s proposal would “encompass two processes (*e.g.*, two refresh processes associated with two different tiles) that overlap at any point during their execution.” Pet. 14. We adopt SurfCast’s proposed construction because it is consistent with the ordinary meaning of the claim phrase and the specification of the ’403 patent.

6. “user-defined array size” (claim 2)

Microsoft’s Proposal	SurfCast’s Proposal
an amount of space determined to be necessary to present a user-defined number of tiles in a display (Pet. 13)	the number and arrangement of tile positions in the array as specified by the user (Prelim. Resp. 22-23)

On this record, we determine that the broadest reasonable interpretation for “user-defined array size” in the context of the specification of the ’403 patent is “*the number and arrangement of tiles to display, as specified by the user.*”

The ’403 patent states that “a user may specify a presentation of the grid, consisting of its dimensions, (*i.e.*, the number of tiles to display and their arrangement).” Ex. 1001, 11:9-11. Microsoft’s additional citations (Pet. 13, citing Ex. 1001, 14:4-14 and 13:28-30) provide no support for its proposed “amount of space determined to be necessary to present.” Similarly, the specification provides no support for SurfCast’s proposed tile “positions.”

7. “assigning said first [second] refresh rate in accordance with a first [second] priority value of a first [second] information source associated with said first [second] tile” (claim 4) / “assign said first retrieval rate and said second retrieval rate in accordance with a predetermined priority scheme (claim 31)

Microsoft’s Proposal	SurfCast’s Proposal
(i) either a user or a device defining a priority value, and (ii) assigning refresh rates by any manner of reference to the priority value (Pet. 15)	the refresh rate is assigned to a tile based on a priority scheme such that a tile’s refresh rate is higher than the refresh rates of other tiles that have lower priority values (Prelim. Resp. 35-36)

On this record, we determine that the broadest reasonable interpretation for “assigning said first [second] refresh rate . . . in accordance with a first [second] priority value of a first [second] information source associated with said first [second] tile” in the context of the specification of the ’403 patent is “*assigning said first [second] refresh rate . . . in accordance with a first [second] priority value of said first [second] tile.*”

Although the claim phrase refers to the “priority value of *a first [second] information source*,” the ’403 patent describes a tile—not an information source—as having a priority. Ex. 1001, 12:50-52 (“according to priorities that may be applied to *individual tiles* on a tile by tile basis if desired”) (emphasis added), 13:10-11 (“[T]he address of each tile, *its priority* and its refresh rate are stored by the grid program.”) (emphasis added); 13:14-15 (“The priority of *a tile* may be used to determine its refresh rate in one embodiment of the present invention.”) (emphasis added). Microsoft’s proposed interpretation imports a step of defining a priority value. SurfCast’s proposed interpretation imports a requirement that a tile

with a higher priority is assigned a higher refresh rate than a tile with a lower priority. Neither proposed limitation is required by the claim language or the specification of the '403 patent.

8. “wherein at least one attribute of each tile in said array of tiles is assigned uniformly” (claim 9) / “uniformly assigning at least one attribute of each tile in said array of tiles” (claim 41 and 48)

Microsoft’s Proposal	SurfCast’s Proposal
assigning one value to at least one attribute in each tile in an array, including by assigning a default value for an attribute of a tile that is created or displayed (Pet. 16)	assigning the same value of an attribute to each tile in the array (Prelim. Resp. 25)

On the record before us at this stage of the proceeding, we determine that the broadest reasonable interpretation for “wherein at least one attribute of each tile in said array of tiles is assigned uniformly” (claim 9) in the context of the specification of the '403 patent encompasses “*assigning the same value of an attribute to each tile in the array*” (Prelim. Resp. 25).

The '403 patent describes examples of an attribute of a tile, such as its size, position, priority, and refresh rate. Ex. 1001, 13:7-19, 21-23 (referring to attributes in Figs. 5 and 12). The parties dispute whether “uniformly” modifies “assigned” or “attribute.” Under Microsoft’s proposed interpretation, what is being assigned need not be the same value, or even the same attribute, as long as the *way* it is assigned is uniform (e.g., by default). However, the '403 patent does not describe explicitly how values would be assigned uniformly. Under SurfCast’s proposed interpretation, each tile must be assigned the same value for the same attribute.

While this interpretation is problematic for some attributes—e.g., if each tile were assigned the same position, the tiles in the array would overlap—other attributes are described as having the same value. For example, in one embodiment, the tiles have the same size. *Id.* at 11:63-12:4. In another embodiment, the tiles have the same refresh rate. *Id.* at 12:36-48. As a result, we adopt SurfCasts’s proposed interpretation.

9. “grid” (claim 12)

Microsoft’s Proposal	SurfCast’s Proposal
any presentation of tiles in a row and column orientation (Pet. 17)	a regular layout of rows and columns where a single tile may occupy more than one row and/or column (Prelim. Resp. 25-26)

On this record, we determine that the broadest reasonable interpretation for “grid” in the context of the specification of the ’403 patent is “*any presentation of tiles in a row and column orientation.*” The ’403 patent describes embodiments in which a single tile occupies more than one row and/or column. *See, e.g.*, Ex. 1001, Fig. 9 (tiles 802-1-2), 12:13-19. Microsoft’s proposed interpretation encompasses such embodiments in fewer words.

10. “wherein each of said tiles occupies a fixed position on said grid” (claim 12)

Microsoft’s Proposal	SurfCast’s Proposal
presenting a tile in a specific cell within a row and column of a grid, and does not require the tile to remain in the identical location on the display (Pet. 17)	wherein each tile occupies a particular position in the regular layout of rows and columns (Prelim. Resp. 27-29)

On this record, we determine that the broadest reasonable interpretation for “wherein each of said tiles occupies a fixed position on said grid” (claim 12) in the context of the specification of the ’403 patent is “*each tile occupies a particular cell or a particular plurality of cells of said grid.*”

Outside of the claims, the ’403 patent does not use the word “fixed” with respect to a tile’s position on the grid. As noted above, the ’403 patent describes embodiments in which a single tile occupies more than one row and/or column. *See, e.g.,* Ex. 1001, Fig. 9 (tiles 802-1-2), 12:13-19. Microsoft’s proposed interpretation is unduly narrow because it excludes embodiments in which a tile occupies more than one cell. SurfCast’s proposed interpretation is unduly broad because it does not limit the “position” occupied by a tile to one or more specific cells. SurfCast does not dispute that a tile need not occupy a fixed position on the *display*, as long as the position is fixed with respect to the *grid*. Prelim. Resp. 28.

11. “tile . . . has a fixed size that is equal to a unit tile size, or a multiple thereof” (claim 13)

Microsoft’s Proposal	SurfCast’s Proposal
[No proposal]	a single tile has a size that may occupy more than one row and/or column in an array of rows and columns (Prelim. Resp. 26-27)

Because SurfCast’s proposed interpretation of the claim phrase is consistent with the ordinary meaning of the claim terms and the specification of the ’403 patent, we adopt SurfCast’s proposed construction.

12. “storing said array of tiles on a second device” (claims 15 and 51) / “storing said array of tiles on a second electronic device” (claim 44)

Microsoft’s Proposal	SurfCast’s Proposal
storing information about the tile, e.g., attributes of the tiles, layout of the array, size of the array, grid configurations, passwords, and other user-specific contents related to the array of tiles such as refresh rates, on a device that does not perform the steps of claim 1 (Pet. 19)	transmitting to, and saving on, a second device, a specification of an array of tiles that includes, for each tile, its position in the array, its refresh rate, and its assigned information source (Prelim. Resp. 36-37)

On the record before us, we determine that the broadest reasonable interpretation for “storing said array of tiles on a second device” (claims 15 and 51) in the context of the specification of the ’403 patent is “*storing attributes of said array of tiles on a second device.*”

Both parties propose interpreting the “said array of tiles” being stored as information about the array of tiles (*compare* “layout of the array, size of the array, grid configurations” (Microsoft’s Proposal) *with* “a specification of an array of tiles” (SurfCast’s Proposal)) as well as information about the tiles within the array (*compare* “passwords, . . . refresh rates” (Microsoft’s Proposal) *with* “for each tile, its position in the array, its refresh rate, and its assigned information source” (SurfCast’s Proposal)). However, the parties differ over the interpretation of “second device” and whether “transmitting” is required.

The term “second device” stands in distinction to the “device” recited in the preamble of claim 1. Microsoft, therefore, contends that “second device” should

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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be interpreted as “a device that does not perform the steps of claim 1.” However, such an interpretation is overly narrow. As long as the device on which “said array of tiles” is being stored is not the device that partitioned a visual display into the “said array of tiles” being stored in claim 15, the device is a “second” device.

SurfCast’s contention that this phrase should be interpreted to require a “transmitting” step lacks support in the specification. Prelim. Resp. 37 (citing Ex. 1001, Fig. 24, 22:1-38). While the cited portion of ’403 patent describes storing grid configurations on the server (“the user may store pre-defined grid configurations on the server”), it does not describe “transmitting” anything to the server.

13. “wherein said array of tiles is retrieved from a second device” (claims 16 and 52) / “retrieving said array of tiles from a second electronic device” (claim 45)

Microsoft’s Proposal	SurfCast’s Proposal
retrieving information regarding the tiles, e.g., attributes of the tiles, layout of the array, size of the array, grid configurations, passwords, and other user-specific contents related to the array of tiles such as refresh rates, on a device that does not perform the steps of claim 1 (Pet. 19-20)	retrieving from a second device, a specification of an array of tiles that includes, for each tile, its position in the array, its refresh rate, and its assigned information source (Prelim. Resp. 37)

On this record, we determine that the broadest reasonable interpretation for “wherein said array of tiles is retrieved from a second device” in the context of the

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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specification of the '403 patent is “*retrieving attributes of said array of tiles from a second device.*”

As noted above, we agree with the parties that interpreting “said array of tiles” as information about the array of tiles (*compare* “layout of the array, size of the array, grid configurations” (Microsoft’s Proposal) *with* “a specification of an array of tiles” (SurfCast’s Proposal)) as well as information about the tiles within the array (*compare* “passwords, . . . refresh rates” (Microsoft’s Proposal) *with* “for each tile, its position in the array, its refresh rate, and its assigned information source” (SurfCast’s Proposal)) is consistent with the specification of the '403 patent. As also noted above, the plain and ordinary meaning of “second device” is adequate to distinguish the “device” recited in claim 1.

B. Anticipated by Duhault II

Microsoft alleges that claims 1-13, 17-28, 30-33, 35-37, 39-43, and 46-50 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Duhault II. 292 Pet. 25-27; 293 Pet. 27-29; 294 Pet. 20-21. Microsoft provides detailed explanations as to how each claim limitation is met by the cited prior art reference, and the explanations are supported by the declaration of Dr. David R. Karger. Ex. 1003. In light of the arguments and evidence submitted by both parties, Microsoft has established a reasonable likelihood that claims 1-13, 17-28, 30-33, 35-37, 39-43, and 46-50 are unpatentable as anticipated by Duhault II.

Duhault II describes a method and system for displaying video wherein multiple tuners are used to display multiple video images within a scaleable window. Ex. 1014, 1:65-67. The term “video image” refers to a unique channel of

video received in the form of an analog or digital signal from a satellite, a cable network, the internet, or other on-demand video device. *Id.* at 3:1-9. One tuner provides a full-motion video to a first image, which is generally a larger image residing within the entire window. *Id.* at 2:1-3. A second tuner provides periodic refreshing to the other generally smaller windows. *Id.* at 2:3-5. Selection of the smaller windows allows for periodic full-motion video, individual full-motion video, switching of location, audio feed, and other desirable manipulation of video images. *Id.* at 2:5-8. Figure 1 of Duhault II is reproduced below to depict Duhault II's display device having a plurality of video images:

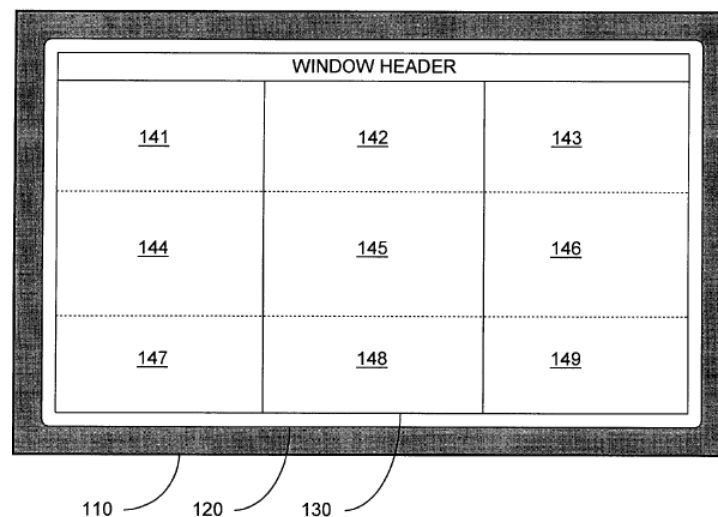


FIGURE 1

As shown in Figure 1 of Duhault II, display device 110 has a screen area 120, substantially all of which is taken up by window 130. *Id.* at 2:16-20. In the embodiment depicted, window 130 has a window header and displays nine video images, 141 to 149. *Id.* at 2:27-29. In other embodiments, window 130 may not

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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have a window header or may have more or fewer video images displayed. *Id.* at 2:29-31.

SurfCast contends that Duhault II's video images are not the recited "tiles" because they are displayed within a "scaleable first window." Prelim. Resp. 44. However, SurfCast does not explain *how* the display of video images within a "scaleable first window" fails to meet the claim language.

SurfCast also contends that Duhault II's video images are not "tiles" because (1) they are not assigned individual refresh rates and (2) they are not persistent. Prelim. Resp. 44-45. SurfCast's arguments are based on a narrow interpretation of "tile," which we decline to adopt (*see* above). We have interpreted "tile" to mean "a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source." Duhault II's video images are graphical user interface elements. Ex. 1014, Fig. 1, 2:16-31; 3:1-9. A video image may be refreshed, for example, periodically or at full-motion rate. *Id.* at 3:10-41. When selected, the video image provides access to an information source, namely a video signal, in the form of full-motion video. *Id.* at 3:55-4:11.

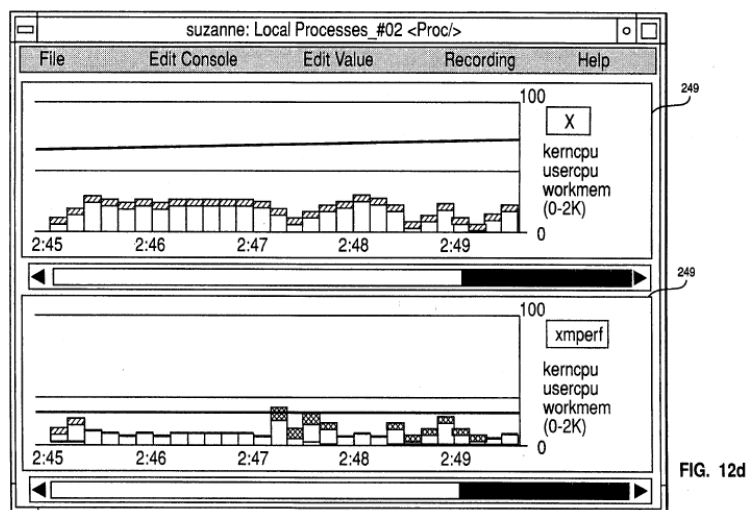
For the foregoing reasons, Microsoft has established a reasonable likelihood that it would prevail in showing that claim 1 is unpatentable as anticipated by Duhault II. We also are persuaded that Microsoft has established a reasonable likelihood that it would prevail in showing that the dependent claims are anticipated by Duhault II.

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IPR2013-00294, and IPR2013-00295
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C. Anticipated by Chen

Microsoft alleges that claims 1, 9-11, 22, 41-43, 46, and 48-50 are unpatentable under 35 U.S.C. § 102(b) as anticipated by Chen. 292 Pet. 27-33; 293 Pet. 29-34; 294 Pet. 21-26. Microsoft provides detailed explanations as to how each claim limitation is met by the cited prior art reference, and the explanations are supported by the declaration of Dr. David R. Karger. Ex. 1003. In light of the arguments and evidence submitted by both parties, Microsoft has established a reasonable likelihood that claims 1, 9-11, 22, 41-43, 46, and 48-50 are unpatentable as anticipated by Chen.

Chen describes a performance monitoring tool for a data processing system. Ex. 1015, 2:61. The performance monitoring tool may be used for monitoring, capturing, saving, retrieving, and analyzing data processing system operations. *Id.* at 63-65. The performance monitoring tool is built on a client/server model in which a server program, known as a “Data Supplier,” runs as a daemon on a server system and one or more client programs, known as “Data Consumers,” provides the monitoring facilities. *Id.* at 4:3-10. The basic monitoring device is called a monitor. *Id.* at 5:11. Within a monitor, one or more sets of data processing system statistics may be observed in subwindows called instruments. *Id.* at 5:14-17. An instrument can monitor a set of statistics supplied from any host on the network that runs the Data Supplier daemon. *Id.* at 5:17-19. Figure 12d is reproduced below depicting Chen’s monitor having a plurality of instruments:



As shown in Figure 12d of Chen, an instrument shows statistics for a system resource over a period of time, as shown at 2:49. *Id.* at 23:35-37. GUI (graphical user interface) 80 allows the user to start and stop recording from any active monitoring instrument. *Id.* at 6:63-65; 13:15-21. The user can add new instrument subwindows to the console and has control over the sampling frequency of the instrument. *Id.* at 8:29-31 and 8:38-40. Each instrument has an “interval” property that determines the number of milliseconds between observations. *Id.* at 23:45-48; 24:3-5.

SurfCast contends that Chen’s instruments are not the recited “tiles” because they (1) are not “selectable to provide access to the underlying information,” insofar as they cannot be maximized independently of one another and do not provide different or additional access to information when maximized, and (2) do not have individually assigned refresh rates. 292 Prelim. Resp. 46-48; 293 Prelim. Resp. 40-41; 294 Prelim. Resp. 36-37. We disagree. As an initial matter, SurfCast’s first argument is based upon an interpretation of “tile” that we declined

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to adopt (*see above*). We interpreted “tile” to require that it, “when selected, provides access to an information source.” *Id.* Chen discloses that individual instruments may be selected or unselected. Ex. 1015, 14:67-15:2. Figure 11 is reproduced below depicting how the options available in an instrument’s Instrument Menu depend, in part, upon whether that instrument is selected.

		SOME INSTRUMENTS ARE RECORDING				
		ALL INSTRS ARE RECORD- ING	SELECT'D INSTR IS RECORD- ING	SELECT'D INSTR NOT RECORD- ING	NO INSTR IS SELECTED	NO INSTR IS RECORD- ING
CONSOLE MENU	SAVE BUFFER	-	-	-	-	+
CONSOLE MENU	BEGIN RECORDING	-	+	+	+	+
CONSOLE MENU	SAVE & BEGIN REC	-	-	-	-	+
CONSOLE MENU	END RECORDING	+	+	+	+	-
INSTRUMENT MENU	SAVE BUFFER	-	-	-	N/A	+
INSTRUMENT MENU	BEGIN RECORDING	-	-	+	N/A	+
INSTRUMENT MENU	SAVE & BEGIN REC	-	-	-	N/A	+
INSTRUMENT MENU	END RECORDING	+	+	-	N/A	-

FIG. 11

As shown in Figure 11, if some instruments are recording but the selected instrument is not recording, the only option available to the user is to Begin Recording. Conversely, if some instruments are recording and the selected instrument is recording, the only option available to the user is to End Recording. Based on Chen’s disclosure, we are not persuaded that the ability to Begin Recording or End Recording when selected does not disclose “selectable to provide access to the underlying information.”

We also are unpersuaded by SurfCast’s argument that Chen’s instruments are not “tiles” because they are not assigned individual refresh rates. 292 Prelim. Resp. 47-48; 293 Prelim. Resp. 40-41; 294 Prelim. Resp. 36-37. As an initial

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matter, SurfCast's argument is based on a narrow interpretation of "tile," which we decline to adopt (*see* above). Moreover, we are not persuaded that Chen's instruments are not assigned individual refresh rates. Specifically, we disagree with SurfCast's characterization of column 8, lines 38 to 40, as referring only to the console, not to instrument subwindows. 292 Prelim. Resp. 47; 293 Prelim. Resp. 41; 294 Prelim. Resp. 37. At the beginning of that paragraph, though, Chen specifically says "the user can . . . add new '*instrument*' *subwindows*, and add multiple instrument values to *any instrument*." Ex. 1015, 8:29-31 (emphasis added). The following sentences then describe exemplary "values" that may be added to an instrument. *Id.* at 8:32-38. Thus, lines 38 to 40 describe other properties of the *instruments* over which the user has control, including "sampling frequency" of the instrument. *Id.* at 8:38-40. This is consistent with disclosures elsewhere in Chen, describing instruments as having their own "interval" property that determines the milliseconds between observations. *Id.* at 23:45-48; 24:3-5.

Finally, SurfCast contends that claims 9-11, 41-43, and 48-50 are not anticipated by Chen for the same reasons as claims 1, 22, and 46. 292 Prelim. Resp. 48; 293 Prelim Resp. 38-39; 294 Prelim. Resp. 37. We are not persuaded by those arguments for the reasons discussed above.

For the foregoing reasons, Microsoft has established a reasonable likelihood that it would prevail in showing that claims 1, 9-11, 22, 41-43, 46, and 48-50 are unpatentable as anticipated by Chen.

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D. Obvious over Chen and MSIE Kit

Microsoft alleges that claim 29 is unpatentable under 35 U.S.C. § 103(a) as obvious over Chen and MSIE Kit. 293 Pet. 35-36. A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

As discussed above, Microsoft has established a reasonable likelihood that Chen anticipates the subject matter of claim 22.

Claim 29 recites “[t]he electronic readable memory of claim 22 further comprising a set of instructions to assign a password to a selected tile of said array of tiles.” Microsoft contends that it would have been obvious to combine Chen with MSIE Kit. 293 Pet. 35-36, citing Ex. 1007. MSIE Kit teaches a “subscription” feature of Internet Explorer 4 that allows a user to “subscribe” to a website by specifying, *inter alia*, “a user name and password, if needed, to authenticate site logins.” Ex. 1007 at 196. SurfCast argues that MSIE Kit does not cure the deficiencies of Chen because MSIE Kit’s Active Desktop icons are not the recited “tiles.” 293 Prelim. Resp. 43. However, we are not persuaded by SurfCast’s arguments about the deficiencies of Chen for the reasons discussed

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above. On the record before us, there is sufficient evidence to support a finding that the claims merely combine known elements for their known purpose to achieve a predictable result. *KSR*, 550 U.S. at 416.

For the foregoing reasons, Microsoft has established a reasonable likelihood that claim 29 is unpatentable under 35 U.S.C. § 103(a) as obvious over Chen and MSIE Kit.

E. Anticipated by MSIE Kit

Microsoft alleges that claims 1-3, 5-8, 11, 12, 14-16, 19, 21, 22, 27, 30, 32, 34, 37-40, 43-47, and 50-52 are unpatentable under 35 U.S.C. § 102(b) and § 102(a) as anticipated by MSIE Kit. 295 Pet. 20-34. Microsoft provides detailed explanations as to how each claim limitation is met by the cited prior art reference, and the explanations are supported by the declaration of Dr. David R. Karger. Ex. 1003. In light of the arguments and evidence submitted by both parties, Microsoft has established a reasonable likelihood that 1-3, 5-8, 11, 12, 14-16, 19, 21, 22, 27, 30, 32, 34, 37-40, 43-47, and 50-52 are unpatentable as anticipated by 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. 1007 at 174, 180, 183, 211. MSIE Kit describes Active Desktop “items” presented on a user’s desktop. *Id.* Each item is associated with an information source on the Web. *Id.* at 174, 176, 177, 180, 183. Each item is presented typically on the desktop in a borderless frame without a title bar or scrollbars. *Id.* at 176, 183. By default, the items are laid out in a 3x2 grid. *Id.* at 176-177, 180, 183. Each item displays information from a URL and is updated

Cases IPR2013-00292, IPR2013-00293,
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periodically. *Id.* at 176-177, 180, 188, 201. The user may choose how frequently to update, or a content provider may specify the frequency in a “CDF” file. *Id.* at 177, 183, 188, 223. Users may select an item in order to move it on the desktop or may select a link within the item to open that link in a new browser window. *Id.* at 177, 183.

SurfCast contends that MSIE Kit’s Active Desktop items are not the recited “tiles” because they are not “selectable to provide access to the underlying information.” 295 Prelim. Resp. 41. SurfCast’s arguments are based on a narrow interpretation of “tile,” which we decline to adopt (*see* above). We have interpreted “tile” to mean “a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source.” MSIE Kit’s Active Desktop items are graphical user interface elements. Ex. 1007, 174, 176, 177, 180, 183. They may be refreshed, for example, hourly, daily, weekly, or monthly. *Id.* at 177, 183, 188, 200-202, and 223. When selected, a link opens in a new browser window to provide access to the information. *Id.* at 177, 183. Thus, Microsoft’s Active Desktop items disclose the recited “tiles.”

For the foregoing reasons, Microsoft has established a reasonable likelihood that it would prevail in showing that claims 1-3, 5-8, 11, 12, 14-16, 19, 21, 22, 27, 30, 32, 34, 37-40, 43-47, and 50-52 are unpatentable as anticipated by MSIE Kit.

F. Obvious over MSIE Kit and Brown

Microsoft alleges that claims 17, 20, 25 and 28 are unpatentable under 35 U.S.C. § 103(a) as obvious over MSIE Kit and Brown. 295 Pet. 37-38.

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As discussed above, Microsoft has established a reasonable likelihood that MSIE Kit anticipates the subject matter of claims 1 and 22. Claims 17 and 20 each depend directly from claim 1. Claims 25 and 28 each depend directly from claim 22.

1. Claims 17 and 25

Claim 17 requires “said device is a mobile telephone.” Claim 25 requires “said second set of instructions arrange said array of tiles on a display of a mobile telephone.” Brown teaches methods and systems for creating Active Desktop components. Ex. 1030, 7:21-41. Brown further teaches that the Active Desktop scheme can be implemented on hand-held devices. *Id.* at 4:44-54 (“Moreover, those skilled in the art will appreciate that the invention may be practiced with other computer system configurations, including hand-held devices.”). Microsoft contends that a person of ordinary skill in the art would have known that a mobile phone is a type of hand-held device on which the Active Desktop functionality could be implemented. 295 Pet. 37-38. SurfCast contends that Brown does not cure the alleged deficiencies of MSIE Kit. 295 Prelim. Resp. 45-46. However, we are not persuaded by SurfCast’s arguments regarding the deficiencies of MSIE Kit for the reasons discussed above in Section II(E). On the record before us, there is sufficient evidence that the claims merely combine known elements for their known purpose to achieve a predictable result.

2. Claims 20 and 28

Claim 20 requires “said device is a personal digital assistant.” Claim 28 requires “said second set of instructions arrange said array of tiles on a personal digital assistant.” As previously discussed, Brown teaches that the Active Desktop

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IPR2013-00294, and IPR2013-00295
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scheme can be implemented on hand-held devices. Ex. 1030, 4:44-54. Microsoft contends that a person of ordinary skill in the art would have known that a personal digital assistant is a type of hand-held device on which the Active Desktop functionality could be implemented. 295 Pet. 38. SurfCast contends that Brown does not cure the alleged deficiencies of MSIE Kit. 295 Prelim. Resp. 46-47. However, we are not persuaded by SurfCast's arguments regarding the deficiencies of MSIE Kit for the reasons discussed above in Section II(E). On the record before us, there is sufficient evidence that the claims merely combine known elements for their known purpose to achieve a predictable result.

For the foregoing reasons, Microsoft has established a reasonable likelihood that claims 17, 20, 25, and 28 are unpatentable under 35 U.S.C. § 103(a) as obvious over MSIE Kit and Brown.

G. Anticipated by Duperrouzel

Microsoft alleges that claims 1-3, 5-8, 12-14, 19, 21, 22, 27, 30, 32, 34, 37-40, 46, and 47 are unpatentable under 35 U.S.C. § 102(e) as anticipated by Duperrouzel. 295 Pet. 41-54. Microsoft provides detailed explanations as to how each claim limitation is met by the cited prior art reference, and the explanations are supported by the declaration of Dr. David R. Karger. Ex. 1003. In light of the arguments and evidence submitted by both parties, Microsoft has established a reasonable likelihood that claims 1-3, 5-8, 12-14, 19, 21, 22, 27, 30, 32, 34, 37-40, 46, and 47 are unpatentable as anticipated by Duperrouzel.

Duperrouzel describes a display system that simultaneously displays multiple web pages in a plurality of non-overlapping "display panes." Ex. 1011,

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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Abstract; 2:4-11; 5:1-2; Fig. 2. In one embodiment, the display system is a web browser. *Id.* at Abstract. A user may designate the number of non-overlapping display areas to be displayed. *Id.* Each display pane can be controlled individually to refresh the web page currently displayed at a rate specified by the user. *Id.* at 13:36-42; Fig. 19. Duperrouzel discloses that, in one embodiment, “the web page display is executed in a windows environment such as Microsoft Active Desktop in conjunction with the Internet Explorer engine.” *Id.* at 11:38-65.

SurfCast contends that Duperrouzel’s display areas are not the recited “tiles” because they are (1) not “selectable to provide access to the underlying information” and (2) not persistent. 295 Prelim. Resp. 50-52. SurfCast’s arguments are based on a narrow interpretation of “tile,” which we decline to adopt (*see above*). We have interpreted “tile” to mean “a graphical user interface element whose content may be refreshed and that, when selected, provides access to an information source.” Duperrouzel’s display panes are graphical user interface elements. Ex. 1011, Abstract; Fig. 2. They may be refreshed at user-defined intervals. *Id.* at 13:36-42. When a user selects maximize control 240 in a display pane, that pane is maximized to provide access to the underlying web page. *Id.* at 6:36-40. Moreover, though we do not construe “tile” to require persistence, we note that Duperrouzel discloses that one “Start Up” option includes “a checkbox for navigating to sites last viewed.” *Id.* at 13:21-22. Such a checkbox would allow for persistence. Thus, Microsoft’s Active Desktop items disclose the recited “tiles.”

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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For the foregoing reasons, Microsoft has established a reasonable likelihood that it would prevail in showing that claims 1-3, 5-8, 12-14, 19, 21, 22, 27, 30, 32, 34, 37-40, 46, and 47 are unpatentable as anticipated by Duperrouzel.

H. Obvious over Duperrouzel and Brown

Microsoft alleges that claims 17, 20, 25, and 28 are unpatentable under 35 U.S.C. § 103(a) as obvious over Duperrouzel and Brown. 295 Pet. 57-58, 60.

As discussed above, Microsoft has established a reasonable likelihood that Duperrouzel anticipates the subject matter of claims 1 and 22. Claims 17 and 20 each depend directly from claim 1. Claims 25 and 28 each depend directly from claim 22.

1. Claims 17 and 25

Claim 17 requires “said device is a mobile telephone.” Claim 25 requires “said second set of instructions arrange said array of tiles on a display of a mobile telephone.” Brown teaches methods and systems for creating Active Desktop components. Ex. 1030, 7:21-41. Brown further teaches that the Active Desktop scheme can be implemented on hand-held devices. *Id.* at 4:44-54 (“Moreover, those skilled in the art will appreciate that the invention may be practiced with other computer system configurations, including hand-held devices, . . .”).

Microsoft contends that, because both Duperrouzel and Brown can be implemented using Active Desktop, and because Brown teaches that it can be implemented on a hand-held device, a person of ordinary skill in the art would have known that a mobile phone is a type of hand-held device on which the display pane functionality of Duperrouzel could be implemented. 295 Pet. 58. SurfCast contends that Brown

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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does not cure the alleged deficiencies of Duperrouzel. 295 Prelim. Resp. 55-56. However, we are not persuaded by SurfCast's arguments regarding the deficiencies of Duperrouzel for the reasons discussed above. On the record before us, there is sufficient evidence that the claims merely combine known elements for their known purpose to achieve a predictable result.

2. Claims 20 and 28

Claim 20 requires "said device is a personal digital assistant." Claim 28 requires "said second set of instructions arrange said array of tiles on a personal digital assistant." As previously discussed, Brown teaches that the Active Desktop scheme can be implemented on hand-held devices. Ex. 1030, 4:44-54. Microsoft contends that a person of ordinary skill in the art would have known that a personal digital assistant is a type of hand-held device on which the display pane functionality of Duperrouzel could be implemented. 295 Pet. 60. SurfCast contends that Brown does not cure the alleged deficiencies of Duperrouzel. 295 Prelim. Resp. 56-57. However, we are not persuaded by SurfCast's arguments regarding the deficiencies of Duperrouzel for the reasons discussed above in Section II(G). On the record before us, there is sufficient evidence to support a finding that the claims merely combine known elements for their known purpose to achieve a predictable result.

For the foregoing reasons, Microsoft has established a reasonable likelihood that that claims 17, 20, 25, and 28 are unpatentable under 35 U.S.C. § 103(a) as obvious over Duperrouzel and Brown.

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IPR2013-00294, and IPR2013-00295
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I. Other Asserted Grounds

Microsoft also asserts the following grounds of unpatentability:

1. Claims 1, 3-5, 7-13, 18, 19, 21-24, 26, 27, 30-33, 35-37, 40-43, and 46-50 are unpatentable under 35 U.S.C. § 102 as anticipated by Duhault I;
2. Claim 29 is unpatentable under 35 U.S.C. § 103 as obvious over Duhault I and Miller;
3. Claim 38 is unpatentable under 35 U.S.C. § 103 as obvious over Duhault I and Brown;
4. Claims 2, 3, 6-8, 12, 13, 19, 23, 27, 30, 39, 40, and 47 are unpatentable under 35 U.S.C. § 102 as anticipated by Chen;
5. Claims 21 and 34 are unpatentable under 35 U.S.C. § 103 as obvious over Chen;
6. Claims 4 and 31 are unpatentable under 35 U.S.C. § 103 as obvious over Chen and Haddock;
7. Claims 15, 16, 44, 45, 51, and 52 are unpatentable under 35 U.S.C. § 103 as obvious over Chen and MSIE Kit;
8. Claims 15, 16, 44, 45, 51, and 52 are unpatentable under 35 U.S.C. § 103 as obvious over Chen and Crawford;
9. Claims 18 and 26 are unpatentable under 35 U.S.C. § 103 as obvious over Chen and DorEl;
10. Claims 24 and 33 are unpatentable under 35 U.S.C. § 103 as obvious over Chen and Duhault I;
11. Claim 29 is unpatentable under 35 U.S.C. § 103 as obvious over Chen and Miller;

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12. Claim 38 is unpatentable under 35 U.S.C. § 103 as obvious over Chen and Brown;
 13. Claims 1, 17, 20, 22, 25, and 28 are unpatentable under 35 U.S.C. § 102 as anticipated by Farber;
 14. Claims 1, 17, 20, 22, 25, and 28 are unpatentable under 35 U.S.C. § 103 over Farber and MSIE Kit; and
 15. Claims 17 and 25 are unpatentable under 35 U.S.C. § 103 over Farber and Jambhekar.
 16. Claims 2, 11, 15, 16, 43-45, and 50-52 are unpatentable under 35 U.S.C. § 103 over MSIE Kit and Duperrouzel;
 17. Claims 5 and 32 are unpatentable under 35 U.S.C. § 103 as obvious over MSIE Kit and Duhault I;
 18. Claims 5 and 32 are unpatentable under 35 U.S.C. § 103 as obvious over MSIE Kit and Duhault II;
 19. Claims 17 and 25 are unpatentable under 35 U.S.C. § 103 over MSIE Kit and Jambhekar; and
 20. Claims 5 and 32 are unpatentable under 35 U.S.C. § 103 as obvious over Duperrouzel and Duhault I;
 21. Claims 17 and 25 are unpatentable under 35 U.S.C. § 103 as obvious over Duperrouzel and Farber; and
 22. Claims 17 and 25 are unpatentable under 35 U.S.C. § 103 as obvious over Duperrouzel and Jambhekar.
- 292 Pet. 20-25, 38-43; 293 Pet. 19-26, 29-48; 294 Pet. 19-26, 21-28; 295 Pet. 34-37, 39, 54-57, 59. Those asserted grounds are denied as redundant in light of the

Cases IPR2013-00292, IPR2013-00293,
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determination that there is a reasonable likelihood that the challenged claims are unpatentable based on the grounds of unpatentability on which we institute an *inter partes* review. *See* 37 C.F.R. § 42.108(a).

III. CONCLUSION

For the foregoing reasons, we determine that the information presented in the petition establishes that there is a reasonable likelihood that Microsoft would prevail in establishing unpatentability of claims 1-52 of the '403 patent.

The Board has not made a final determination on the patentability of any challenged claim.

IV. ORDER

Accordingly, it is

ORDERED that pursuant to 35 U.S.C. §§ 314 and 315(d), Cases IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295 hereby are instituted and consolidated;

FURTHER ORDERED that an *inter partes* review is instituted as to claims 1-52 of the '403 patent on the following grounds:

1. Claims 1-13, 17-28, 30-33, 35-37, 39-43, and 46-50 under 35 U.S.C. § 102 as anticipated by Duhault II;
2. Claims 1, 9-11, 22, 41-43, 46, and 48-50 under 35 U.S.C. § 102 as anticipated by Chen;
3. Claim 29 under 35 U.S.C. § 103 over Chen and MSIE Kit;
4. Claims 1-3, 5-8, 11, 12, 14-16, 19, 21, 22, 27, 30, 32, 34, 37-40, 43-47, and 50-52 under 35 U.S.C. § 102 as anticipated by MSIE Kit;

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5. Claims 17, 20, 25, and 28 under 35 U.S.C. § 103 over MSIE Kit and Brown;
6. Claims 1-3, 5-8, 12-14, 19, 21, 22, 27, 30, 32, 34, 37-40, 46, and 47 under 35 U.S.C. § 102 as anticipated by Duperrouzel; and
7. Claims 17, 20, 25, and 28 under 35 U.S.C. § 103 over Duperrouzel and Brown;

FURTHER ORDERED that all other grounds raised in Microsoft's petitions are *denied* because they are redundant in light of the grounds on the basis of which an *inter partes* review is being instituted;

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(d) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial on the grounds of unpatentability authorized above; the trial commences on the entry date of this decision; and

FURTHER ORDERED that an initial conference call with the Board is scheduled for 3:30 PM Eastern Time on December 12, 2013; the parties are directed to the Office Trial Practice Guide² for guidance in preparing for the conference call, and should be prepared to discuss any proposed changes to the Scheduling Order entered concurrently herewith and any motion the parties anticipate filing during the trial;

FURTHER ORDERED that all further filings in the consolidated proceedings shall be made in the instant proceeding; the case caption for the instant proceeding shall be changed to reflect the consolidation in accordance with the

² *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48765-66 (Aug. 14, 2012).

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
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attached example; and a copy of this Decision be entered into the files of Cases
IPR2013-00293, IPR2013-00294, and IPR2013-00295.

Cases IPR2013-00292, IPR2013-00293,
IPR2013-00294, and IPR2013-00295
Patent 6,724,403

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION
Petitioner,

v.

SURFCAST, INC.
Patent Owner.

Case IPR2013-00292¹
Patent 6,724,403

¹ Cases IPR2013-00293, IPR2013-00294, and IPR2013-00295 have been consolidated with the instant proceeding.