

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Microsoft Corporation  
Petitioner,

v.

SurfCast, Inc.  
Patent Owner

Patent No. 6,724,403

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro et al.

Title: SYSTEM AND METHOD FOR SIMULTANEOUS DISPLAY OF  
INFORMATION SOURCES

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*Inter Partes* Review No. IPR2013-00292, IPR2013-00293,  
IPR2013-00294, and IPR2013-00295

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**PETITIONER'S CORRECTED REPLY TO  
PATENT OWNER'S RESPONSE**

## **TABLE OF CONTENTS**

<b>I.</b>	<b>Patent Owner’s Claim Constructions Should Be Rejected .....</b>	<b>1</b>
<b>II.</b>	<b>Ground 1: Anticipation by Duhault II .....</b>	<b>6</b>
<b>A.</b>	<b>Duhault II Is Prior Art.....</b>	<b>6</b>
<b>B.</b>	<b>The Cited Claims Are Anticipated By Duhault II.....</b>	<b>9</b>
<b>III.</b>	<b>Ground 2: Anticipation by Chen.....</b>	<b>11</b>
<b>IV.</b>	<b>Ground 3: Claim 29 Is Obvious Over Chen and MSIE Kit .....</b>	<b>12</b>
<b>V.</b>	<b>Ground 4: Anticipation by MSIE Kit.....</b>	<b>14</b>
<b>VI.</b>	<b>Ground 6: Anticipation by Duperrouzel .....</b>	<b>17</b>
<b>VII.</b>	<b>Obviousness Over MSIE Kit and Brown, Or Duperrouzel and Brown</b>	<b>18</b>

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>CASES</b>	
<i>Bey v. Kollonitsch</i> , 806 F.2d 1024 (Fed. Cir. 1986) .....	9
<i>Ex parte Olchanski et al.</i> , No. 2012-1333, 2012 WL 5872286 (PTAB Nov. 16, 2012).....	8
<i>KSR Int’l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007) .....	13, 18
<i>Lacks Industries, Inc. v. McKechnie</i> , 322 F.3d 1335 (Fed. Cir. 2003) .....	7
<i>Mahurkar v. C. R. Bard, Inc.</i> , 79F.3d 1572 (Fed. Cir. 1996).....	6
<i>Rambus, Inc. v. Infineon Techs. AG</i> , 318 F.3d 1081 (Fed. Cir. 2003) .....	4
<i>Rodime PLC v. Seagate Tech., Inc.</i> , 174 F.3d 1294 (Fed. Cir. 1999) .....	2
<i>Thorner v. Sony Computer Entm’t Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012) .....	2
<i>Vitronics Corp. v. Conceptiontronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	4

**I. Patent Owner's Claim Constructions Should Be Rejected**

**“Tile”.** Patent Owner asks the Board to modify its construction of “tile” to require “persistence” and to provide access when selected to an information source “assigned to the tile.” Patent Owner Response, Paper 27 (“Resp.”) at 3. The Board has already considered and rejected Patent Owner’s arguments as to “persistence,” and should do so again. Institution Decision, Paper 19 (“Dec.”) at 9-11. For example, Patent Owner presents no evidence that “persistence” is somehow definitional or important to its invention. Ex. 1110 at ¶ 49. The word appears only once in the ‘403 Patent and not at all in Patent Owner’s provisional patent application, which Patent Owner claims as a constructive reduction to practice of the claimed invention. Resp. at 28. The documents advanced by Patent Owner as evidence of conception and diligence also do not use the word “persistent” (*see* Exs. 2010, 2023, 2024-2029, 2035, 2036, 2037, 2049, 2050, 2067, and 2068), and Inventor Santoro conceded he was aware of no document between the dates of the alleged conception and constructive reduction to practice that show “persistence” was considered part of the invention. Ex. 1103, Santoro Tr. at 25:19-26:11; 138:25-139:11. Persistence also does not “distinguish a tile from a window” as Patent Owner asserts, Resp. at 6, since at least some prior art windows were persistent, Ex. 1110 at ¶ 52.

Patent Owner next cites column 15 of the patent to argue that persistence “is

not a preferred embodiment but rather a description of implementation details.”

Resp. at 6. The Board is not permitted to read limiting “implementation details” into the claims without a clear and unambiguous disclaimer. *See Thorner v. Sony Computer Entm’t Am. LLC*, 669 F.3d 1362, 1367 (Fed. Cir. 2012). Moreover, as Patent Owner concedes, this passage merely describes “an exemplary implementation.” Resp. at 6. Even if the only or all of the tile examples described in the disclosure included persistence (*Id.* at 7-8 and 9-10), it would be improper to read the claims under their broadest reasonable construction in a manner contrary to their terms as requiring this admittedly optional property. *Thorner, supra*. Indeed, even if certain purposes of “tiles” described in the patent might not be achieved without persistence, Resp. at 7-8, that still does not mean this unclaimed limitation should be read into the claims. The claims need not recite every structure or function necessary to carry out the invention. *See, e.g., Rodime PLC v. Seagate Tech., Inc.*, 174 F.3d 1294, 1303 (Fed. Cir. 1999). Finally, Patent Owner’s reliance on the word “resides” is of no moment, Resp. at 9, as the cited sentence is clearly not definitional or a clear and unambiguous disclaimer. *See Thorner, supra; see also* Ex. 1092 at 340 (defining tile without persistence).

Patent Owner’s second proposed modification, to additionally require that the associated information source be “assigned to the tile,” must also be rejected as superfluous and contrary to the broadest reasonable construction of the claim

language. Any information source to which a tile provides access would necessarily be assigned to that tile under the broadest reasonable construction, Ex. 1110 at ¶¶ 50-51, and Patent Owner’s interpretation conflicts with the ordinary meaning of the claim terms used, which simply recite “associating” an information source with a tile. Ex. 1001 at 24:14-28:9. Claim construction is not a license for a Patent Owner to rewrite its claims. Finally, adopting this modification would confusingly insert the word “tile” into the definition of a “tile.”

Patent Owner also asks the Board to find that a tile cannot be a window, asserting a window “does not need to be selectable in order to display the current content of the [associated] application program or file.” Resp. at 5-6. But that is not a requirement of the Board’s construction, and adding it would improperly read limitations into the plain language of the claims.

**“Partitioning ...”**. Patent Owner’s arguments about “partitioning” are irrelevant, as all of the grounds instituted by the Board rest on primary references showing non-overlapping grids. Ex. 1110 at ¶ 57. In any event, Patent Owner’s only new evidence is testimony from its expert suggesting he could not find an example of overlapping partitions in the prior art. Ex. 2004 at ¶¶ 62-65. Mr. Weadock’s inability to find examples of overlapping partitions is irrelevant extrinsic evidence, and unpersuasive in view of the prior art examples Dr. Karger identifies showing overlapping partitions. Ex. 1110 at ¶¶ 53-56.

Patent Owner's reliance on a single sentence that recites "the present invention" is unavailing since that phrase does not automatically require a limiting construction. *See Rambus, Inc. v. Infineon Techs. AG*, 318 F.3d 1081, 1094-95 (Fed. Cir. 2003). Indeed, the cited sentence – "partitioning a visual display of a computer into an array of tiles *in a non-overlapping configuration*" – undercuts Patent Owner's argument. If "partitioning a visual display" inherently required a non-overlapping configuration, the final clause would be superfluous. The passage Patent Owner cites in columns 11-12 is equally unpersuasive – it is a description of a preferred embodiment as the Board found. Dec. at 12-13. Indeed, that paragraph literally reads "[i]n a preferred embodiment, ..." '403 Patent at 11:63.

**"Refresh rate ...".** Patent Owner asks the Board to redefine "refresh rate" and "retrieval rate," based on its semantic analysis of the word "rate" and its expert's assertion that "aperiodic rates" are common in currency markets and automobile design. Ex. 2004 at ¶ 60. It is improper to rely on such extrinsic evidence (*i.e.*, expert testimony asserting that "rate" does not mean "rate" or what terms mean in unrelated contexts) to redefine the plain language of the claims. *See Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1584 (Fed. Cir. 1996). Patent Owner's modification also would have no effect here – its proposal functions to *broaden* the Board's claim construction, Ex. 1110 at ¶¶ 59-61, and it does not explain how this change renders any claim patentable. *See* Resp. at 18-26.

Patent Owner next argues that “refresh rate” should have a particular meaning based on its portrayal of a passage at column 12 of the patent, *id.* at 22-24. That argument has already been considered and rejected by the Board. Dec. at 14 and 15. Moreover, by its own terms, this “preferred embodiment” example does not discuss configuration of refresh rates, but instead discusses how the grid *manages* refresh rates, including where a tile has not been assigned a refresh rate. Ex. 1084, Karger Tr. at 112:11-13 (“For example, to decide not to assign a refresh rate is a way of managing the refresh rate.”). Far from being a “tortured” reading, Resp. at 24 n.3, this reading comports with the plain language of the passage, which states “[i]n a preferred embodiment, ... **the grid manages the refresh rate of each tile** in the grid. **For example,** ...” Ex. 1001 at 12:50-53 (emphasis added). Patent Owner’s assertion that column 12 redefines “refresh rate” because it shows a “tile” without a time-based refresh rate also was undercut by Inventor Lagermann, who conceded on cross-examination that tiles associated with locally stored documents (the example at column 12:53-56) also include a refresh rate, albeit one where that value is set to “zero.” Ex. 1104, Lagermann Tr. at 49:22-50:12; *see also* FIG. 1 of Ex. 2048 and FIG. 13 of Ex. 1001.

**“User-defined array size”.** Patent Owner asks the Board to alter the construction of “user-defined array size” to include the concept of “tile positions”. Resp. at 26-27. The phrase “tile positions,” however, does not appear anywhere in

the '403 Patent and Patent Owner never explains what it means. *See* Ex. 1110 at ¶ 62. Moreover, the passage Patent Owner cites from column 11 of the '403 Patent refers only to the number and arrangement of tiles (like the Board's), and says nothing about "tile positions." Ex. 1001, 11:9–11; Dec. at 16.

## II. Ground 1: Anticipation by Duhault II

### A. Duhault II Is Prior Art

**Patent Owner Has Not Corroborated Conception.** Patent Owner presents no corroboration of its putative dates of conception, instead asserting that "[c]orroboration is not required when a party seeks to prove conception through the use of physical exhibits," citing *Mahurkar v. C. R. Bard, Inc.*, 79 F.3d 1572, 1577 (Fed. Cir. 1996). Resp. at 31 n. 4. Patent Owner misreads *Mahurkar*:

We recognize that our reviewing court has set forth clearly that corroboration is not required when a party seeks to prove conception through the use of physical exhibits. *Mahurkar*, 79 F.3d at 1577. But that principle is directed to the technical content of a document, **not to the date or origin of the document.**

*Garmin Int'l Inc. v. Cuozzo Speed Technologies LLC*, Paper No. 59, IPR2012-00001 at 22 (emphasis added). *Mahurkar* thus does not hold, as Patent Owner contends, corroboration of the date or origin of a physical exhibit is unnecessary – it only holds that one need not corroborate *the teachings* of the physical exhibit, which can be deduced by inspection of the physical exhibit. Patent Owner was therefore required to corroborate the dates of its putative conception documents with non-inventor evidence. But with only one exception, Patent Owner's

IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295

evidence of conception exists of documents putatively drafted by and communicated solely between the inventors. Exs. 2023-2029, 2036-37, 2067-68. (Petitioner observes Inventor Santoro confirmed the email address “[cebra@ibm.net](mailto:cebra@ibm.net)” belonged to Inventor Lagermann. Ex. 1103, Santoro Tr. 70:9-17.) The exception is an email also sent to a Mr. Dixon Dick, Ex. 2024, who has not provided any evidence in this proceeding. Because Patent Owner presents **no evidence** corroborating the date or origin of its putative conception documents, it cannot carry its burden of proof of prior conception.

**Patent Owner Has No Credible Evidence of Reasonable Diligence.**

Patent Owner’s principle diligence witness, Richard Bone, has a significant financial interest in the outcome of this matter. Ex. 1102, Bone Tr. at 10:10-12; 18:18-19:11; 64:19-65:22. Dr. Bone is thus an interested party, and his testimony must be corroborated to counter the obvious bias it carries. *Lacks Industries, Inc. v. McKechnie*, 322 F.3d 1335, 1350 (Fed. Cir. 2003).

Despite this obvious bias, the primary evidence of corroboration Patent Owner offers for diligence prior to Duhault II (June 29, 1999) is Dr. Bone’s personal log-book (Ex. 2035). That “evidence” is plainly insufficient. First, there is no corroboration of any of the putative records evidencing diligence it purports to show. As Dr. Bone freely admits, there is no witness (other than himself) who can testify about when the entries in his log-book were made or if they are accurate.

Ex. 1102, Bone Tr. at 30:4-10. Second, Dr. Bone's conduct on the dates of his logbook entries cannot be reliably linked to any element of the claimed invention. *See, e.g.*, Ex. 2008 at p. 8; Ex. 2035 at pp. 7, 8, 9, 11, 24, 30, 31, 37, 39, 42, 46, 87, 88, 92, 104, and 113. Dr. Bone was unable to recall any details of his putative conduct on the days referenced in his logbook – the only testimony he offered regarding his activity on those days is based entirely on speculation. *See, e.g.*, Ex. 1102, Bone Tr. at 31:18-21; 34:4-12; 50:14-52:22; 54:5-7; 92:12-22; 104:3-11; 118:24-119:21; 127:24-128:4; 130:6-9; 130:24-132:5; 136:18-21; 138:9-13; 139:13-18; 146:10-17; 150:2-151:24; 152:23-153:3; 154:18-24; 155:23-156:9; 157:1-15; 159:1-6; 159:17-160:3; 160:16-161:2; 162:13-22; 163:12-164:4; 165:10-19; 167:8-18; 168:9-20; 169:6-13; 170:15-171:6; 171:18-23. Moreover, many of the entries in the log book are redacted, and when questioned about them, Dr. Bone either was directed not to answer based on a claim of privilege or testified he did not know what the redacted material said. *Id.* at 33:2-7; 34:3-35:5; 54:16-56:5; 62:6-13; 144:24-145:14; 170:15-171:6. Dr. Bone's uncorroborated and redacted log book cannot reliably establish what Dr. Bone was doing before the Duhault II filing date, much less prove his activities were relevant to reduction to practice of the claimed invention. *See, e.g.*, Ex. 1102, Bone Tr. at 127:16-21; *see also Ex parte Olchanski et al.*, No. 2012-1333, 2012 WL 5872286, at \*3 (PTAB Nov. 16, 2012).

In fact, Patent Owner's other evidence confirms Dr. Bone did not work on the '403 Patent application for significant portions of this critical period. Dr. Bone admitted he did not work on the '403 patent application during the periods of August 5-10, 1999 (Ex. 1102, Bone Tr. at 98:14-22), August 20-30 (*Id.* at 105:2-24), September 5-10, 1999 (*Id.* at 108:13-19), and September 16-21, 1999 (*Id.* at 114:11-115:19). Instead, he worked on later-assigned matters unrelated to the '403 patent application, *see* Ex. 2008 at 11-13; Ex. 1102, Bone Tr. at 65:24-66:15; 66:25-67:8; 68:3-10; 68:20-69:4, and worked on them out of order, Ex. 2008 at 7; Ex. 1102, Bone Tr. at 73:20-74:10; 74:6-10; 82: 11-83:1; 84:10-85:1; 86:15-23; 101:9-23; 109:3-6. This conduct by Dr. Bone is evidence contrary to reasonable diligence. *Bey v. Kollonitsch*, 806 F.2d 1024, 1026, 1028 (Fed. Cir. 1986).

Other than the plainly insufficient logbook and self-interested testimony of Dr. Bone, the only pre-Duhault II diligence evidence advanced by Patent Owner is (i) an uncorroborated email from Inventor Santoro (Ex. 2024) and (ii) photos of the inventors dated before the asserted date of conception of the invention (Ex. 2041). None of this evidence discloses the elements of the claimed invention, and cannot carry Patent Owner's burden of proof of reasonable diligence. Finally, Patent Owner does not even attempt to establish earlier invention dates for the subject matter of claims 4, 13 and 31.

B. The Cited Claims Are Anticipated By Duhault II

Patent Owner asserts the video images of Duhault II are not “tiles” “because they are not assigned individual refresh rates,” Resp. at 36; *see also id.* at 37, “because they are not selectable to provide access to an information source,” *id.* at 37, and because they “are not persistent,” *id.* at 38-9. But the Board has already concluded that these are not requirements of the claims. Dec. at 9-11, 25, 27-28, 32. And, in fact, the tiles of Duhault II are assigned refresh rates and are “selectable to provide access.” Ex. 1110 at ¶¶ 65-80.

Patent Owner also argues that selection of a tile in Duhault II does “not provide access to the underlying information source because the information from the underlying information source **was already being displayed before the image was even selected.**” Resp. at 37 (emphasis added). But Patent Owner cites no evidence to support this contention. *See id.* Indeed, Patent Owner’s expert never compares the prior art to the “when selected” portion of the Board’s interpretation of “tile,” implicitly conceding that each primary reference satisfies that requirement of the claims. Ex. 1110 at ¶¶ 67-80. In any event, both Inventor Santoro and Patent Owner’s expert conceded that the tiles of the ‘403 Patent display information from the underlying information source **before** being selected. Ex. 1103, Santoro Tr. at 46:12-19; Ex. 1106, Weadock Tr. at 27:9-16. Moreover, the Board’s construction requires only that access to the information source be provided “when selected.” This is taught by Duhault II, which shows that when

tiles are selected, they provide *a new kind of access* (*i.e.*, full motion video rather than slow motion video), which satisfies the claims. Ex. 1110 at ¶¶ 68-78. Finally, Patent Owner asserts dependent claims 4, 10, 31, 42 and 49 are not anticipated, but cites no evidence to support its arguments and its expert does not contest Dr. Karger’s analysis of those claims. *See* Resp. at 39; Ex. 2004 at ¶¶ 90-100. The Board can ignore this unsupported lawyer argument.

### III. Ground 2: Anticipation by Chen

Patent Owner argues, without explanation or support, that “the disclosures of Chen that the Board relies upon must be pieced together from disparate parts of the reference.” Resp. at 40. But a reference remains anticipatory even if one must select from choices presented in various portions of the reference to satisfy the claims. IPR2013-00045, Paper 11, at 12. Anticipation is only questioned when “... the number of categories and components . . . [is] so large that the combination . . . would not be immediately apparent to one of ordinary skill in the art.” *Id.* Patent Owner offers no evidence on that question, and, in any case, the portions of Chen addressed by Dr. Karger are all from Chen’s preferred embodiment. Ex. 1110 at ¶¶ 91-93.

Patent Owner also argues the instruments of Chen are not “tiles” because they are supposedly not “**persistent** and, when selected, provide access to an information source **assigned to the tile.**” Resp. at 42 (emphasis added). But these

IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295

are not requirements of the Board’s claim interpretation and the only evidence Patent Owner cites (Ex. 2004 at ¶ 102) does not support the assertion. *See* Ex. 1004 at ¶¶ 102-104. The Board can ignore such unsupported lawyer argument. In any event, Chen discloses persistent tiles, Ex. 1110 at ¶¶ 100-101, and also that a selected tile provides access to information from the assigned information source, *inter alia*, by permitting recordation and marking of information from that source. Ex. 1110 at ¶¶ 96-98; Ex. 1015 at 6:63-65; 13:15-21; 88:16-24.

Patent Owner’s other arguments are based on its incorrect understanding of the basis of the Board’s findings on Chen. Specifically, Patent Owner argues that the ability to select “submenu items” is the part of Chen relied on by the Board to show that Chen’s instruments could be selected. Resp. at 43-46. But what the Board found, Decision at 28, was that Chen discloses that instruments may be selected, *see, e.g.*, Ex. 1015, Figure 11 & at 14:67-15:2, and once selected the ability to choose a submenu control to initiate recording demonstrates that access to the information source has been provided, *id.*, which, along with Chen’s marking functionality, satisfied the claim. Ex. 1110 at ¶ 98.

#### **IV. Ground 3: Claim 29 Is Obvious Over Chen and MSIE Kit**

Patent Owner argues the Board has not identified a clear rationale for the combination of Ground 3 because one of ordinary skill in the art “would not be motivated to use Active Desktop items in a high-performance monitoring system

disclosed by Chen.” Resp. at 46. But the Board did not find in Ground 3 it was necessary to use Active Desktop Items in the scheme of Chen. Rather, the Board found that it would have been obvious to use the password scheme described in MSIE Kit with the instruments of Chen because to do so would be a routine modification to an existing system and the combination of techniques employed in analogous art found in related fields. *See* Dec. at 30-31; IPR2013-00293 Petition, Paper 5, at 35-36; Ex. 1003 at ¶¶ 822-825; Ex. 1110 at ¶¶ 107-113. Patent Owner advances no evidence challenging the Board’s findings on use of a password scheme with Chen. *See* Resp. at 46-47. Moreover, Patent Owner’s expert concedes that both Chen and MSIE Kit address the same problem as the ‘403 Patent – the display of information from various sources that are periodically updated over a network. *Compare* Ex. 2004 at ¶ 111; Ex. 1106, Weadock Tr. at 121:13-122:6; Ex. 1001 at Abstract. As the Supreme Court has explained, “[u]nder the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007). Indeed, Patent Owner’s expert agreed that his opinions about Chen and MSIE Kit were contrary to this Supreme Court precedent. Ex. 1106, Weadock Tr. at 121:13-122:10.

**V. Ground 4: Anticipation by MSIE Kit**

Patent Owner contends Active Desktop Items cannot be “selected,” Resp. at 47-48, and do not provide access to an information source when selected, *id.* at 47-51. Patent Owner is incorrect on both points, and the only evidence it cites (Ex. 2004 at ¶ 115-119) says nothing of the sort. First, Active Desktop Items can be selected by clicking on a link within an Item, since the click selects both the Item and the link. Ex. 1110 at ¶ 121. A click on a link within an Item is an indication that the user wants access to the information displayed *in the Item* and necessarily requires the system to access information from the information source displayed in the Item, such as the URL associated with the clicked link. *Id.* at ¶ 124.

Moreover, MSIE Kit discloses a “single-click mode” option in which moving the cursor over the Item (*i.e.*, before the click) selects the Item and the subsequent click selects the link. *Id.* at ¶¶ 122-23. Also, Patent Owner incorrectly suggests that clicking on a link within an Active Desktop Item necessarily opens up a new browser window. Resp. at 48. MSIE Kit explains that Active Desktop Items can be configured so that when a link is clicked within the Item the referenced page may be displayed in that same Item, *see* Ex.1007 at 766; *see also* 136, 137, 183; Ex. 1110 at ¶ 125, confirming that it is the Item that is being selected. Ex. 1110 at ¶¶ 126-129. Petitioner notes, moreover, that this same functionality is described in the ‘403 Patent as an example of providing a user access to an information source

upon selection of the tile. *Id.* at ¶ 130.

Second, Patent Owner ignores the hot spot functionality of Active Desktop Items, which permits the user to select an Item by clicking any portion of the Item to select the Item and be provided access to an assigned information source. *Id.* at ¶ 131; *see also* Ex. 1007 at 213-14. One of ordinary skill in the art would understand that “hot spots” can be defined to encompass any portion of the Item or even the entire Item, Ex. 1110 at ¶ 132, which is the same functionality described in one embodiment of the tiles disclosed in the ‘403 Patent. Ex. 1104, Lagermann Tr. at 57:8-58:17; *see also* Ex. 1110 at ¶ 133.

Third, moving an obscured Item to an un-obscured location or resizing it both selects that Item and provides the user additional access to the information source by permitting the user a more complete view of information from that source. Ex. 1110 at ¶ 134; Ex. 1007, MSIE Kit at 175, 224.

Fourth, MSIE Kit also discloses that an Active Desktop Item can be selected by pressing the TAB or SHIFT+TAB keys, Ex. 1007 at 561, and, once selected, the user may “move forward through the hyperlinks *in that item*,” and activate a displayed link by pressing the “enter” key when the link is highlighted. Ex. 1007 at 562 (emphasis added). Ex. 1110 at ¶¶ 135-36.

Patent Owner also argues that Active Desktop Items are not “selectable to provide access to information,” Resp. at 49-50, and that they cannot be associated

with word processing or spreadsheet files, *id.* at 50-51. Neither is a requirement of the claims and the selection options discussed above plainly satisfy the “selectable to provide access to information” language. Ex. 1110 at ¶¶ 117-19.

Finally, Patent Owner argues MSIE Kit does not show “partitioning” because Active Desktop Items “can overlap each other”. Resp. at 52 (emphasis added). Yet, the Board rejected this precise theory of “partitioning.” Dec. at 12-13. Moreover, Active Desktop Items can be displayed in a non-overlapping configuration, as Patent Owner’s expert conceded. Ex. 1106, Weadock Tr. at 132:20-133:3; *see also* Ex. 1110 at ¶¶ 140-42. Thus, even if the claims required a non-overlapping configuration, MSIE Kit would anticipate such a configuration, Ex. 1110 at ¶¶ 140-42, and Patent Owner has never suggested “partitioning” means “not permitted to overlap.” *See* Resp. at 12.

As to claims 3 and 30, MSIE Kit shows that Active Desktop Items will be displayed by default in a non-overlapping 3 X 2 grid, Ex. 1007 at 183, and that they can be created without the user specifying their size or shape but instead defined using the system’s default (*i.e.*, uniform) size and shape values, Ex. 1110 at ¶¶ 143-45. Thus, MSIE Kit satisfies all the requirements of claims 3 and 30 because it discloses how Active Desktop Items can be displayed in non-overlapping grid with a uniform size and shape. *Id.*

## **VI. Ground 6: Anticipation by Duperrouzel**

Patent Owner asserts the panes in Duperrouzel are not tiles because they do not satisfy the “when selected...” portion of the Board’s construction. Resp. at 55-56. But its expert has offered no such opinion and Patent Owner cites no other evidence to support this lawyer argument. In any event, the Board found maximizing the display area of a pane to constitute providing access to information from the information source, Dec. at 35; Ex. 1110 at ¶ 156, and this functionality is described in the ‘403 patent at 9:43-47 as an example of providing access to an information source upon selection, Ex. 1110 at ¶ 156. Duperrouzel also shows its panes can be selected to save, print or **refresh** the web page displayed in the pane. Ex. 1011 at 9:27-53; FIGs. 8-9. The ‘403 patent at 9:35-36 also shows refreshing as another example of providing access upon selection. Ex. 1110 at ¶ 157.

Patent Owner’s assertion that Duperrouzel’s panes are not “tiles” because they are web browsers, Resp. at 56, can be dismissed because it is unrelated to the claim requirements, and is unsupported lawyer argument. Its assertions that Duperrouzel’s panes are not persistent are likewise irrelevant and wrong. Duperrouzel shows storing configuration information about panes to implement the “sites last viewed” functionality. Ex. 1110 at ¶ 161. Finally, Patent Owner’s arguments (Resp. at 58-59) that Duperrouzel’s form of persistence is different than the invention can be ignored because even Patent Owner has not argued that a

“tile” is limited to *only certain kinds* of persistence.

## **VII. Obviousness Over MSIE Kit and Brown, Or Duperrouzel and Brown**

Patent Owner’s only argument as to Grounds 5 and 7 is that MSIE Kit and Duperrouzel do not disclose tiles, Resp. at 60, which is refuted above. Further, its expert ignores evidence showing why a person of ordinary skill would have combined MSIE Kit and Brown (*e.g.*, they both are directed to Active Desktop Item functionality, Ex. 1110 at ¶ 146) as well as Duperrouzel and Brown (*e.g.*, Duperrouzel identifies Active Desktop as being suitable for implementing its scheme, *id.* at ¶ 163). He also ignores that MSIE Kit, Duperrouzel and Brown address the same problem as the ‘403 Patent – the display of information from various sources periodically updated over a network. *Id.* at ¶¶ 146, 163. The evidence thus shows sufficient reasons to combine these different sets of references. *KSR*, 550 U.S. at 420. The testimony from Patent Owner’s expert that display screens on mobile phones were smaller than on desktop computers (Ex. 2004 at ¶ 128) is irrelevant, as the claims require only two tiles and prior art screen phones had displays large enough to accommodate two tiles. Ex. 1110 at ¶¶ 147, 163. That browsers supposedly “are often not space-efficient” due to their use of scroll bars and the like (Ex. 2004 at ¶ 129) is also irrelevant, as the claims do not require such decorations. Ex. 1110 at ¶¶ 147, 163.

IPR2013-00292, IPR2013-00293, IPR2013-00294, and IPR2013-00295

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Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of March 2014, a copy of this  
**PETITIONER'S REPLY TO PATENT OWNER'S RESPONSE** has been  
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