

Paper No. _____

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Microsoft Corporation
Petitioner,

v.

SurfCast, Inc.
Patent Owner

Patent No. 6,724,403 (Claims 1-21)

Issued: April 20, 2004

Filed: October 30, 2000

Inventors: Ovid Santoro et al.

Title: SYSTEM AND METHOD FOR SIMULTANEOUS DISPLAY OF
INFORMATION SOURCES

Inter Partes Review No. IPR2013-00292

PETITION FOR INTER PARTES REVIEW

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Attachment A. Proof of Service of the Petition

Attachment B. List of Evidence and Exhibits Relied Upon in Petition

I. Compliance with Requirements of an *Inter Partes* Review Petition

A. Certification that the Patent May Be Contested via *Inter Partes* Review by the Petitioner

Petitioner certifies it is not barred or estopped from requesting *inter partes* review of claims 1-21 for U.S. Patent No. 6,724,403 (“the ’403 patent”) (Ex. 1001). Neither Petitioner, nor any party in privity with Petitioner: (i) has filed a civil action challenging the validity of claims 1-21 of the ’403 patent; or (ii) has been served a complaint alleging infringement of the ’403 patent more than a year prior to the present date. Also, claims 1-21 of the ’403 patent have not been the subject of a prior *inter partes* review or a finally concluded district court litigation involving Petitioner.

B. Fee for *Inter Partes* Review (§ 42.15(a))

The Director is authorized to charge the fee specified by 37 CFR § 42.15(a) to Deposit Account No. 18-1260.

C. Mandatory Notices (37 CFR § 42.8(b))

1. Real Party in Interest (§ 42.8(b)(1))

The real party of interest of this petition is Microsoft Corporation (“Microsoft”) located at One Microsoft Way, Redmond, WA 98052. No other entity is a real party of interest or a privy of Microsoft for this petition.

2. Other Proceedings (§ 42.8(b)(2))

The ’403 patent was asserted against Microsoft in litigation in the United

States District Court for the District of Maine (Civil Action No. 2:12-cv-00333-DBH) (the “Maine litigation”) on October 30, 2012.

3. Lead and Backup Lead Counsel (§ 42.8(b)(3))

<u>Lead Counsel</u>	<u>Backup Lead Counsel</u>
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4. Service Information (§ 42.8(b)(4))

Service on Petitioner may be made by mail or hand delivery to: Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005. The fax number for lead and backup lead counsel is (202) 736-8711.

D. Proof of Service (§§ 42.6(e) and 42.105(a))

Proof of service of this petition is provided in **Attachment A**.

II. Identification of Claims Being Challenged (§ 42.104(b))

Claims 1-13 and 15-21 of the ’403 patent are unpatentable for the following reasons:

- (i) Claims 1, 3-5, 7-13, 18, 19, and 21 are anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,118,493 to Duhault (“Duhault I”) (Ex. 1013);
- (ii) Claims 1-13 and 17-21 are anticipated under § 102(e) by U.S. Patent No. 6,456,334 to Duhault (“Duhault II”) (Ex. 1014);
- (iii) Claims 1-3, 6-13 and 19 are anticipated under 35 U.S.C. §§ 102(a), 102(b), and 102(e) by U.S. Patent No. 5,432,932 to Chen et al. (“Chen”) (Ex. 1015);

- (iv) Claim 4 would have been obvious under 35 U.S.C. § 103 based on Chen in view of U.S. Patent No. 6,104,700 to Haddock (“Haddock”) (Ex. 1024);
- (v) Claims 15 and 16 would have been obvious under § 103 based on Chen in view of the book *Microsoft Internet Explorer Resource Kit*, Craig Beilinson et al. (“MSIE Kit”) (Ex. 1007);
- (vi) Claims 15 and 16 would have been obvious under § 103 based on Chen in view of U.S. Patent No. 5,901,228 to Crawford (“Crawford”) (Ex. 1029);
- (vii) Claim 18 would have been obvious under § 103 based on Chen in view of U.S. Patent No. 5,721,951 to DorEl (“DorEl”) (Ex. 1025);
- (viii) Claim 21 would have been obvious under § 103 based on Chen;
- (ix) Claims 1, 17 and 20 are anticipated under § 102(a), 102(b), and § 102(e) by U.S. Patent No. 5,819,284 to Farber et al. (“Farber”) (Ex. 1016);
- (x) Claims 1, 17 and 20 would have been obvious based on Farber in view of MSIE Kit;
- (xi) Claims 17 would have been obvious based on Farber in view of U.S. Patent No. 5,848,356 to Jambhekar (“Jambhekar”) (Ex. 1031).

A list of evidence relied upon in support of this petition is set forth in **Attachment**

B. The Declaration of David R. Karger Regarding U.S. Patent No. 6,724,403 demonstrating the above lack of patentability is included herewith as Exhibit 1003. Dr. Karger’s Curriculum Vitae is included as Exhibit 1004, and the evidence and other materials relied on and considered by Dr. Karger are included herewith as Exhibits 1005-82. Petitioner’s proposed construction of the claims, the evidence relied upon, and the precise reasons why the claims are unpatentable are set forth in § IV, below.

III. Relevant Information Concerning the Contested Patent

A. Effective Filing Date of the '403 Patent

The '403 patent issued from U.S. Application No. 09/702,325, which was filed on October 30, 2000. The '325 application claims priority as a continuation-in-part of U.S. Provisional Application No. 60/162,522 (Ex. 1005), filed October 29, 1999. Patent Owner has previously acknowledged the claims of the '403 patent have different effective filing dates – it contends in the Maine litigation that “...claims 1-9, 12-41, 44-48 and 50-52 are entitled to a priority claim to the provisional application filed October 29, 1999” but that “... claims 10, 11, 42, 43, and 49 were constructively reduced to practice no later than October 30, 2000.” Ex. 1052 at pp. 12-13. The effective filing date of claims 1-9 and 12-21 is not earlier than October 29, 1999, while the effective filing date of claims 10 and 11 is not earlier than October 30, 2000. Ex. 1003 at ¶¶ 104-07.

B. Person of Ordinary Skill in the Art

A person of ordinary skill in the art in the field of the '403 patent would have been familiar with software engineering techniques published in the literature and known in the field in October of 1999. That person would have gained this familiarity through graduate level studies in computer engineering or computer science, or through work experience in academia (either as a professor or a graduate student), or for a technology company or government. Ex. 1003 at ¶¶ 53-58.

C. Construction of Terms Used in the Claims

In this proceeding, the claims must be given their broadest reasonable construction in light of the specification. 37 CFR 42.100(b). Patent Owner's assertions in the Maine litigation as to what the claims encompass are relevant to this determination. In particular, Patent Owner has proposed constructions for several claim terms, and has contended certain subject matter falls within the scope of those claims. *See, e.g.*, Ex. 1052 at pp. 17-137; *see also* Ex. 1082 at pp. 2-134; Ex. 1053; Ex. 1054. Also, if Patent Owner contends terms in the claims should be to have a special meaning in this proceeding, those contentions should be disregarded unless Patent Owner presents amendments to the claims compliant with 35 U.S.C. § 112, first paragraph, to expressly correspond to its contentions. *See* 77 Fed. Reg. 48764 (August 14, 2012). *Cf.*, *In re Youman*, 679 F.3d 1335, 1343 (Fed. Cir. 2012).

1. General Observations

Claim 1 is independent, claims 2-9 and 11-21 depend from claim 1, and claim 10 depends from claim 9.

The preamble in claim 1 does not impart any material restrictions on the claim. Claim 1 specifies a “method executed by a device under the control of a program, said device including a memory for storing said program, said program comprising...” The preamble of claim 1 does not restrict or limit the steps recited

by the claim. This field was well known before October 1999. *See* Ex. 1001 at 7:34-39 (“As is known to those skilled in the art, a graphical user interface is a computer program that resides in memory 112 of some data processing system and that provides means for presenting information...”). *See also* Ex. 1003 at ¶¶ 120, 124.

2. “information source”

In its broadest reasonable construction, an “information source” is a local or remote source of information. *See, e.g.*, Ex. 1001 at 4:41-54 (providing examples of information sources); *id.* at 6:52-59. Examples of information sources identified in the specification include an analog signal, a source of digital data or a datastream. *Id.* at 6:52-55 (“Within the scope of the present invention, an information source may comprise any analog signal, source of digital data or a datastream, including, but not limited to, video, audio, text and graphics.”). A “plurality of information sources” means at least two information sources. *See* Ex. 1001 at 25:18-23 (Claim 21) (reciting “... wherein said plurality of information sources comprises at least two information sources...”). *See also* Ex. 1003 at ¶¶ 125-27.

3. “tile”

In its broadest reasonable construction, a “tile” is a visual element (including a window or an icon) that occupies less than the entire display, and may contain

active areas or control elements. Ex. 1003 at ¶ 128.

Claim 1 contains no language restricting the form, number or manner of presentation of tiles on a display other than to specify “tiles” are displayed as part of an “array.” *See e.g.*, Ex. 1001 at 24:14-33 (Claim 1) (“...partitioning a visual display of the device into an array of tiles ...”). By contrast, claims dependent on claim 1 do impose such restrictions. *See, e.g., id.* at 24:37-40 (Claim 3) (“...partitioning said array of tiles in a non-overlapping configuration wherein each tile of said array of tiles is a uniform size and shape.”); 24:55-56 (Claim 8) (specifying more than one row and one column); 25:18-23 (Claim 21) (specifying at least two information sources associated, each associated with a tile).

The specification does not explicitly or implicitly define the term “tile” or place restrictions on the form, number or manner of presentation of “tiles” on a display. The specification tries to distinguish “tiles” from “windows,” asserting “tiles” omit control elements and active areas found in windows, and are smaller in size than windows. Ex. 1003 at ¶¶ 134-43. Yet, as “tiles” are described in the specification, they: (i) may contain control elements and active areas often found in windows, and (ii) may be the same size as a window. *Id.* at ¶¶ 128, 136-38. For example, the specification states a tile “does not necessarily have the large number of active areas associated with windows such as title bar, menu bar and scroll bars.” *See, e.g.*, Ex. 1001 at 8:42-45 (emphasis added). The ‘403 specification also

shows examples of “tiles” with active areas. *See id.* at 10:30-34; 17:24 (describing widgets – a special type of tile – having a “titlebar” and a “toolbar”). Similarly, the specification explains that “tiles will typically be smaller in size” than a window. *See id.* at 8:38-41. The specification also acknowledges that windows can be configured to have the same visual appearance as a “tile,” admitting that it was known that “windows” (i) may include or omit elements such as menu bars, scroll bars or tool bars and (ii) are resizable to any size and can occupy any fraction of a display. *See id.* at 3:37-41 (a window “may have active areas around its borders such as menu bars, scroll bars, or tool bars ...”); *id.* at 3:35-37 (“a window may be resized as appropriate”). *See also* Ex. 1003 at ¶ 139; Ex. 1063 at 54 (noting that Windows systems “now commonly allow several programs to display information simultaneously in separate areas of the screen, rather than each taking up the entire display.”); Ex. 1003 at ¶¶ 140, 224; Ex. 1064 at p. 446, Figure 13.1 (windows without scroll or menu bars were well known in the art). *See also, e.g.,* Ex. 1064 at p. 446, Figure 13.1 (showing windows without scroll or menu bars).

The ’403 specification also admits a “tile” may appear and behave in a functionally equivalent way to a “window.” For example, it explains that a “tile” may be of any size (like a window) and may expand to occupy the entire display. Ex. 1003 ¶ 141; Ex. 1001 at 9:45-46 (“In this embodiment, double clicking tile 402

or 412 causes the image to be expanded to fit the whole display area.”).

In concurrent litigation Patent Owner has asserted that “tile” means “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.” Ex. 1053 at 10. A “window” satisfies the definition of a “tile” as proposed by SurfCast. Ex. 1003 at ¶ 143.

4. “array of tiles”

In its broadest reasonable construction, the phrase “array of tiles” encompasses any arrangement on a display of one or more tiles. *See* Ex. 1003 at ¶¶ 144-51; *see also* Ex. 1058 (Dictionary of Computer and Internet Terms) (“**array**: a collection of data items...”). The narrower language used in claims 3, 8, 12, 13, 30 and 40 compels this conclusion. For example, claims 3 and 30 limit the array to one where tiles are in a “non-overlapping configuration” and have “a uniform size and shape.” *See* Ex. 1003 at 24:37-40, 25:64-67. Similarly, claims 8 and 40 state the “array of tiles” “comprises more than one row and more than one column,” while claim 13 limits the array of tiles to those where each tile “has a fixed size that is equal to [the] unit tile size, or a multiple thereof” where the unit tile size is dictated by a “maximum number of tiles” that may be displayed, respectively, vertically and horizontally. *See id.* at 24:55-56, 26:33-35, 24:66-25:4.

Claim 1 also does not require the tiles to be presented in a grid. Instead, dependent claim 12 specifies the “array comprises a grid” and that each of the tiles “occupies a fixed position on said grid.” *See id.* at 24:63-65. The specification also indicates a “grid” may consist of a single tile. *See e.g.*, Ex. 1001 at 13:28-30 (“The grid can be configured to contain any number of tiles from **one** to as many as can reasonably fit on the user’s display.”); *id.* at 12:6-12 (“FIG. 8 shows one embodiment in which all tiles are the same size and are presented in an array comprising M rows and N columns. There is no particular requirement that the arrangement consists of more than one row and more than one column.”) (emphases added).

In the Maine litigation, Patent Owner has asserted an “array of tiles” means simply “multiple tiles displayed in an orderly fashion.” Ex. 1053 at 14.

5. “wherein each tile in said array of tiles is associated with an information source in said plurality of information sources”

In its broadest reasonable construction, an association between a tile and an information source encompasses any type of relationship between the two, including, for example, a bookmark, hyperlink or other pointer to the information source, or a thumbnail, excerpt, summary or other representation of information from the information source. *See* Ex. 1001 at 8:31-34 (“Tiles permit ‘dynamic bookmarking’ of information in that each tile is a viewer of a single information source—including streaming data sources—and can be customized with the user’s

choice of content.”); *id.* at 8:57-59 (“A tile is associated with a program, file or datastream, in the same way that an icon and a window are”); *id.* at 10:54-65 (“Each tile is associated with a data stream or application program and allows a choice of displayed images. In particular, different tiles can be associated with different contents.”); *id.* at 11:1-3 (“Each tile is separately associated with a source of information, for example, an application program, datastream or file, any one of which may be another grid object.”). Also, two or more tiles may be associated with the same information source. *Id.* at 11:61-62 (“Equally, a tile on more than one grid can point to the same information source.”). *See also* Ex. 1003 at ¶ 154.

6. “partitioning a visual display of the device into an array of tiles”

In its broadest reasonable construction, the phrase “partitioning a visual display into an array of tiles” encompasses a presentation of two or more tiles within a portion or region of the display, including within a window. *See, e.g., id.* at ¶ 155; Ex. 1001 at 13:28-31. This conclusion is compelled by claim 14, which specifies the array of tiles is to be presented in a “web-browser.” *See id.* at 25:5-6. The ’403 specification acknowledges that web-browsers may present multiple, overlapping windows that occupy a portion of a display. *See id.* at 1:66-2:1; *id.* at 8:15-28 (web-browser displays page in a window and that window may be resized). The specification also illustrates the invention using a tile within a first array of tiles which itself contains a second array of tiles, explaining that tile can

expand to occupy the full screen. *See id.* at 9:9-11 (“Tile 406 displays a further array of tiles that may be displayed in full by expanding tile 406 to occupy the full area of the display.”). *See also* Ex. 1003 at ¶¶ 155-58.

In the Maine litigation, Patent Owner asserts this claim language means simply “dividing/divide some or all of a display into an array of tiles.” Ex. 1054.

7. “refresh rate”

In its broadest reasonable construction, this term encompasses a recurring time interval at which information displayed in a tile is refreshed or retrieved. For example, claim 1 specifies “updating information from a first information source ... presented to said first tile in accordance with said first refresh rate...” *See* Ex. 1001 at 24:26-29; Ex. 1003 at ¶¶ 163-64.

A refresh rate is different from a “priority” value. *See, e.g.,* Ex. 1001 at 12:50-53 (“In 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.”); *id.* at 13:10-11 (“...the address of each tile, its priority and its refresh rate are stored by the grid program.”). *See also* Ex. 1002 at p. 168 (“According to Applicants’ specification as filed, page 16, lines 7-8, a priority value is not the same as a refresh rate.”). Also, “refresh rates” (or “retrieval rates”) may be identical or different. *See, e.g., id.* at 24:50-51 (dependent claim 6) (specifying that the first and second refresh rates are “different”) and 26:29-31

(dependent claim 39) (specifying that the first and second retrieval rates are “different”). *See also* Ex. 1003 at ¶¶ 165-66. In the Maine litigation, Patent Owner contends a “refresh rate” means simply “criteria for updating.” Ex. 1054.

8. “user-defined array size”

In its broadest reasonable construction, a “user-defined array size” encompasses an amount of space determined to be necessary to present a user-defined number of tiles in a display. *See* Ex. 1001 at 11:9-12; 14:4-14. For example, the ‘403 specification states “The grid can be configured to contain any number of tiles from one to as many as can reasonably fit on the user’s display.” *Id.* at 13:28-30. *See also* Ex. 1052 at 63, 116. In the Maine litigation, Patent Owner contends a “user-defined array size” means “the number and arrangement of tile positions in the array as specified by the user.” Ex. 1054; Ex. 1003 at ¶¶ 160-62.

9. “updating information from a [first/second] information source in said plurality of information sources presented to said [first/second] tile in accordance with said [first/second] refresh rate”

The broadest reasonable construction of this claim term encompasses any manner of changing information displayed in a specified tile in accordance with a refresh rate assigned to that tile. *See* Ex. 1001 at 12:50-65; 8:35-37; 8:41-42; 8:49-51; 9:31-33. *See also* Ex. 1003 at ¶¶ 173-174.

10. “simultaneously updating information from a second information source . . . in accordance with said second refresh rate”

In the Maine litigation, Patent Owner contends this claim phrase means “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.” Ex. 1053. The Patent Owner’s proposed interpretation would, for example, encompass two processes (*e.g.*, two refresh processes associated with two different tiles) that overlap at any point during their execution.

11. “uniform size and shape”

In its broadest reasonable construction, the term “uniform size and shape” includes tiles that have the same size and shape. Ex. 1001 at 8:52-56 (“Another advantage of using tiles is a uniformity of appearance between tiles which correspond to different programs and datastreams. The display content of a tile will differ from application to application though its size and format need not.”) (emphasis added); *id.* at 11:63-64 (“In a preferred embodiment, the grid permits a regular layout of tiles on the display screen such that the tiles are uniform in size and shape, as depicted in FIGS. 8-11.”).

12. “assigning said first [second] refresh rate and said second refresh rate in accordance with a first [second] priority value of a first [second] information source associated with said first tile”

In their broadest reasonable constructions, these phrases encompass (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. For example, the specification discloses setting general conditions for tiles, and refresh rates are then assigned by the device using events unrelated to user input. *See, e.g.*, Ex. 1001 at 12:50-60 (“according to priorities that may be applied to individual tiles . . .,” configuring “tiles to refresh only when the underlying data is written to the local hard drive,” “tiles containing infrequently updated HTML data from the Internet to refresh at a certain time each day,” and tiles “to display a television channel at a refresh rate of 29 frames per second. . .”); *see also id.* at 7:52-59.

The specification does not define the term “priority.” One example of when “priority” may be implicated is in a constrained resource setting, *e.g.*, limited bandwidth or limited capacity of the user to process the information being presented. Ex. 1003 at ¶ 188. However, the term “priority” is not limited to such constrained resource settings.

13. “wherein said assigning includes attributing a selected state or an unselected state to said first tile and said second tile”

In its broadest reasonable construction, this phrase encompasses any manner

of designating a tile as being selected or unselected, including by direct or indirect user action. *See, e.g.*, Ex. 1001 at 9:25-32; Ex. 1003 at ¶ 191.

14. “wherein at least one attribute of each tile in said array of tiles is assigned uniformly”

The broadest reasonable construction of this term encompasses 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. The claim term thus encompasses systems and processes where values are assigned to an attribute without specific input by a user, and may be independent of interactions with information sources. *See, e.g.*, Ex. 1001 at 13:21-23 (referencing Fig. 12 and Fig. 5 as providing examples of tile attributes); *id.* at 13:10-11 (examples of tile attributes include “the address of each tile, its priority and its refresh rate . . .”); *see also* discussion of “uniform size and shape” (*supra* III.C.11). *See also id.* at 13:8-14 and 14:21-24 (“When launching the grid immediately, the grid is automatically constructed on the fly according to the content and tile types specified by the user during the set up procedure.”); Ex. 1002 at p. 164 (identifying attributes that may be assigned to tiles and how a “grid” can be automatically constructed based on those tile attributes); Ex. 1003 at ¶¶ 192-193.

15. “refresh rate is assigned automatically”

The broadest reasonable construction of this term encompasses assigning a refresh rate without direct input from the end user. For example, Patent Owner

identified several passages of the '403 patent as supporting its October 15, 2003 amendment to claim 11, including page 15, line 33 – page 16, line 4; page 16, lines 29-30; and page 26, line 23 – page 27, line 34. These passages show operations that perform updates in a manner that requires no direct user input. *See* Ex. 1001 at 12:56-62; Ex. 1003 at ¶¶ 194-197 ; Ex. 1052 at p. 69 (alleging Microsoft's "Weather and Finance tiles" infringe claim 11 because they employ a refresh rate defined in a configuration file and set at runtime). In the Maine litigation, Patent Owner contends this term means that the "rate is assigned without direct user input." Ex. 1054.

16. "grid"

In its broadest reasonable construction, the term "grid" means any presentation of tiles in a row and column orientation. *See* Ex. 1001 at 13:7-8 ("The grid object stores the number of rows 1212 and the number of columns 1214 of tiles that are present."); 13:12-14 ("The grid also stores other attributes of tiles such as their respective positions on the grid as given by their column and row number."); 10:41-44, 11:63-12:30, Figs. 8-11; Ex. 1059 at 208; Ex. 1003 at ¶¶ 198-200. In the Maine litigation, Patent Owner contends a "grid" means "a regular layout of rows and columns, wherein a single tile may occupy more than one row and/or column." Ex. 1054.

17. “wherein each of said tiles occupies a fixed position on said grid”

In its broadest reasonable construction, this phrase encompasses 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. *See* Ex. 1001 at 13:12-14 (“The grid also stores other attributes of tiles such as their respective positions on the grid as given by their column and row number.”); 11:65-66 (“Each tile is indexed by its position on the grid. For example 802-2-1 is the first tile in the second row.”). Thus, in its broadest reasonable construction, where the tile is located on the display may vary if the location of the grid varies on the display. *See, e.g., id.* at 12:21-35 (showing a grid can itself be a tile, and that tiles can be individually resized); 9:43-49 (showing examples of resizing tiles by double-clicking on them, causing the tile to “occupy a substantial fraction of the whole display area” or to “occupy an area in the middle of the display that is larger in area than a single tile. . .”). In the Maine litigation, Patent Owner contends tiles may have a “fixed position” on a grid even if they are rearranged within the grid. *See, e.g.,* Ex. 1052 at p. 70 (contending Windows 8 infringes claim 12 based on documentation showing user can both rearrange and resize Windows 8 “tiles” visible on a display screen). Patent Owner also contends in the Maine litigation this term means “wherein each of said tiles occupies a particular position in the regular layout of rows and columns.” Ex. 1054.

18. “storing said array of tiles on a second device”

Under its broadest reasonable construction, this term encompass storing information about 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. For example, the '403 specification explains, “In one embodiment of the present invention, FIG. 24, the user at client device 2400 interacts with server software on a server 2402. The server stores locally a profile comprising user-specific content 2406 that can feed customized data to the user. For example, the user may store pre-defined grid configurations on the server. Additionally, passwords for specific web-sites can be stored along with the user’s profile.” Ex. 1001 at 22:2-20 (emphasis added). *See also* Ex. 1003 at ¶¶ 207-08.

19. “wherein said array of tiles is retrieved from a second device”

Under their broadest reasonable constructions, these terms encompass 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. For example, the '403 specification explains, “In one embodiment of the present invention, FIG. 24, the user at client device 2400 interacts with server software on a server 2402. The server stores locally a profile

comprising user-specific content 2406 that can feed customized data to the user.

For example, the user may store pre-defined grid configurations on the server.

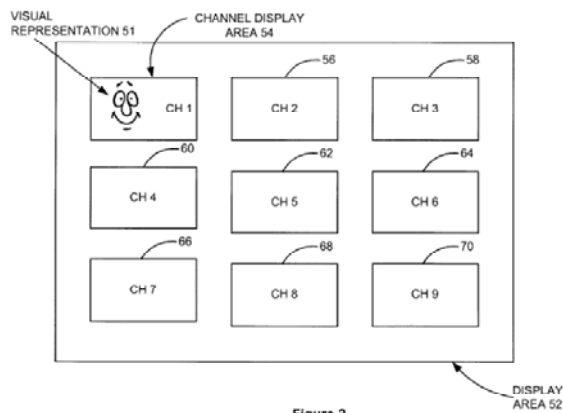
Additionally, passwords for specific web-sites can be stored along with the user's profile." Ex. 1001 at 22:2-20. *See also* Ex. 1003 at ¶¶ 209-10.

IV. Precise Reasons for Relief Requested

A. Claims 1, 3-5, 7-13, 18, 19, and 21 Are Anticipated By Duhault I

Duhault I is prior art to the '403 patent under at least § 102(e). Ex. 1003 at ¶¶ 231, 595. Duhault I describes a system for watching multiple television audio or video channels at the same time. *Id.* at ¶¶ 596-99. A tuner periodically samples multiple audio or video channels and displays them on a computer display or television at the same time. *Id.* at ¶¶ 596-97, 600.

Each channel is displayed in a separate rectangular area on the screen laid out in a grid configuration, as shown to the right in Figure 2 from Duhault I. *See* Ex. 1013; *see also* Ex. 1003 at ¶ 599.



Each channel is sampled on a periodic basis and displayed as a still thumbnail. Ex. 1003 at ¶¶ 597, 600. When a tile is selected by a user, however, the channel associated with the selected tile is sampled and displayed at a rate consistent with the display of “live” audio and video. *Id.* at ¶ 601.

1. Duhault I Anticipates Claim 1

Each of the elements of claim 1 is described in Duhault I. Ex. 1003 at ¶¶ 602-609. First, Duhault I discloses “[a] *method executed by a device under the control of a program, said device including a memory for storing said program.*” *Id.* at ¶ 602. Duhault I describes the ROM and RAM memory that stores the program implementing the Duhault I functionality. *Id.* at ¶ 602.

Duhault I discloses “*selecting a plurality of information sources....*” Ex. 1003 at ¶ 603; *see also* III.C.2. The Duhault I scheme selects multiple television channels for display. Ex. 1003 at ¶ 603. The television channels are the plurality of information sources and each channel is an audio and/or video information source. *Id.* at ¶¶ 603 and 624.

Next, Duhault I discloses “*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....*” Ex. 1003 at ¶¶ 604-06; *see also* III.C.3-6. Duhault I discloses partitioning a display into a grid of rectangular video viewing areas. Ex. 1003 at ¶ 604. The grid of video viewing areas is an array of tiles. *Id.* at ¶ 605. Each video viewing area is associated with one of the television sources. *Id.* at ¶ 605.

Duhault I discloses “*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. . .*” *Id.* at ¶

607. Duhault I discloses that each video viewing area “will be updated or refreshed at a periodic rate.” *Id.* at ¶ 607. In the Duhault I system, both a first refresh rate and a second refresh rate are assigned in that a selected tile will be refreshed at a live video rate and the unselected tiles will be refreshed at “the speed of the tuner 12 in switching from channel to channel and the number of channels.” *Id.* at ¶ 618 (quoting Duhault I, Ex. 1013, at 3:47-50); *see also* Ex. 1003 at ¶ 607. The rate at which each television channel is sampled and displayed in a tile (video viewing area) is the refresh rate assigned to the tile. Ex. 1003 at ¶ 607.

Duhault I discloses “*updating information from a first information source ... presented to said first tile in accordance with said first refresh rate; and simultaneously updating information from a second information source ... presented to said second tile in accordance with said second refresh rate.*” Ex. 1003 at ¶¶ 608-09; *see also* III.C.9-10. The tuner of Duhault I’s scheme updates video information from the television video source associated with each video viewing area. Ex. 1003 at ¶¶ 608-09. As explained above, the Duhault I system will simultaneously display multiple tiles, updating each at the refresh rate assigned to that particular channel content. *Id.* at ¶ 609.

2. Duhault I Anticipates Claim 3

Duhault I discloses that the video viewing areas do not overlap and can be of uniform size and shape. Ex. 1003 at ¶¶ 610-11.

3. Duhault I Anticipates Claim 4

In the Duhault I scheme, users can set the priority values of the video viewing areas by selecting one of them. Ex. 1003 at ¶ 612. The selected viewing area has a higher priority than the other viewing areas that are not selected. *Id.* at ¶ 612. The refresh rates of the viewing areas depend on the priority value—the higher-priority selected viewing area has a higher (full motion) refresh rate, while the refresh rate for the other viewing areas is less. *Id.*

4. Duhault I Anticipates Claim 5

In the Duhault I system, users may select one of the multiple video viewing areas. Once selected, the Duhault I scheme will assign a higher refresh rate to that video viewing area. Ex. 1003 at ¶ 613.

5. Duhault I Anticipates Claim 7

In the Duhault I scheme, users can specify the refresh rate of a video viewing area by selecting the viewing area which causes the refresh rate to increase to a full motion rate. Ex. 1003 at ¶ 614. In the Duhault I scheme, users may also specify the lower refresh rate for unselected tiles. *Id.*

6. Duhault I Anticipates Claim 8

Duhault I discloses that its grid of video viewing areas may be more than one row and more than one column. Ex. 1003 at ¶ 615.

7. Duhault I Anticipates Claim 9

Duhault I discloses that multiple unselected video viewing areas will be assigned the same refresh rate using the same methodology. Ex. 1003 at ¶ 616.

8. Duhault I Anticipates Claim 10

As explained above with respect to claim 9, the refresh rate attribute is assigned uniformly for unselected tiles. Ex. 1003 at ¶ 617.

9. Duhault I Anticipates Claim 11

Duhault I also discloses that the refresh rate for a selected tile is the rate used for “live” audio and/or video. Ex. 1003 at ¶ 618. Thus, Duhault I discloses at least one refresh rate that is assigned automatically upon selection of the tile.

Moreover, while Duhault I discloses that the refresh rate of unselected tiled “may be user controlled,” it also discloses that “[t]he periodic rate is primarily a function of the speed of the tuner 12 in switching from channel to channel and the number of channels.” Ex. 1013 at 3:47-50, 4:23-26. One of ordinary skill in the art would read this disclosure to mean that the refresh rate of Duhault I for unselected tiles is assigned automatically. Ex. 1003 at ¶ 618.

10. Duhault I Anticipates Claim 12

Duhault I discloses that the position and layout of the video viewing areas are fixed. Ex. 1003 at ¶ 619.

11. Duhault I Anticipates Claim 13

Duhault I discloses a grid of video viewing areas in which the viewing areas are of equal size and, consequently, in which the size of the viewing areas are dependent on the maximum number of tiles displayed vertically and horizontally. Ex. 1003 at ¶ 620.

12. Duhault I Anticipates Claim 18

Duhault I discloses that its scheme can be displayed on a television. Ex. 1003 at ¶ 622.

13. Duhault I Anticipates Claim 19

Duhault I discloses that its scheme can be implemented on a computer. Ex. 1003 at ¶ 623.

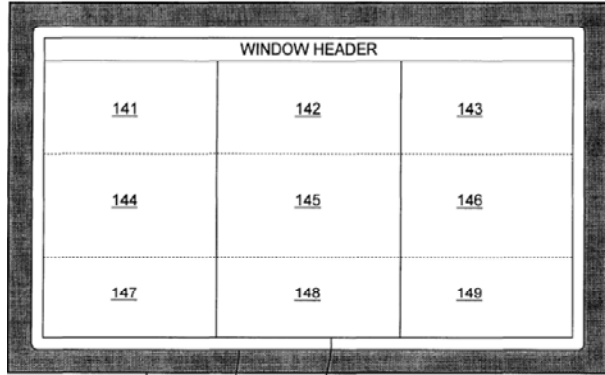
14. Duhault I Anticipates Claims 21

Duhault I discloses that its information sources can be an analog signal, a video signal or an audio signal. Ex. 1003 at ¶ 624.

B. Claims 1-13 and 17-21 Are Anticipated By Duhault II

Duhault II is prior art to the '403 patent under at least § 102(e). Ex. 1003 at ¶¶ 232, 671. Duhault II describes a system for watching multiple television audio or video channels at the same time. *Id.* at ¶ 672. In Duhault II, two tuners periodically sample multiple audio or video channels and displays them on a computer display or television at the same time. *Id.* at ¶¶ 673-74.

Each channel is displayed in a separate rectangular area on the screen laid out in a grid configuration, as shown to the right in Figure 1 from Duhault II. Ex. 1014; *see also* Ex. 1003 at ¶¶ 675-76.



Each channel is sampled on a periodic basis and displayed in slow motion. *See* Ex. 1003 at ¶¶ 677-79. When a tile is selected by a user, however, the channel associated with the selected tile is sampled and displayed at a rate consistent with the display of “live” audio and video. *Id.*

1. Duhault II Anticipates Claims 1, 3-5, 7-13, 18, 19, and 21

The scheme of Duhault II is similar to the scheme of Duhault I, and discloses each of the elements of claims 1, 3-5, 7-13 and 18-21 as set forth above with respect to Duhault I. Ex. 1003 at ¶¶ 680-86 (claim 1), 688-89 (claim 3), 690 (claim 4), 691 (claim 5), 693 (claim 7), 694 (claim 8), 695 (claim 9), 696 (claim 10), 697 (claim 11), 698-99 (claim 12); 700-01 (claim 13), 704 (claim 18), 705 (claim 19), 708 (claim 21); *see also* III.C.

2. Duhault II Anticipates Claims 2

Duhault II discloses a user interface for resizing the grid of video viewing areas by adding video viewing areas thereby changing the size of the array. Ex. 1003 at ¶ 687.

3. Duhault II Anticipates Claims 6

Duhault II discloses that video viewing area can have a full-motion refresh rate while other viewing areas simultaneously have a lower refresh rate. Ex. 1003 at ¶ 692.

4. Duhault II Anticipates Claims 17

Duhault II discloses that its scheme may be implemented on “handheld devices” and “any other device wherein window scalability would generally be found.” Duhault II at 2:23-27. A person of ordinary skill in the art reading that disclosure would have interpreted it to mean that its scheme could be implemented on mobile telephones. Ex. 1003 at ¶¶ 702-03; *In re Petering*, 301 F.2d 676, 681-82 (C.C.P.A. 1962). Moreover, to the extent the ’403 Patent enables claim 17, Duhault II does as well.

5. Duhault II Anticipates Claim 20

Duhault II discloses that its scheme may be implemented on “handheld devices” and “any other device wherein window scalability would generally be found.” Ex. 1014 at 2:23-27. A person of ordinary skill in the art reading that disclosure would have interpreted it to mean that its scheme could be implemented on personal digital assistant. Ex. 1003 at ¶¶ 702-03.

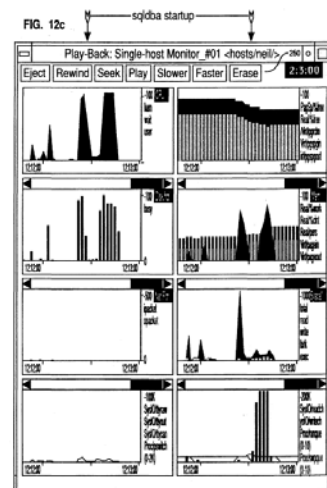
C. Claims 1-3, 6-13 and 19 Are Anticipated By Chen

Chen is prior art to the ’403 patent under at least § 102(b). Ex. 1003 at ¶¶

233, 750, and 751. Chen describes, among other things, a scheme for monitoring remote computers and displaying information about each monitored computer in a grid of tiles. *Id.* at ¶ 753.

The Chen scheme includes components (“Data Supplier daemon[s]”) on the remote computers that facilitate the exchange of monitor data to the computer that displays the monitor data. *See* Ex. 1015 at 4:11-23; Ex. 1003 at ¶ 753. The Chen scheme also includes, on the computer that displays the monitor data, a “Data Consumer” component that retrieves and records monitor data from the remote monitored computers, and another component that displays monitored data. *See* Ex. 1015 at 4:24-36; Ex. 1003 at ¶ 753. In the Chen scheme, a data consumer program displays a “console” partitioned into a grid of rectangular areas called “instruments.” *See* Ex. 1015 at 23:5-6; *see also* Ex. 1003 at ¶ 753. Chen discloses the console can be “maximize[d],” and occupy the entire display. *See* Ex. 1015 at 29:17-23; Ex. 1003 at ¶ 753.

The display of a Chen console having multiple instruments is set forth to the right. Each instrument in Chen displays performance information from a monitored remote computer. Ex. 1003 at ¶ 753. The frequency at which performance information is sampled is user configurable. *Id.* at ¶ 754.



1. Chen Anticipates Claim 1

Each of the elements of claim 1 is described in Chen. Ex. 1003 at ¶¶ 755-764. First, Chen discloses “[a] method executed by a device under the control of a program, said device including a memory for storing said program” *Id.* at ¶ 755. The data consumer program described in Chen executes such a method and is stored in the memory of the computer running the data consumer program. *Id.* at ¶ 755.

Next, Chen discloses “selecting a plurality of information sources....” *Id.* at ¶ 756; *see also* III.C.2. The data supplier daemons running on remote monitored computers are information sources as that term is used by the ’403 patent. Ex. 1003 at ¶ 756.

Next, Chen discloses “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....” *Id.* at ¶¶ 757-59;

see also III.C.3-6. Chen discloses that data consumer program places a “console” on the display of the host computer executing the program. The data consumer program partitions the console (which can occupy the entire display of the host computer) into multiple rectangular instruments. Ex. 1003 at ¶ 758. This partitioning into instruments corresponds to “partitioning the display into an array of tiles.” *Id.* at ¶ 758. As explained above, the broadest reasonable construction of this term does not require that all portions of the display be occupied by tiles, but even if the APJ disagrees, Chen discloses this limitation because the consoles in Chen occupy the entire display if maximized. *Id.* The instruments of Chen are the tiles of the claims of the ’403 patent. *Id.* Chen discloses that each instrument is associated with a monitored computer. *Id.*

Chen discloses “*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...*” *Id.* at ¶¶ 760-62. When an instrument is added, a “start data feed” request is sent to the associated data supplier daemon. *See* Ex. 1015 at 33:6-9; Ex. 1003 at ¶ 760. This request specifies the rate at which the information source is sampled. Ex. 1003 at ¶ 760. This rate can be changed after adding the instrument. *Id.*

Chen discloses “*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. . .*” *Id.* at ¶ 763; *see also* III.C.9. The instruments of Chen

update displayed statistics from the remote monitored computers according to the configured sampling rate. Ex. 1003 at ¶ 763. Chen discloses “*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.*” *Id.* at ¶ 764; *see also* III.C.10. As explained above, the Chen system will simultaneously display multiple instruments each with its own refresh rate, which will all be continually updated. Ex. 1003 at ¶ 764.

2. Chen Anticipates Claim 2

Chen discloses that a user can add instruments to a console, and can resize and reposition each instrument in the console. Ex. 1003 at ¶ 765. Thus, the user can configure the number of rows and columns of instruments within each console, thus configuring the size of the console. *Id.* at ¶¶ 765-66. Indeed, Chen discloses consoles that have been configured to different sizes. *Id.* at ¶ 766; Ex. 1015 at Figs. 12c (2x4 layout), 12d (1x2), 12e (2x2).

3. Chen Anticipates Claim 3

Chen discloses that the partitioning of the display into instruments can result in a non-overlapping configuration wherein each instrument is a uniform size and shape. Ex. 1003 at ¶¶ 768-70.

4. Chen Anticipates Claim 6

Chen discloses that different requestors may set the intervals, at which data

is delivered from servers, to be different. Ex. 1003 at ¶ 776.

5. Chen Anticipates Claim 7

Chen discloses that a user may specify the refresh rate. Ex. 1003 at ¶ 777.

6. Chen Anticipates Claim 8

Chen discloses that a console may have more than one row and more than one column. Ex. 1003 at ¶ 778.

7. Chen Anticipates Claim 9

Chen discloses that the refresh rates of the instruments are assigned using one of two specific application programming interface function calls (RSiStartFeed or RSICChangeFeed). Ex. 1003 at ¶ 779. The refresh rates are assigned uniformly because they are assigned in the same manner using the same programming interface function call. *Id.* In addition, Chen anticipates claim 9 because it discloses that the refresh rates of different instruments may be the same, including for example a default rate. *Id.*

8. Chen Anticipates Claim 10

As explained above with respect to anticipation of claim 9 by Chen, one attribute that may be assigned uniformly is a refresh rate. Ex. 1003 at ¶ 780.

9. Chen Anticipates Claim 11

Chen discloses the use of a default refresh rate. Ex. 1003 at ¶ 781. One of ordinary skill in the art would understand that such a rate would be assigned

automatically where the user assigned no other rate. *Id.*

10. Chen Anticipates Claim 12

Chen discloses that its instruments are laid out in a grid and that the position and layout of the instruments change only when users reconfigure the grid. Ex. 1003 at ¶ 782.

11. Chen Anticipates Claim 13

Chen discloses a grid of viewing areas in which the viewing areas are of equal size and, consequently, in which the size of the viewing areas are dependent on the maximum number of tiles displayed vertically and horizontally. Ex. 1003 at ¶ 783.

12. Chen Anticipates Claim 19

Chen discloses that the client devices can be computers. Ex. 1003 at ¶ 803.

D. Claims 4, 15, 16, 18 and 21 Would Have Been Obvious Over Chen

1. Claim 4 Would Have Been Obvious Based On Chen in View of Haddock

Haddock is prior art to the '403 patent under at least § 102(e). Ex. 1003 at ¶ 235. Haddock describes a “flexible, policy-based, mechanism for managing, monitoring, and prioritizing traffic within a network...” Ex. 1024 at Abstract; *see also* Ex. 1003 at ¶ 735. Haddock indicates that it is desirable to manage network traffic such that high priority traffic is usually sent first but low priority traffic is still guaranteed an acceptable minimum transfer rate. Ex. 1003 at ¶ 735. Haddock

then describes a scheme for classifying network communications using attributes including the network addresses of the devices performing the communication. *Id.* Classified network communications are then assigned relative priority values, and lower priority communications may be delayed or canceled. *Id.*

It would have been obvious to combine Chen with Haddock in this manner. *Id.* at ¶¶ 771-75. The patents are directed to related fields—Chen is directed to a system for retrieving information from multiple sources using a network and Haddock is directed to improving use of a network that needs to carry multiple streams of information. *Id.* at ¶ 772. Considering Haddock’s direction, a person of skill in the art implementing the Chen system would have been motivated to try the improvements described in Haddock in order to more efficiently use network resources. *Id.*

Applying the teachings of Haddock to those of Chen results in claim 4. A typical Chen implementation would have network communications corresponding to the regular retrieval of performance information presented to instruments. *Id.* at ¶¶ 772, 774. It would have been obvious to a person of ordinary skill in the art, because each instrument corresponds to a data supplier daemon at a particular network address, that the network communications in the Chen scheme could likewise be classified according to the network address associated with the desktop component. *Id.* at ¶¶ 774-75. Following the teachings of Haddock, priority values

would be associated with each instrument, and the refresh of the network information associated with the instrument would be modified, depending on its priority, in the same way as is disclosed in the '403 patent. *Id.* at ¶ 774.

2. Claim 15 Would Have Been Obvious Based on Chen in View of MSIE Kit

MSIE Kit is a printed publication that was publicly distributed prior to October of 1998. *See* Ex. 1006; Ex. 1007; Ex. 1008; Ex. 1009; Ex. 1010. MSIE Kit is prior art to the '403 patent under 35 U.S.C. §§ 102(b) & 102(a). *See also* Ex. 1003 ¶ 229, 241-42. MSIE Kit discloses that Active Desktop is able to store a users' array of desktop items on a network server. *Id.* at ¶ 790. Applying the teachings of MSIE Kit to Chen yields claim 15. *Id.* at ¶ 791. Chen discloses that the array of tiles (configuration of the layout of Chen's instruments) can be stored. *Id.* at ¶ 784. Using the network storage of MSIE Kit would thus mean that the array of tiles will be stored on a "second device." *Id.* at ¶¶ 789-91. The second device is the networked file server. *Id.* at ¶ 791.

It would have been obvious to combine Chen and MSIE Kit in this manner. They are directed to related fields. *Id.* at ¶ 789. Chen describes partitioning a display into tiles that display information periodically updated from information sources, and storing the files implementing that functionality. *Id.* And Chen discloses that its scheme may be implemented in a networked environment. *Id.* MSIE Kit describes a scheme for using networked storage in place of physically

attached storage and a scheme for executing applications on networked computers. *Id.* at ¶ 790. MSIE Kit also discloses explains why one would be motivated to make such modifications, including permitting a user to roam among multiple computers while still keeping the same profile and allowing administrators control over individual user settings. *Id.*

3. Claim 15 Would Have Been Obvious Based on Chen in View of Crawford

Crawford is prior art to the '403 patent under at least § 102(e). Ex. 1003 at ¶ 238. Crawford discloses the limitations of claim 15 in two ways. First, Crawford describes prior art techniques and its own techniques for supplying a network storage on a file server that appears, to applications running on a computer, to be a physically attached hard disk. *Id.* at ¶ 786. The networked nature of the storage is transparent such that applications do not need to be modified to use the described network storage instead of hard disks physically attached to the computers that the applications execute on. *Id.* Second, Crawford describes a commercial product that allows a user to execute a program on one computer but use a second networked computer for input (keyboard, mouse, etc.) and output (display). *Id.*

Applying the teachings of Crawford to Chen yields claim 15. *Id.* at ¶ 787. With respect to the first set of Crawford teachings, Chen discloses that the array of tiles (configuration of the layout of Chen's instruments) can be stored. *Id.* Using the network storage of Crawford would thus mean that the array of tiles will be

stored on a “second device.” *Id.* The second device is the networked file server. *Id.* With respect to the second set of Crawford teachings, a person of skill in the art could use the technique of the commercial product described to partition the display of one computer while a second computer would execute the composite desktop program and thus store the array of tiles. *Id.*

It would have been obvious to combine Chen and Crawford in this manner. They are directed to related fields. *Id.* at ¶ 785. Chen describes partitioning a display into tiles that display information updated from information sources, and storing the files implementing that functionality. *Id.* And Chen discloses that its scheme may be implemented in a networked environment. *Id.* Crawford describes a scheme for using networked storage in place of physically attached storage, and a scheme for executing applications on networked computers. *Id.* Crawford explains why one would be motivated to make such modifications, including permitting a user to remotely access a second computer, providing additional storage to the client and creating a more secure computing environment. *Id.*

4. Claim 16 Would Have Been Obvious Based on Chen in View of MSIE Kit, or Chen in View of Crawford

As explained above with respect to claim 15, Chen in view of MSIE Kit, and alternatively Chen in view of Crawford, would have made it obvious to store tiles on a second device. Likewise, once stored, it would have been obvious to retrieve those stored tiles from the second device. Ex. 1003 at ¶¶ 792-99.

5. Claim 18 Would Have Been Obvious Based on Chen in View of DorEl

Chen discloses that the client devices are computing devices. Ex. 1003 at ¶ 803. DorEl is prior art to the '403 patent under at least § 102(e). *Id.* at ¶ 236. DorEl shows that well before 1999, it was known that a television could advantageously be used as the display of a computer in order “to view and interact with multimedia software in the same relaxed comfort and manner in which they enjoy television, videos, and music, *e.g.*, relaxing on a comfortable couch in the living room and watching images on a large screen television placed at a comfortable distance.” *Id.* at ¶ 801; Ex. 1025 at 1:48-53. A person of ordinary skill, thus, would have considered it obvious to output a computer’s display to a television, as specified in claim 18 well before 1999. Ex. 1003 at ¶¶ 800-01.

6. Claim 21 Would Have Been Obvious Based on Chen

A person of ordinary skill in the art would have found claim 21 obvious in view of Chen. Ex. 1003 at ¶ 804. For example, Chen illustrates its system by presenting data on the display in a variety of formats, including a “graphical” format (which is one of the forms of data listed in claim 21). *Id.*

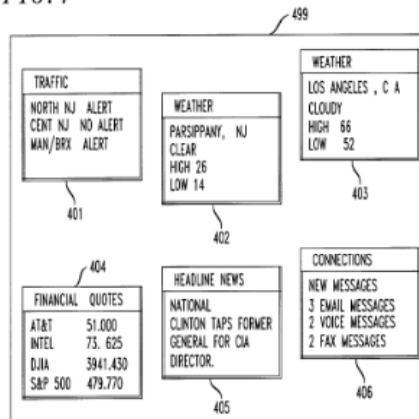
E. Claims 1, 17 and 20 Are Unpatentable Over Farber

Farber is prior art to the '403 patent under at least § 102(b). Ex. 1003 at ¶¶ 234, 862-63. Farber discloses an “at-a-glance” screen that can display updated information from a variety of information “feeds,” such as weather, traffic, news,

and financial information, at the same time. *Id.* at ¶ 864; Ex. 1016 at Fig. 4 and 6:41-65.

Information from a plurality of sources are displayed in an array of rectangular display “areas,” which correspond to the “tiles” of the ’403 patent., as shown in Figure 4 of Farber at right. *Id.*

FIG. 4



The tiles of Farber are periodically updated such that the displayed information is always “current.” Ex. 1003 at ¶ 865. Farber also discloses that users can specify the time intervals between the scheduled updates. *Id.*

1. Farber Anticipates Claim 1

Chen discloses each element of claim 1. Ex. 1003 at ¶¶ 866-79. Farber discloses “[a] *method executed by a device under the control of a program, said device including a memory for storing said program*” by disclosing a method for displaying up-to-date information from a plurality of information sources using a personal computer, which necessarily has a memory. *Id.* at ¶ 866.

Farber discloses “*selecting a plurality of information sources*” by disclosing that users can select information feeds such as weather, traffic, news, and financial information to be displayed. Ex. 1003 at ¶ 867; *see also* III.C.2.

Farber discloses “*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*” by disclosing partitioning the display into an array of rectangular display areas, each display area being associated with an information source. Ex. 1003 at ¶¶ 868, 869-73; *see also* III.C.3-6. In Farber, each tile (403, 401, and 404 of Farber’s FIG. 4) is associated with corresponding information sources (150, 152 and 154 of Farber’s FIG. 1, respectively). Ex. 1003 at ¶ 868.

Farber satisfies “*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*” by disclosing that users can specify the time intervals between scheduled updates for the Farber tiles. *Id.* at ¶ 877.

Farber discloses “*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*” by disclosing that the plurality of rectangular display areas display “up to date” information, “such as traffic, weather and sports,” which are updated at the user-specified rate. *Id.* at ¶ 878; *see also* III.C.9-10. One skilled in the art would understand that information

from a second information source is simultaneously updated in accordance with said second refresh rate because Farber discloses displaying multiple tiles, which are updated at their respective rates, at the same time. Ex. 1003 at ¶ 879.

2. Farber Anticipates Claim 17

Farber discloses his scheme may be used on a “screen phone.” Ex. 1003 at ¶ 880. One of ordinary skill in the art would understand that disclosure to refer to a mobile phone. *Id.* at ¶¶ 880-81 (discussing US 5,635,980 at 1:13-22 (referring to “screen phone type customer premises equipments” as “smart phones”); US 6,061,576 at 2:41-41 and FIG. 1 (showing that a “screen-phone” is a mobile phone); Nokia 9110 (showing that a screen phone is a mobile phone); Motorola Envoy (showing that a screen phone is a mobile phone); Simon (showing that a screen phone is a mobile phone)).

3. Farber Anticipates Claim 20

Farber discloses that his scheme can be implemented on other visual display devices, such as personal digital assistants. Ex. 1003 at ¶ 886.

4. Claims 1, 17 and 20 Would Have Been Obvious Based on Farber in View of MSIE Kit

Patent Owner may assert that Farber does not disclose an array because in at least one embodiment of Farber the tiles are caused to float in a non-overlapping manner. However, that the tiles of Farber can float does not preclude them from being in an array for purposes of the '403 patent, nor does that change the

disclosure of FIG. 4 of Farber, that has no indication of float. Ex. 1003 at ¶ 873.

Further, common sense dictates that the feature of Farber that causes the tiles to float could have been removed from Farber, making the claims obvious. *Id.* at ¶ 874.

Even if the APJ disagrees with the above, however, MSIE Kit discloses the display of tiles in a grid arrangement, and one of ordinary skill in the art would have considered the combination of Farber and MSIE Kit obvious. Both Farber and MSIE Kit disclose schemes to display tiles linked to various information sources which are periodically updated. *Id.* at ¶ 875. MSIE Kit discloses such a scheme for displaying in a grid on computers generally. *Id.* Farber discloses such a scheme for use on computers, telephones and personal digital assistants. *Id.*

A person of ordinary skill would have reason to combine the grid-based Active Desktop technology of MSIE Kit with the scheme of Farber in order to convey useful information from multiple sources, such as stocks, weather and news, to the user. This would have led a person of ordinary skill in the art to conclude it would have been obvious to implement Microsoft's Active Desktop functionality on a mobile telephone, rendering claims 1, 17 and 20 obvious. *Id.*

5. Claims 17 Would Have Been Obvious Based on Farber in View of Jambhekar

Patent Owner may contend that Farber does not disclose a mobile phone and that claim 17 would not otherwise be obvious in view of Farber. That contention

would be incorrect, since even if one were to interpret Farber as not disclosing a mobile phone, use of the scheme of Farber on a mobile would have been obvious solely in view of Farber's disclosure that his scheme could be used on a "screen phone."

Nevertheless, even if the APJ were to conclude otherwise, claim 17 would still be invalid as obvious based on Farber in view of Jambhekar. Ex. 1003 at ¶ 882. Both Farber and Jambhekar are directed to a tiled user interface that presents to the user updated information from multiple sources, and tiled user interfaces were well known in the mobile phone arts. *Id.* at ¶ 883 (discussing US 6,430,405, US 6,047,197, US 6,418,309, and EP 0651544). One of ordinary skill in the art would have been motivated to combine these references because, for example, of the "increasing pressure in the marketplace to provide multi-functional radio communication devices that offer more than one of the typical radio communication services mentioned above," and also to provide a more efficient user interface. Ex. 1031 at 1:21-24; Ex. 1003 at ¶ 883. Combining the tiled interface of Farber with the mobile phone of Jambhekar would have taken only ordinary skill, produced only predictable results and would have resulted in claim 17. *Id.* at ¶¶ 884-85. Accordingly, claim 17 is unpatentable as obvious.

V. CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that the evidence presented in this petition establishes a reasonable likelihood that Petitioner will prevail in establishing claims 1-21 of the '403 patent are unpatentable, and requests that Trial be instituted to cancel these claims.

Dated: May 22, 2013

Respectfully Submitted,

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**PETITION FOR INTER PARTES REVIEW
OF U.S. PATENT NO. 6,724,403**

**Attachment A:
Proof of Service of the Petition**

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2013, a copy of this Petition, including all attachments, appendices and exhibits, has been served in its entirety by Federal Express on the following address for patent owner:

SurfCast Corporation
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Portland, ME 04102

Respectfully submitted,

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**PETITION FOR INTER PARTES REVIEW
OF U.S. PATENT NO. 6,724,403**

Attachment B:

List of Evidence and Exhibits Relied Upon in Petition

Petition re U.S. Pat. 6,724,403 (Claims 1-21)

Exhibit #	Description
1001	U.S. Patent 6,724,403
1002	File History of U.S. Patent 6,724,403
1003	Declaration of David R. Karger
1004	Curriculum Vitae of David R. Karger
1005	U.S. Provisional Application 60/162,522
1006	Declaration by Utah State Library (5/1/2013)
1007	Utah State University Library copy of Microsoft Internet Explorer Resource Kit (“MSIE Kit”) (Microsoft Press 1998) (Exhibit 1 to Declaration by Associate Dean for Public Services of Utah State University Library)
1008	Excerpts of North Carolina State University copy of Microsoft Internet Explorer Resource Kit (Microsoft Press 1998)
1009	Excerpts of Library of Congress copy of Microsoft Internet Explorer Resource Kit (Microsoft Press 1998)
1010	Excerpts of Harvard copy of Microsoft Internet Explorer Resource Kit (Microsoft Press 1998)
1011	U.S. Patent 6,832,355
1012	File History of U.S. Patent 6,832,355
1013	U.S. Patent 6,118,493
1014	U.S. Patent 6,456,334
1015	U.S. Patent 5,432,932
1016	U.S. Patent 5,819,284
1017	U.S. Patent 6,807,558
1018	U.S. Patent 5,959,621
1019	U.S. Patent 5,479,602
1020	U.S. Patent 5,321,750
1021	U.S. Patent 5,712,995
1022	U.S. Patent 5,473,745
1023	U.S. Patent 5,140,678
1024	U.S. Patent 6,104,700
1025	U.S. Patent 5,721,951
1026	U.S. Patent 5,321,808
1027	U.S. Patent 5,550,968
1028	U.S. Patent 4,905,171
1029	U.S. Patent 5,901,228
1030	U.S. Patent 6,278,448
1031	U.S. Patent 5,848,356
1032	U.S. Patent 6,430,405

Exhibit #	Description
1033	U.S. Patent 6,047,197
1034	U.S. Patent 6,418,309
1035	U.S. Patent 5,635,980
1036	U.S. Patent 6,061,576
1037	U.S. Patent 5,371,847
1038	U.S. Patent 5,764,972
1039	U.S. Patent 6,363,445
1040	U.S. Patent 5,812,123
1041	U.S. Patent 6,411,275
1042	U.S. Patent 4,831,556
1043	U.S. Patent 5,757,371
1044	U.S. Patent 5,831,664
1045	U.S. Patent 5,838,326
1046	U.S. Patent 5,929,854
1047	U.S. Patent 6,160,553
1048	U.S. Patent 6,166,738
1049	U.S. Patent 6,188,405
1050	EP 0651544
1051	PCT Application WO9926127
1052	SurfCast's Responses to Microsoft's First Set of Interrogatories (includes SurfCast's Infringement Contentions (Exhibits A and B) (2/14/2013)
1053	SurfCast Proposed Claim Construction (4/12/2013)
1054	SurfCast Rebuttal Proposed Claim Construction (4/26/2013)
1055	Microsoft's Initial Proposed Terms and Constructions (4/12/2013)
1056	SurfCast's Amended Complaint from 2:12-CV-00333-DBH [19]
1057	Amended Scheduling Order, Maine District Court, Case No. 2:12-CV-333-DBH [41]
1058	Excerpts of Dictionary of Computer and Internet Terms (Sixth Ed., 1998)
1059	Excerpts of Microsoft Computer Dictionary (Fourth Ed., 1999)
1060	Nokia 9110 User Guide ("Nokia 9110")
1061	Motorola Envoy Wireless Communicator User's Guide ("Motorola Envoy")
1062	Simon User's Manual ("Simon")
1063	Readings in Human-Computer Interaction: Toward the Year 2000 (1995 2d ed.)
1064	Schneiderman, B., Designing the User Interface (3d ed. 1998)

Exhibit #	Description
1065	Cerani, Delivering Push, 1998
1066	Myers, B.A., "The User Interface for Sapphire," CG&A, Vol. 4, No. 12, Dec. 1984, pp.13-23
1067	Myers, B.A., A Taxonomy of Window Manager User Interfaces, CG&A, Sep. 1988, pp. 65-84
1068	<i>Teitelman</i> , A Tour Through Cedar (1984)
1069	OpenStep User Interface Guidelines (1996)
1070	Lane, J.C., <i>et al.</i> , User Interfaces for a Complex Robotic Task: A Comparison of Tiled vs. Overlapped Windows (January 1997)
1071	Bly, <i>et al.</i> , A Comparison of Tiled and Overlapping Windows Proc. SIGCHI, Human Factors in Computing Systems, ACM, New York, 1986, pp. 101-106
1072	<i>Inside Dynamic HTML</i> (Microsoft Press 1997)
1073	E. S. Cohen, E. T. Smith, and L. A. Iverson, "Constraint-Based Tiled Windows," Proc. 1 st Int'l Conf. on Computer Workstations, CS Press, Los Alamitos, Calif., Nov. 1984, pp. 2-11.
1074	M. Gancarz, "Uwm: A User Interface for X Windows," Conf. Proc. Summer Tech. Conf., Usenix, Denver, Jan. 1986, pp/429-440.
1075	Matthews, M. S., <i>et al.</i> , FrontPage 2000: The Complete Reference (1999) (Excerpts of pages referenced in prosecution history)
1076	Ross, J., ABCs of Internet Explorer 4 (1997) (Excerpts of pages referenced in prosecution history)
1077	McFedries, P., The Complete Idiot's Guide to Windows 95 (Mar. 1997, 2d Ed.) (Excerpts of pages referenced in prosecution history)
1078	http://www.w3.org/submission/1997/5/ (4/11/97)
1079	http://www.w3.org/TR/NOTE-Submission-HDML (5/9/97)
1080	http://www.we.org/TR/NOTE-Submission-HDML-FAQ.html (4/11/97)
1081	http://www.ncns.com/news/2/uwplanet.html (5/7/97)
1082	Microsoft's 2 nd Supplemental Responses to SurfCast's First Set of Interrogatories (Confidential) (4/8/2013)