

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

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**PETITIONER MICROSOFT CORPORATION'S MOTION FOR  
OBSERVATIONS ON CROSS-EXAMINATION OF REPLY WITNESSES**

As authorized by the Board in its Order of April 21, 2014, IPR2013-00292 Paper No. 53, Petitioner submits the following observations on Exhibit 1113 (Transcript for deposition of David Karger on April 24, 2014) and Exhibit 2089 (Transcript for deposition of Glenn Weadock on May 14, 2014).

(1) In Exhibit 1113, from page 224, line 8 to page 226, line 4, Dr. Karger demonstrated that a system that has the ability to arrange a grid of tiles into a non-overlapping configuration and does not give the user the ability to move the tiles satisfies the language of the proposed amended claims requiring “*wherein said processor executes instructions to ... arrange the display into a grid of tiles that are not permitted to overlap.*” This statement is relevant to Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 58 (“*MSIE Kit also discloses an embodiment in which the Active Desktop Items would be displayed in a 3 x 2 non-overlapping grid that the user could not modify. Ex. 1007, MSIE Kit at 183 and 601. MSIE Kit therefore also discloses a grid of tiles that are not permitted to overlap.*”) and Patent Owner’s Motion for Conditional Amendment (Paper No. 28) at page 2 (“*arrange a display into a grid ~~an array~~ of tiles that are not permitted to overlap, said grid of tiles being persistent from session to session*”). The statement is relevant because it demonstrates that the cited prior art, including MSIE Kit, is within the scope of the proposed amended claims.

(2) In Exhibit 1113, on page 251, lines 12-13, Dr. Karger testified “*If I*

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*explicitly saved the document, then yes, those bookmarks would be there later.”*

This statement is relevant to Mr. Weadock’s declaration (Ex. 2004) at ¶ 48 (“*Lines 8:30-34 and 11:50-52 indicate persistence through use of the term ‘bookmarked’ and “bookmarking.” Bookmarks are persistent by definition.*”) and the ‘403 Patent (Exhibit 1001) at 15:63-64 (“‘*persistent*’, *that is they are not saved explicitly but are preserved from session to session.*”). The statement is relevant because it demonstrates that the primary written description support (*i.e.*, disclosure of “bookmarks”) proposed by Patent Owner for the limitation “persistent,” in fact, fails to support the explicit definition of the term, “persistent,” given by the ‘403 patent itself since the bookmarks must be explicitly saved in order to be preserved from session to session.

(3) In Exhibit 1113, from page 325, line 21 to page 330, line 20, from page 381, line 23 to page 382, line 18, from page 393, line 8 to page 394, line 4, and from page 397, line 22 to page 398, line 18, Dr. Karger explained why one skilled in the art would understand that “*channels*” of Ex. 1051 (Kostes) can be displayed, not only in the “*netchannel view*,” but also in the “*montage view*.” This statement is relevant to Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 270 (“*Each rectangular region can display content from a different information source, Ex. 1051, Kostes at 13, and each such information from such information source refreshes at a specified interval. See, e.g., Ex. 1051, Kostes at 16, 20.*”), ¶ 297

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(which cites to page 20 of Kostas, *“Pull-type channels request Model Services to retrieve a web resource on a regular basis, ranging from every few minutes for rapidly changing data such as stock quotes, to only once every few hours for less dynamic data. Often this interval is user-configurable”*) and Mr. Weadock’s Reply Declaration (Exhibit 2081) at ¶ 84 (*“There is no showing in Kostas that the ‘rectangular regions’ in the montage view can “refresh at a specified interval.”*). The statement is relevant because it demonstrates that one skilled in the art would understand the description of user-configurable retrieval intervals, using periodic polling, on page 20 of Kostas to be applicable to the “montage view,” thereby refuting Mr. Weadock’s Reply Declaration (Exhibit 2081) at ¶ 84.

(4) In Exhibit 1113, from page 378, line 23 to page 380, line 18, Dr. Karger stated that *“this is a typo or an ambiguity in my report, where I just used ‘Resp.’ and should have specified a particular exhibit. ... So this reference is – should be correctly pointing into this document and not at Weadock’s.”* This statement is relevant to Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 68 (*“Specifically, Patent Owner is clearly interpreting the phrase ‘when selected, provide access to an information source’ to require that the provision of access to the information source must commence at the time the tile is selected. Resp. at 5-6, 37-38, and 57.”*) and ¶ 58 (defining “Resp.” as *“IPR2013-00292, Paper No. 27, Patent Owner Response”*). The statement is relevant because it clarifies that the

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document (*i.e.*, “*Resp.*”) cited in Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 68 is “*IPR2013-00292, Paper No. 27, Patent Owner Response*” rather than Mr. Weadock’s report.

(5) In Exhibit 1113, from page 384, line 20 to page 386, line 21, Dr. Karger testified that certain portions of the ‘403 patent disclose embodiments of overlapping tiles. This statement is relevant to Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 53 (“*I understand Patent Owner asks the Board to alter its construction of the “partitioning” language to exclude overlapping configurations. In my opinion, the word “partitioning” does not require a non-overlapping configuration. Indeed, the ‘403 Patent describes several embodiments that permit tiles to overlap, including when a tile is enlarged to cover the entire screen or a large portion of it. Ex. 1001 at 9:43-56.*”). The statement is relevant because it undercuts SurfCast’s argument, in IPR2013-00292, Paper No. 27, Patent Owner Response at pages 12-18, that all claims must be limited to non-overlapping tiles.

(6) In Exhibit 2089, from page 72, line 10 to page 73, line 20, Mr. Weadock testified that he disagrees with Dr. Karger’s broadest reasonable interpretation of “session” as being “more of an English language use of the term ‘session’” rather than a “computer person definition.” This statement is relevant to Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶¶ 27-29. The statement is relevant because it demonstrates that Patent Owner’s failure to provide a

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construction of “session” was material, as evidenced by a substantial dispute between the parties regarding the proper construction thereof, and also because it undercuts Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶ 29, which indicates that Mr. Weadock agrees with Dr. Karger’s construction of the term “session.”

(7) In Exhibit 2089, from page 86, line 15 to page 89, line 13, Mr. Weadock testified that he disagrees with Dr. Karger’s broadest reasonable interpretation of “call.” This statement is relevant to Patent Owner’s Motion for Conditional Amendment (Paper No. 28) (in which no proposed construction of the term “call” was provided) and Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶¶ 30-31 (under the section “*Patent Owner’s Substitute Claims recite terms that have been construed by Patent Owner, or that have plain and ordinary meanings*” in page 5). The statement is relevant because it demonstrates that Patent Owner’s failure to provide a construction of “call” was material, as evidenced by a substantial dispute between the parties regarding the proper construction thereof.

(8) In Exhibit 2089, from page 97, line 1 to page 99, line 2, Mr. Weadock testified that an Active Desktop item “would be a selected element on the screen” after clicking on it for resizing. This statement is relevant to Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 134 (“*Clicking on and dragging or resizing an Active Desktop Item also qualifies as one way to select the Item to obtain access to an associated information source*”) and Mr. Weadock’s Reply Declaration (Ex. 2081)

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at ¶¶ 58-64 (generally alleging that MSIE Kit discloses “*No selecting a tile to call an assigned application program*”). The statement is relevant because it demonstrates that Mr. Weadock agrees with Dr. Karger’s Reply Declaration (Ex. 1110) at ¶ 134 and that Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶¶ 58-64 is either incomplete and/or inconsistent. In addition, this statement is relevant because it demonstrates that an Active Desktop item can be “selected” even when “a user clicked on an Active Desktop item that did not contain a link visible in that item,” which is inconsistent with Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶ 59. In addition, this statement is relevant because it demonstrates that the testimony of Joe Belfiore that Patent Owner seeks to rely on, Patent Owner’s Reply to Petitioner’s Opposition to Motion to Conditionally Amend, Paper No. 62, at 4-5, is irrelevant because the hypothetical Mr. Belfiore was given simply asked what would happen if a user clicked in an already selected (because it was recently resized) Active Desktop Item at a location in which there was no link, Mr. Belfiore’s response to which (nothing) therefore bears on no issue in these proceedings.

(9) In Exhibit 2089, on page 101, lines 8-13, Mr. Weadock testified “*that you can have information on your hard drive that doesn’t get displayed from session to session.*” This statement is relevant to Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶ 15 (“*a person of skill in the art would apply common*

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*sense and conclude that the information that is stored will be used for its obvious purpose, namely, to display the grid of tiles.”*). The statement is relevant because it undercuts Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶ 15.

(10) In Exhibit 2089, from page 109, line 11 to page 111, line 14, Mr. Weadock testified that the plain and ordinary meaning of the term “program,” in accordance with the Microsoft Computer Dictionary definition (*i.e.*, “*a sequence of instructions that can be executed by a computer*”), should not be used to construe the term “program” of the amended claims of the ‘403 patent. This statement is relevant to Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶¶ 32-35 (under the section “*Patent Owner’s Substitute Claims recite terms that have been construed by Patent Owner, or that have plain and ordinary meanings*” in page 5). The statement is relevant because it is inconsistent with Mr. Weadock’s Reply Declaration (Ex. 2081) at ¶¶ 32-35, given that Patent Owner did not propose a construction for the term “the assigned application program being different from a program that arranges the display into the grid of tiles that are not permitted to overlap” in its Motion for Conditional Amendment (Paper No. 28).

Dated: May 23, 2014

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of May 2014, a copy of this  
PETITIONER MICROSOFT CORPORATION'S MOTION FOR  
OBSERVATIONS ON CROSS-EXAMINATION OF REPLY WITNESSES has  
been served in its entirety by e-mail on the following counsel of record for Patent  
Owner, per 37 C.F.R. § 42.6(e)(4)(ii):

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