UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Facebook, Inc.
Petitioner

v.

Rembrandt Social Media, L.P.,
Patent Owner

U.S. Patent No. 6,415,316 B1
Filing Date: September 1, 1998
Issue Date: July 2, 2002

Title: METHOD AND APPARATUS FOR IMPLEMENTING A WEB PAGE DIARY

PETITIONER'S REPLY IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW

Inter Partes Review No. 2014-00415

Table of Contents

Page

List of Petitioner's Exhibits

Exhibit No.	Description of Document
1001	U.S. Patent No. 6,415,316 to Joannes Van Der Meer
1002	Declaration of Edward R. ("Ed") Tittel
1003	Rulings pertaining to claim construction in *Rembrandt Social Media, L.P. v. Facebook, Inc.*, No. 13-CV-00158 TSE (E.D. Va.)
1004	Transcript of Court Hearing dated June 6, 2013 in *Rembrandt Social Media, L.P. v. Facebook, Inc.*, No. 13-CV-00158 TSE (E.D. Va.)
1005	U.S. Patent No. 6,233,600 to Pito Salas et al.
1006	Ed Tittel et al., *More HTML for Dummies* (2d ed 1997), pp. xv-xxv, 57-84, 153-180, 341-364
1007	Ed Tittel et al., *Foundations of World Wide Programming with HTML and CGI* (1995), pp. xxi-xxxvi, 125-144
1008	William Martiner, *Visual Basic Programmer's Guide to Web Development* (1997), pp. vii-xiii, 47-97
1009	David Fox et al., *Web Publisher's Construction Kit with HTML 3.2* (1996), pp. vii-xxv, 5-47, 51-61, 629-655
1010	M. Frans Kaashoek et al., *Dynamic Documents: Mobile Wireless Access to the WWW* (1995)
1011	U.S. Patent No. 5,729,734 to Robert D. Parker et al.
1012	U.S. Patent No. 5,933,811 to Paul Angles et al.
1013	U.S. Patent No. 6,289,362 to Joannes Van Der Meer
1014	Mark R. Weinstein Bio
1015	Second Declaration of Edward R. ("Ed") Tittel
1016	Transcript of 01/16/2015 Deposition of Mark T. Jones, Ph.D.

List of Petitioner's Exhibits

Exhibit No.	Description of Document
1017	Excerpts from Rembrandt's Opening Claim Construction Brief in *Rembrandt Social Media, L.P. v. Facebook, Inc.*, No. 13-CV-00158 TSE (E.D. Va.)

I. INTRODUCTION

With the exception of the "privacy level information" limitations in independent claims 1 and 17, the patent owner does not dispute that the prior art discloses every limitation of every challenged claim. The patent owner's arguments should be rejected because they are based on the narrow construction of "privacy level information" that the Board properly rejected. Because Salas and Parker fully disclose the "privacy level information" limitations properly construed, and the patent owner provides no arguments about any other claim limitations, the Board should find claims 1, 4, 17, 18, 20 and 26 invalid.

II. CONSTRUCTION OF "PRIVACY LEVEL INFORMATION"

A. "Privacy Level Information" Need Not Specify a "Universe" of Users

The patent owner asks the Board to narrow its construction of "privacy level information" to require that it describe "the universe of one or more users or categories of users permitted to view particular content on a cohesive diary page." (Resp. at 48-49.) This proposal should be rejected for several reasons.

The specification does not use the word "universe" (or any variant of that word) in its discussion of privacy level features. The specification instead discusses the "privacy level" features in broad terms, and in displaying a page, by reference to a single individual. ('316, Ex. 1001, 5:55-67.) "If a user does not have

sufficient permission to view an object in a diary," the patent explains, "the diary may not make the object visible to the user, i.e., the user does not even know that the object exists, or it may present the object using an alternate representation." ('316, 5:63-67 (emphasis added).) Nothing in the specification requires that the claimed "privacy level information" specify a "universe" of users.

In fact, the claims themselves are specifically written from the perspective of a single "user system" – the one for which the cohesive diary page is being assembled. ('316, claims 1 and 17 (assembling a cohesive diary page for a single "user system").) For example, if "User X" is attempting to access a diary page, the diary server sends "privacy level information" relating to that "User X" so that the diary program on the user system can assemble the diary page on that user system. Nothing in the claims suggests that the diary server sends "privacy level information" about other users. (Tittel Reply Decl., Ex. 1015, ¶¶ 6-8.) And there would be no reason the diary server would ever send "privacy level information" about other users – the claim is concerned only with assembling a cohesive diary page for the particular "user system" recited in the claim. (*Id.* ¶¶ 9-10.)

The patent owner relies heavily on Figure 4(d) of the '316 patent, which shows a user interface for a diary owner to set a privacy level with respect to a diary page. (Resp. at 50-51.) But Figure 4(d) describes an *unclaimed* feature in

which a diary owner sets privacy levels for a diary page. (*Id.* (citing '316, 10:28-54).) That process occurs (if at all) well before the steps of claim 1 occur. By the time the steps of claim 1 occur, the privacy levels have already been set by the diary page owner. Figure 4(d) is therefore not informative on the meaning of "privacy level information" as it pertains to the subsequent assembly and display of a cohesive diary page on a particular "user system," as recited in the claims.

The patent owner rests its argument on the word "level" and argues that it implies some sort of "gradation" of multiple privacy levels. (Resp. at 52-53.)[1] But the claim does not require "privacy **levels**" – it merely recites sending "privacy **level** information," using "level" in singular form. Information about only one user falls squarely within the broadest reasonable construction of "privacy level information," and is entirely consistent with the claim language's focus on the

[1] The patent owner cites Mr. Tittel's deposition testimony for its "gradation" argument, but that testimony was in the context of Figure 4(d) and initial setting of privacy levels by the diary page owner. (Resp. at 53-54.) As explained in the text, this process is irrelevant to the "privacy level information" sent to a user system when a diary page is later assembled. (Tittel Reply Decl., Ex. 1015, ¶¶ 7-8.)

singular user system for which the cohesive diary page is being assembled.

B. "Privacy Level Information" Does Not Require Client-Side Filtering

Another suggestion appearing throughout the Response is that the claims require "privacy level information" to be used at the user system – not the server – to perform the actual filtering of content, i.e. preventing the user from viewing content it is not permitted to view. (Resp., at 3 ("Like Salas, Parker's access control takes place at the server, not at the user system."), 24-30, 43-44.)[2]

This suggestion should be rejected because the claims under their broadest reasonable construction allow content filtering to occur at the server with no

---

[2] The patent owner specifically argued in the district court litigation that the claims do not require client-side content filtering. (Ex. 1017, Patent Owner's Claim Construction Brief, at p. 10 ("Rembrandt disputes the imposition of such a restriction and proposes a construction that permits the filtering to happen at the user system or at the server.").) The district court agreed with the patent owner. (Ex. 1004, at 13:1-9, 26:8-27:2.) Having convinced the district court to adopt a construction that does not require client-side content filtering, the patent owner should be estopped from advocating an irreconcilably narrower position here.

involvement by the client. Claim 1 on its face requires only that (1) the diary server send "privacy level information" to the user system, and that (2) the user system assemble a cohesive diary page "in accordance with" that information. This language under its broadest reasonable construction only requires the user system to assemble a diary page that is *consistent with* the privacy level information sent by the server – it does not require use of the privacy level information at the user system to select and filter content. The patent owner's expert agreed at his deposition. (Jones Depo., Ex. 1016, at 11:25-12:7.)

III. SALAS AND PARKER DISCLOSE SENDING "PRIVACY LEVEL INFORMATION" TO THE USER SYSTEM AND ASSEMBLING A COHESIVE DIARY PAGE

A. Brief Summary of How Salas & Parker Disclose Privacy Information

Salas discloses a "cohesive diary page" in the form of an eRoom page such as the one in Figure 4 (at right). The "content data" comprises (among other things) objects in the item box (**408**) including "Brainstorms" (**482**), "Press Notes" (**486**), "Budget Projections" (**488**) and "Staff Plan" (**490**). The buttons on the bottom right of the item box allow the

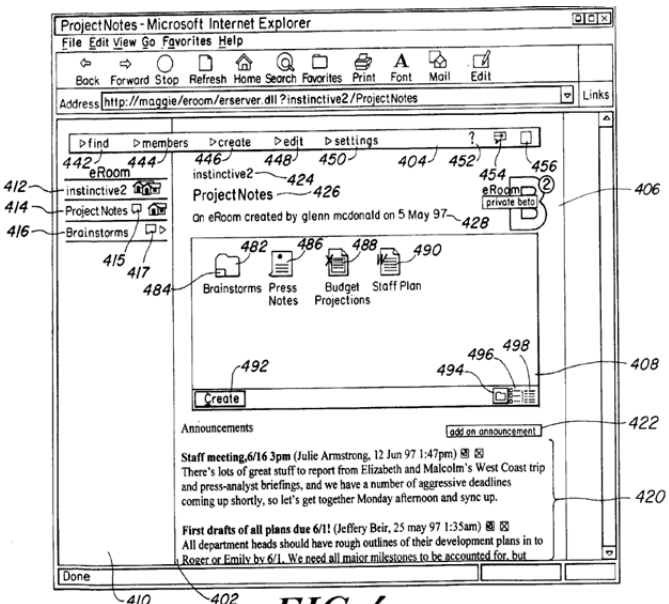

FIG. 4

content items to be shown as icons (**494**), in a list (**496**), or in report view (**498**), the latter modes causing additional metadata information about the items (such as dates) to be displayed on the page. (Petition at 36-37, 40.) Salas discloses "privacy level information" in the form of file metadata that includes "access information such as which users may open, view, and edit the file." (Salas, 13:52-57.) As explained in detail in **Part III.B** below, Salas makes clear that this access information is transmitted from the eRoom server to the client computer.

Parker describes a network-based file access system similar to Salas that adds the ability to display items in a way that visually indicates the access or privilege level granted to the viewing user. This is shown in Figure 7 (shown in relevant part at right), which shows how "**User C**" will see two content items – folders **417** and **419**. The item "test folder-1" (**417**) appears unobstructed with a "lock open" icon (**487**) because the "**User C**" was given access that folder. But for "test folder-2" (**419**), because the administrator did not grant "**User C**" rights to that folder, the user sees the folder name greyed out and with a "lock closed" icon (**488**). (Parker, 11:32-35, 11: 40-47.) Other icons could appear, such as an "eye glasses" icon to indicate that the user has read access, and a

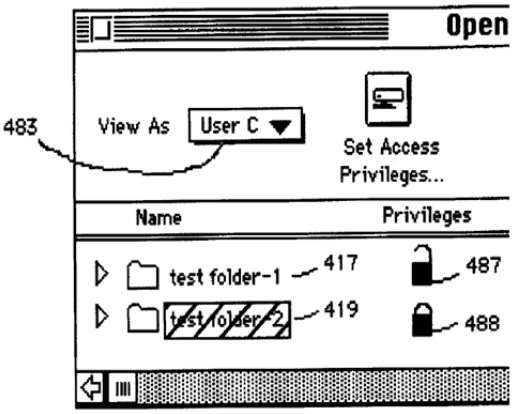

FIG. 7

"writing instrument" indicating the right to modify the document. (*Id.*, 11:50-64.)

Parker mirrors the language of claim 1 by describing Figure 7 as showing a display "from user C's perspective (i.e., **in accordance with user C's access privileges** as if the administrator was sitting at user C's client terminal)." (Parker, 11:32-35 (emphasis added).) As explained below, it is undisputed that the server in Parker sends access privilege information to the user system – even the patent owner's expert agreed at his deposition. (Jones Depo., Ex. 1016, at 21:23-23:12.)

B. The Server in Salas Sends "Privacy Level Information" to the Client

The crux of the patent owner's argument is that Salas and Parker do not disclose sending "privacy level information" to the user system, and therefore, do not disclose assembly of the diary page "in accordance with" that information. With respect to Salas, the patent owner spends a large number of pages pointing out various ways in which the server in Salas controls access to eRooms and their contents. But the server's involvement in these processes does not show that the server does not also send privacy level information to the user system.

Salas discloses "configuration information" and "privacy level information" in the form of file metadata, described in Salas as follows:

> File metadata may include: the name of the file; the size of the file; the date the file was created; the date the file was last modified;

> access information such as which users may open, view, and edit the file; and information regarding the edit status of the file, such as whether an edit lock has been set by a user.

(Salas, 13:52-57 (underlining added).) As explained in the Petition and correctly observed by the Board, Salas makes clear that the server sends this file metadata to the user system. (Petition at 40-41; Decision at 17-18.) The Board recognized in its Decision that the eRoom page displayed on the user system (such as Figure 4) can specifically display file metadata, "such as filename, creation date, modified date, and which application should be used to open and edit the file." (*Id.* at 17.) The user system simply could not present the eRoom page with file names, dates, and other file metadata if the server did not send that metadata before the page was generated at the client. (Tittel Reply Decl., Ex. 1015, ¶ 18.)

For this reason, the patent owner wisely does not dispute that the server in Salas sends some of the file metadata to the user system. The patent owner instead asserts that the server excludes the "access information" from the metadata it sends to the client. But there is no support in Salas for this position.

Salas specifically discloses a "local database metadata" synchronization process in Columns 11 and 12 that results in the server sending metadata to the user system for local storage. (Petition at 40-41; Salas, 11:42-12:6.) The patent

owner speculates that the synchronized "**local database metadata**" does not include the "access information" in Salas, but offers no support. As the Board observed, the patent owner "cites nothing in Salas to suggest that file metadata does *not* include access information." (Decision at 17 (italics in original).)

The patent owner rests its speculation on the fact that the passages in Salas describing local metadata synchronization do not specifically mention the "access information" metadata. (Resp. at 20-25.) But this is irrelevant. Salas's discussion of metadata synchronization also does not mention synchronizing the file name, file creation and modification date and application type – but this file metadata is indisputably sent to the client and appears on the eRoom page. Nothing in Salas suggests that the eRoom server specifically removes "access information" from the metadata it sends to the client in the synchronization process.

The gist of the patent owner's argument appears to be that the server in Salas does not send the access information because, according to the patent owner, the client does not use it to control access. But the access information is certainly used at the client. It specifies "which users may open, view, and edit the file" (Salas, 13:54-55), and is checked when a user attempts to download a file:

> If no edit lock has been set for a requested file, the access rights of the requesting user are checked. If the user has appropriate access

> rights, i.e., "can edit" if the user has indicated editing will occur or "can view" if the user has indicated only viewing will occur, the user will be allowed to retrieve the file. In the case of a user that indicated editing will occur, an edit lock is set before the file is downloaded.

(Salas, 12:34-39 (underlining added).) The patent owner fixates on where this particular access check takes place, but the claim language does not require that the check occur on the client as explained in **Part II.B** above. The issue is whether the access information is sent from the server to the client system. And it is.

As the above-quoted passage makes clear, when a file is downloaded to a client, there may be restrictions on how it may be used at the client after it is downloaded. Once the file is downloaded, the client launches the appropriate software application. (Salas, 2:42-43 ("An application capable of viewing the file is invoked.").) If the user's access privileges include "**can view**" but do not include "**can edit**," for example, the file will be downloaded and viewable but the user will not be allowed to modify its contents. (Tittel Reply Decl., Ex. 1105, ¶¶ 21-22.)

The patent owner's expert conceded that the user's local computer must enforce these access privileges when a selected file is downloaded to the user's system. (Jones Depo., Ex. 1016, at 12:24-14:18.) This is common sense – a user computer obviously cannot enforce access restrictions (such as "read only")

unless it knows what those restrictions are. (*Id.*; Tittel Reply Decl., Ex. 1015, ¶ 23.) The patent owner has no reasonable basis to dispute that the server in Salas sends the access control file metadata to the user system.

C. Parker Also Sends "Privacy Level Information" to the Client, and Assembles the Page "In Accordance With" that Information

Even if there was some question as to whether Salas sends "privacy level information" to the user system, this step is also disclosed by Parker. Parker further discloses displaying content data "in accordance with" received privacy level information and renders the claims obvious in combination with Salas.

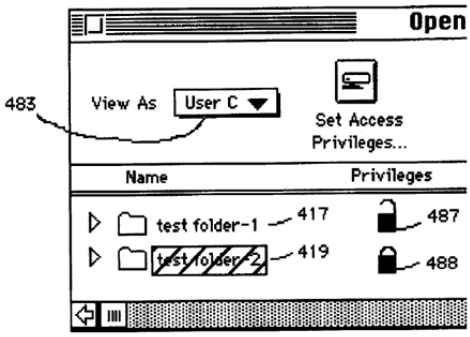

FIG. 7

As explained above, Figure 7 of Parker shows folders in a way that visually indicates the privilege level granted to the viewing user. (Parker, 11:32-35.) One of ordinary skill in the art would have understood that in Parker, like Salas, the server sends the access privilege information to the user system. This is because in order to show "test folder-1" and "test folder-2" to the user "in accordance with" (i.e. consistent with) the user's access privileges, the server must have sent those access privileges to the user computer. Both sides' experts are in full agreement on this point. (Jones Depo., Ex. 1016, at 21:23-23:12; Tittel Reply Decl., Ex. 1015, ¶¶ 23, 29-30.) The

fact that Parker expressly states that it displays the files and folders "in accordance with user C's access privileges" (Parker, 11:32-35) conclusively shows that those access privileges were transmitted from the server to the user system.

D. The Patent Owner's Attempt to Confuse the Displayed Content Data with Data in the Underlying Files Should Be Rejected

The patent owner argues that, even if the access privilege information Salas and Parker is sent to the user system, that information still does not qualify as "privacy level information." This is because, according to the patent owner, the access information in Salas and Parker is about access to underlying files or folders themselves, not the icons and other file information displayed to the user that correspond to the claimed "content data." (Resp. at 8-9, 15-16, 43-46.)

The problem with this argument is that it assumes limitations not recited in the claims. "Privacy level information" specifies at least one user who is permitted to view particular content on a cohesive diary page – it need not specify users who are not permitted. In Salas and Parker, the access information specifies that the viewing user is permitted to view the content items such as the file names and other file information. Parker further discloses that the visual appearance of those items may change based on the viewing user's access privileges. The use of the access information in this manner clearly satisfies the

"privacy level information" claim limitations, regardless of whether the access information also controls access to the underlying files.

The '316 patent does not require that "privacy level information" be used to hide information from display. For example, the specification explains that depending on the user's permissions, an object may be concealed or the browser "may present the object using an alternate representation." ('316, 5:63-67 (emphasis added).) This is precisely what Parker discloses. (Parker, 11:50-64.) This satisfies the claim language because the combination of Salas and Parker discloses generation of a diary page at the user system "in accordance with," *i.e.* consistent with, the access privilege information sent from the server. Nothing more is required by the claims under their broadest reasonable construction.

IV. SALAS AND PARKER ARE PROPERLY COMBINABLE

Finally, the patent owner argues that Salas and Parker cannot be combined. (Resp. at 56-60.) This argument is based on a gross mischaracterization of Salas.

The patent owner quotes a passage at Column 14, lines 42-50 of Salas describing how eRoom members can be assigned different roles (e.g. coordinator, reader), each role specifying a different level of access. (Resp. at 56-57.) There is no reason to combine Salas with Parker, according to the patent owner, because a user's access rights in Salas are determined by its assigned role, and thus, there

would be no need to show different access privileges among the displayed items, as described in Parker. (*Id*.)

But Salas makes clear that deriving access rights based on roles is simply one embodiment. In fact, an earlier sentence of the passage cited by patent owner, but not quoted in its Response, states that access levels can be assigned to each individual object. (Salas, 14:37-39.) Another passage in Salas makes clear that assignment of "access rights" based on roles is just an "alternative" to assigning access rights separately to each file on a user-by-user basis:

> Access rights may be checked over the network in many ways. For example, each object may be provided with a field or fields which identify users that may open, view, and edit the object. ***Alternatively***, an object may assign a pre-defined value to a field which controls access to the object. For example, a "coordinator" role may be defined and an object may identify that any coordinator may edit, open or view it.

(Salas, 13:31-37 (emphasis added); *see also id.*, 13:52-57 ("File metadata may include: . . . access information such as which users may open, view, and edit ***the file***…") (emphasis added).) Because assignment of access rights based on the "role" of a member is simply an "alternative" to assigning them separately for each file, the patent owner's arguments about combining Salas and Parker lack merit. Federal Circuit law is clear that "mere disclosure of alternative designs

does not teach away." *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

As the Board recognized, a person of ordinary skill in the art would have been motivated to combine Salas and Parker so that a user of Salas could visually ascertain which actions it is allowed to perform on the displayed files and folders. (Decision at 18; Petition at 47.) For example, Salas discloses that a user may, for a particular file, be able to view the file but may lack permission to edit it. (Salas, 12:34-39, 13:52-57.) Parker explains that files can be displayed to users with an "eye glasses" icon indicating read privileges, and if the user has write privileges, with a "writing instrument" icon. (Parker, 11:60-64.) Parker expressly discloses the advantage of this feature – allowing users to distinguish their access privileges based on how the items appear on their display. (*Id.*, 11:50-54; Tittel Reply Decl., Ex. 1015, ¶¶ 35-36.) A person of ordinary skill would have had ample motivation to combine Salas and Parker to produce a system that assembles and displays an eRoom page in accordance with the user's access privileges.

V. CONCLUSION

For all of the foregoing reasons, the Board should reject the patent owner's arguments and enter a final decision finding claims 1, 4, 17, 18, 20 and 26 invalid under 35 U.S.C. § 103 based on the prior art cited in the Petition.

Dated: January 20, 2015

Respectfully submitted,

COOLEY LLP
ATTN: Patent Group
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
Tel: (650) 843-5007
Fax: (650) 849-7400

By: /Mark R. Weinstein/
Mark R. Weinstein
Pro Hac Vice
Counsel for Petitioner
Facebook, Inc.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. section 42.6, that a complete copy of the attached **PETITIONER'S REPLY IN SUPPORT OF PETITION FOR INTER PARTES REVIEW and Exhibit Nos. 1015-1017,** are being served via electronic mail on the 20th day of January, 2015, the same day as the filing of the above-identified document in the United States Patent and Trademark Office/Patent Trial and Appeal Board, upon the patent owner's attorneys of record:

LEAD COUNSEL
Robert H. Hillman
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402
hillman@fr.com
IPR2014-00415@fr.com
[Ref. No. 37115-0002IP1]

BACK-UP COUNSEL
Lawrence K. Kolodney
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402
kolodney@fr.com

John S. Goetz
3200 RBC Plaza
60 South Sixth Street
Minneapolis, MN 55402
goetz@fr.com

/Mark R. Weinstein/
Mark R. Weinstein
Pro Hac Vice

Cooley LLP
ATTN: Patent Group
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
Tel: (650) 843-5007
Fax: (650) 849-7400