

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.
Petitioner

v.

REMBRANDT SOCIAL MEDIA, L.P.,
Patent Owner

Case IPR2014-00415
Patent 6,415,316

PETITIONER'S NOTICE OF APPEAL

Pursuant to 37 C.F.R. § 90.2(a) and 35 U.S.C. § 142, Petitioner Facebook, Inc. ("Facebook") hereby appeals to the United States Court of Appeals for the Federal Circuit from the Patent Trial and Appeal Board's ("Board's") Final Written Decision entered June 22, 2015 (Paper 33), and from all underlying and related findings, orders, decisions, rulings and opinions. A copy of the Board's Final Written Decision is attached hereto.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Facebook further indicates that the issues on appeal may include, but are not limited to: (1) the Board's determination that claims 1, 4, 17, 18 and 26 have not been shown to be unpatentable under 35 U.S.C. § 103 as obvious over the combination of U.S. Patent No. 6,233,600 to Salas ("Salas"), *More HTML for Dummies* by Ed Tittel and Stephen N. James ("Tittel (1997)") and U.S. Patent No. 5,729,734 to Parker ("Parker") (which are, respectively, designated Ex. 1005, Ex. 1006 and Ex. 1011 in the Final Written Decision); (2) the Board's determination that claim 20 has not been shown to be unpatentable under 35 U.S.C. § 103 as obvious over the combination of Salas, Tittel (1997), Parker and U.S. Patent No. 5,933,811 to Angles ("Angles") (designated Ex. 1012 in the Final Written Decision), and the findings, rulings and conclusions supporting or relating to those determinations. Those findings, rulings and conclusions include, but are not limited to: (1) the Board's findings that

conflict with the evidence of record and/or are not supported by substantial evidence; (2) the Board's failure to properly consider evidence of record; and (3) the Board's claim construction, and its alternative claim construction, of the term "privacy level information."

Facebook further reserves the right to challenge any finding or determination supporting or relating to the issues listed above, and to challenge any other issues decided adversely to Facebook in the Board's Final Written Decision or in any other order, decision, ruling, or opinion underlying the Final Written Decision.

Simultaneous with this submission, three (3) copies of this Notice of Appeal are being filed with the Clerk of the United States Court of Appeals for the Federal Circuit, together with the requisite fee in the amount of \$500. In addition, a copy of this Notice of Appeal is being filed with the Patent Trial and Appeal Board and served upon counsel of record for Rembrandt Social Media, L.P.

No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to Deposit Account No. 50-1283.

Petitioner's Notice of Appeal
IPR 2014-00415

Dated: August 21, 2015

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FACEBOOK, INC.,
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v.

REMBRANDT SOCIAL MEDIA, L.P.,
Patent Owner.

Case IPR2014-00415
Patent 6,415,316 B1

Before PHILLIP J. KAUFFMAN, JENNIFER S. BISK, and
MATTHEW R. CLEMENTS, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Facebook, Inc. (“Petitioner”) filed a Petition requesting an *inter partes* review of claims 1, 4, 17, 18, 20, and 26 (“the challenged claims”) of U.S. Patent No. 6,415,316 B1 (Ex. 1001, “the ’316 patent”). Paper 1 (“Pet.”). Rembrandt Social Media, L.P. (“Patent Owner”) filed a Preliminary Response. Paper 8 (“Prelim. Resp.”). On July 7, 2014, we instituted an *inter partes* review of the challenged claims of the ’316 patent on the alleged grounds of unpatentability. Paper 9 (“Dec. to Inst.”).

After institution of trial, Patent Owner filed a Patent Owner Response (Paper 17, “PO Resp.”) to which Petitioner filed a Reply (Paper 20, “Reply”). Patent Owner filed its Observations on the testimony of Petitioner’s Expert, Mr. Ed Tittel (Paper 25) to which Petitioner responded (Paper 28). Patent Owner also filed a Statement Concerning Petitioner’s New Argument (Paper 29) to which Petitioner responded (Paper 30).

Oral hearing was held on April 6, 2015.¹

The Board has jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

Petitioner has not shown, by a preponderance of the evidence, that any challenged claim of the ’316 patent is unpatentable.

A. *Related Proceedings*

Petitioner and Patent Owner indicate that the ’316 patent is involved in one co-pending district court case: *Rembrandt Social Media, L.P. v. Facebook, Inc.*, Case No. 13-CV-00158 TSE (E.D. Va.), filed February 4,

¹ A transcript of the oral hearing is included in the record as Paper 32 (“Tr.”).

2013, and served on February 6, 2013. Pet. 1; Paper 5, 2. The case is currently stayed pending an appeal to the U.S. Court of Appeals for the Federal Circuit. Pet. 1; Paper 5, 2.

B. The '316 Patent

The '316 patent relates generally to computer networks and, specifically, to a method and apparatus for implementing a diary of web pages on a computer network. Ex. 1001, 1:19–22. According to the '316 patent, there was a need for a way for users to keep track of locations that they have visited in a more visual and memorable way. *Id.* at 1:65–67.

To address this need, the '316 patent discloses a method and apparatus for implementing a web page diary. *Id.* at Title. The diary allows a diary owner to organize information, including links to websites and other content, like a book. *Id.* at 4:62–64. A diary has a book design that determines the graphics and layout of content within pages of a diary. *Id.* at 5:9–10. The book design includes page designs. *Id.* at 5:11. Page designs define the visual and audible appearance of the page, provides slots for content entries or objects, and determines the size and location of such slots within the page. *Id.* at 5:14–17. Diary owners can insert content objects into pages. *Id.* at 5:18. When a content object is inserted into a page, it is displayed in one of the slots provided by the page design of the page. *Id.* at 5:19–20. A content object can be any type of object, including text, bookmarks, images, programs, movies, etc. *Id.* at 5:20–22. The book design and book content are independent. *Id.* at 5:26–27. Diary software dynamically combines the diary's book design and book content to present a cohesive view of the “book.” *Id.* at 5:32–34. The diary may enforce privacy rules on any part or

level of the book—i.e., book, section, page, or individual content object. *Id.* at 5:55–57.

Figure 1(b) is reproduced below.

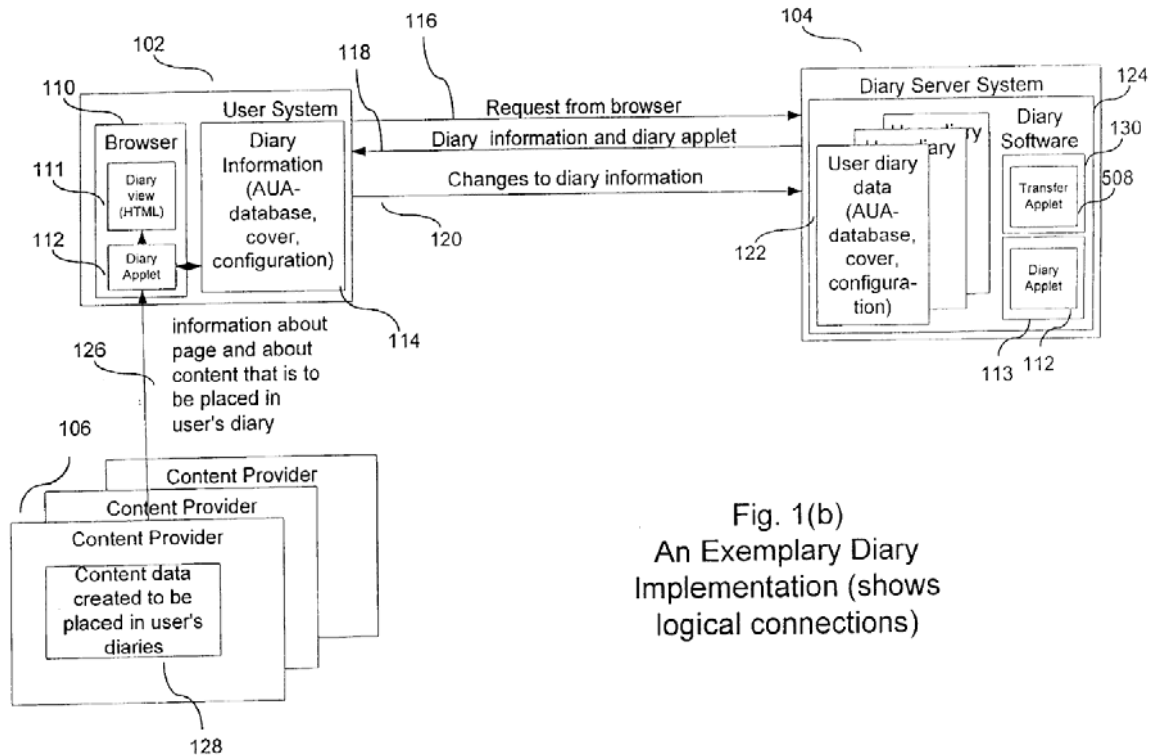


Fig. 1(b)
An Exemplary Diary
Implementation (shows
logical connections)

Figure 1(b) is a block diagram of a computer network in accordance with an embodiment of the invention of the '316 patent that illustrates how a diary is viewed or edited. Ex. 1001, 6:30–32. The system comprises user system 102, diary server 104, and one or more content providers 106. *Id.* at 6:32–34. User system 102 can be the system of the owner of the diary or of a person who wishes to view the diary. *Id.* at 6:34–36. User system 102 includes browser 110, which is shown executing diary applet 112 downloaded from diary server 104, and diary information 114, which contains information about the diary of this diary owner. *Id.* at 6:36–40. Diary applet 112 generates HTML 111 for the web pages of the user's diary, which are preferably displayed by browser 110. *Id.* at 6:40–43.

Diary server 104 includes diary information 122 (including diary information for a plurality of users' diaries), diary software 124, an original copy of diary applet 112, and the HTML needed to display an initial web page. Ex. 1001, 6:44–48.

A user begins viewing or editing a diary by viewing web page 113 available from diary server 104. *Id.* at 6:56–59. Web page 113 allows the user to indicate that he wishes to view or edit a specified diary. *Id.* at 6:59–60. This indication begins execution of diary applet 112, which sends a request 116 to diary server 104 for the contents of the specified diary. *Id.* at 6:60–62. When diary software 124 receives request 116 from browser 110, it sends information 118, including diary information, appropriate for the specified diary to the user system. *Id.* at 6:63–67. Diary applet 112 reads diary information 114 received from diary server 104 and generates HTML 111 for one or more diary pages in accordance with diary information 114. *Id.* at 7:1–3. Diary applet 112 instructs browser 110 to display the diary page(s) in the browser window. *Id.* at 7:3–5.

C. Illustrative Claim

Of the challenged claims, claims 1 and 17 are independent. Claim 1 is reproduced below:

1. A method of organizing information for display, comprising:

- sending from a diary server to a user system, a diary program capable of being executed by a browser in the user system;

- sending diary information from the diary server to the user system, the information comprising content data including an associated time, a page design to specify the presentation of the content data, and configuration information for controlling

behavior of a cohesive diary page, the configuration information including privacy level information;

assembling the cohesive diary page by dynamically combining the content data and the page design in accordance with the configuration information for the cohesive diary page to be displayed by the diary program running in the browser;

receiving by the diary server at least one request for at least one change concerning the diary information, from the diary program in the user system; and

sending, by the diary server to the user system, new diary information for changing the cohesive diary page.

Ex. 1001, 23:44–65.

D. Prior Art Supporting the Instituted Challenges

Petitioner relies upon the following references:

| | | | |
|--|-----------------|---------------------------------------|----------|
| Salas | US 6,233,600 B1 | May 15, 2001 (filed July 15, 1997) | Ex. 1005 |
| ED TITTEL & STEPHEN N. JAMES, MORE HTML FOR DUMMIES, xv-xxv, 57–84, 153–180, 341–364 (2d ed. 1997) (“Tittel (1997)”) | | | Ex. 1006 |
| Parker | US 5,729,734 | Mar. 17, 1998 | Ex. 1011 |
| Angles | US 5,933,811 | Aug. 3, 1999 | Ex. 1012 |

E. The Instituted Grounds of Unpatentability

We instituted *inter partes* review on the following grounds:

| References | Basis | Claims Challenged |
|--|-------|----------------------|
| Salas, Tittel (1997), and Parker | § 103 | 1, 4, 17, 18, and 26 |
| Salas, Tittel (1997), Parker, and Angles | § 103 | 20 |

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are interpreted according to their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 1281–82 (Fed. Cir. 2015) (“Congress implicitly adopted the broadest reasonable interpretation standard in enacting the AIA,” and “the standard was properly adopted by PTO regulation.”). Under the broadest reasonable interpretation, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

In the Decision to Institute, we interpreted various claim terms of the ’316 patent as follows:

| Claim Term (Claims) | Interpretation |
|---|---|
| “cohesive diary page” (1 and 17) | a page in which the content data and the page design are fully integrated for display |
| “configuration information” (1 and 17) | information that determines what information will be displayed to a user who is viewing a cohesive diary page |

See Dec. to Inst. 8–9. The parties do not dispute these interpretations in their Patent Owner Response and Reply. We adopt the above claim constructions based on our previous analysis, and, based on the complete record now before us, see no reason to deviate from those constructions for purposes of this decision.

In our Decision to Institute, we also construed “privacy level information” to mean “configuration information that describes or specifies

at least one user or category of users permitted to view particular content on a cohesive diary page.” Dec. to Inst. 9–10.

Patent Owner argues that our construction “is too broad because it covers information that merely specifies whether a particular individual user has access to certain content, and does not specify a level of access—the universe of users that have access to certain content.” PO Resp. 50.

According to Patent Owner, “privacy level information” should be construed to mean “configuration information that describes or specifies the universe of one or more users or categories of users permitted to view particular content on a cohesive diary page.” *Id.* at 49 (emphasis added).

Petitioner counters that (1) the Specification does not use the word “universe;” (2) the claims themselves are written from the perspective of a single “user” system; (3) Figure 4(d) describes an unclaimed feature that should not be read into the claims; and (4) the claims use “level” in singular form and, therefore, information about only one user falls squarely within the broadest reasonable construction of privacy level information. Pet. Reply 1–4.

Having reviewed the parties’ arguments and evidence, we are persuaded that our initial construction of “privacy level information” is incorrect. We are not persuaded, however, that a “privacy level” describes or specifies a “universe” or “category” of users permitted to view particular content. Specifically, we disagree with Patent Owner’s contention that the examples of privacy levels disclosed in the ’316 patent reflect a universe, or level, of permitted users (PO Resp. 51–52 (citing Ex. 1001, Fig. 4d, 10:36–41 (“world, friend, close friend, best friend, and owner”), 18:8–29 (“various classes of persons”))). Patent Owner’s construction requires that a “privacy

level”—e.g., “owner”—specify a universe or category of users—e.g., user1. The ’316 patent, however, describes a “privacy level” as a characteristic of the diary page, not as a group of users/viewers of the diary page. Ex. 1001, 10:37–39 (“Window 450 allows a user of the diary to set a privacy level *at which the diary is operating.*”) (emphasis added). As described in the ’316 patent, the “privacy level” at which the diary page is operating does not depend upon the identity of the user/viewer of the diary page. For example, the ’316 patent discloses:

Button 438 allows *any* user to change the privacy level on which the diary is operating, provided that the user is able to authenticate himself at the desired level. Authentication is preferably performed by requiring the user to enter a password required to change the privacy level to a certain level.

Ex. 1001, 10:29–33 (emphasis added). The ’316 patent further discloses that “[a]ny user can change the privacy level, provided that he is able to authenticate himself, e.g., via a password supplied in area 456.” *Id.* at 10:41–43 (emphasis added). In both passages, the user is required to enter only a password, not a username. The ’316 patent also describes the following example: “If the user selects the owner privacy level (button 455) and can supply a correct password in area 45[6], after clicking OK button 45[7], buttons 440, 442, 444, and 446 of FIG. 4(a) become available to the owner.” *Id.* at 10:45–48. Thus, any user that can provide the “correct password” can view the diary at the “owner” privacy level. This is consistent with the disclosure that the password required to access a given privacy level does not depend upon the identity of the viewer/user of the diary page:

Button 473 [of Fig. 4(f)] allows the owner to change passwords for the five privacy levels that are shown in FIG. 4(d). *All users*

must enter an appropriate *password* before diary applet 112 will generate HTML (for content objects) or otherwise reveal the existence of objects having those privacy levels (e.g., for named sections in the named section list 404).

Ex. 1001, 11:24–29 (emphases added); *see also id.* at 17:22–23 (“the passwords required for *users* to access the different privacy levels” (emphasis added)), 18:25–27 (“The diary applet of the described embodiment asks for *a password* to determine a privacy level of a person.” (emphasis added)).

Under our initial construction of Patent Owner’s proposed construction, a particular “privacy level” would be available only to a particular user, or users, within the “universe” or “category” of users specified for that privacy level. That is inconsistent, though, with the ’316 patent’s teaching that a diary page can be set to a privacy level by *any* user that enters the correct password for that privacy level. Accordingly, neither our construction nor Patent Owner’s construction can be correct.

The ’316 patent uses the term “privacy level” in two contexts: it describes a diary page “operating” at a privacy level (Ex. 1001, 10:37–41), and it describes content objects “having” a privacy level (*id.* at 11:25–29). The “privacy level information” being claimed is part of “configuration information for controlling behavior of a cohesive diary page.” Ex. 1001, Claims 1, 17. The ’316 patent discloses that an owner can assign a “privacy level” to pages, sections, and content objects to control whether they are visible at the privacy level at which the diary page is operating. Ex. 1001, 18:12–15 (“[T]he owner of the diary can control what is presented to various classes of persons via his diary” by “identify[ing] various pages, sections, or content objects as having a certain privacy level.”). Only content data with a

privacy level lower than or equal to the privacy level at which the diary page is operating is displayed. *Id.* at 18:17–20 (“[T]he diary applet generates HTML only for those portions of the diary that have a privacy level lower than or equal to the privacy level of the viewer who is viewing the diary.”).² Specifically, “[t]he person viewing a diary page can only view that content marked as appropriate for him and other people at his privacy level.” *Id.* at 18:23–25. Similarly, “[a]ll users must enter an appropriate password before diary applet 112 will generate HTML (for content objects) or otherwise reveal the existence of objects having those privacy levels (e.g., for named sections in the named section list 404).” *Id.* at 11:25–29. The privacy level information for a content object, therefore, specifies the privacy level at or above which the diary page must be operating in order for that content object to be displayed.

Accordingly, we construe “privacy level information” to mean “configuration information that describes or specifies a level at, or above, which particular content data is displayed as part of a cohesive diary page.”

*B. Claims 1, 4, 17, 18, and 26 –
Obviousness over Salas, Tittel (1997), and Parker*

Petitioner argues that claims 1, 4, 17, 18, and 26 are unpatentable under 35 U.S.C. § 103(a) as obvious over Salas, Tittel (1997), and Parker. Pet. 24–56. In support of this ground of unpatentability, Petitioner relies upon the Declaration of Edward R. Tittel. *Id.* (citing Ex. 1002).

² Although these passages refer to the “privacy level of the viewer,” the ’316 patent clarifies that the “privacy level” at which the diary page operates depends solely upon the password entered, not upon the identity of the viewer. *Id.* at 18:25–27 (“The diary applet of the described embodiment asks for a password to determine a privacy level of a person.”).

Patent Owner argues that (1) neither Salas's access control information nor Parker's modified icons teach "privacy level information," as it was construed in the Decision to Institute (PO Resp. 9–17, 46–47); (2) neither Salas nor Parker teach sending "privacy level information," as properly construed (*id.* at 55); (3) Salas's access control information is not sent to the user system, as required by claims 1 and 17 (*id.* at 18–43); (4) Parker's access privileges are not sent to the user system, as required by claims 1 and 17 (*id.* at 43–45); and (5) a person of ordinary skill in the art would not have combined Salas and Parker because "in Salas every member of the e-room has viewing permission, both of the underlying files and the icons themselves" (*id.* at 56–60).

Upon consideration of the parties' contentions and supporting evidence, we determine that Petitioner has not established, by a preponderance of the evidence, that claims 1, 4, 17, 18, and 26 are unpatentable as obvious over Salas, Tittel (1997), and Parker.

1. Salas (Exhibit 1005)

Salas describes a system and method for providing a collaborative work environment that includes servers and client workstations. Ex. 1005, Abstract. Client workstations receive data objects from one or more servers and combine the received data objects with stored templates to render HTML pages representing at least a portion of a common project. *Id.* Users may view, edit, and create common documents for the projects and upload them to the server using a drag-and-drop interface. *Id.*

Figure 4 of Salas is reproduced below.

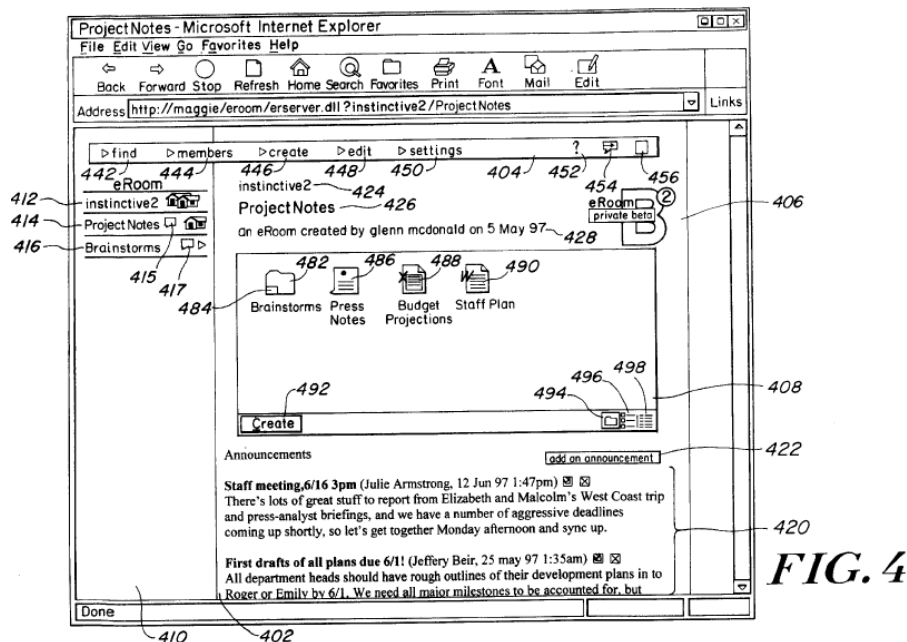


Figure 4 depicts an embodiment of eRoom page 60 that a user might encounter while using a browser program. Ex. 1005, 5:21–23. The eRoom page has five major elements: page element 402, navigation bar 404, graphical identifier 406, item box 408, and shortcut list 410. *Id.* at 5:24–27.

Page element 402 may include sub-elements. *Id.* at 5:28. In the embodiment depicted, discussion 420 is embedded within page element 402 and facility 422 allows a viewer to contribute to discussion 420. *Id.* at 5:28–31. Embedded discussion 420 and contribution facility 422 may be implemented as ActiveX controls, a JAVA applet, or other means. *Id.* at 5:31–34.

Graphical identifier 406 is used to pictorially identify the viewed page—e.g., a corporate logo or other organizational identifier. *Id.* at 5:54–56. Graphical identifier 406 may be static or dynamic (such as a javascript or ActiveX control). Ex. 1005, 5:56–58.

Item box 408 collects and displays items associated with the project represented by page 402. *Id.* at 5:60–61. In the embodiment shown in Figure 4, item box 408 contains folder of items 482, notes file 486, spreadsheet file 488, and word processing file 490, each of these being links to other eRoom pages or files. *Id.* at 5:61–65. Item box 408 may also include version organizers, discussion, links, vote/poll pages, a facility for creating new items 492, and icons that control how items are displayed in item box 408. *Id.* at 5:65–6:4. In Figure 4, three icons are provided: “icon display” icon 494 (currently selected) which causes items to be displayed as large icons with identifying text underneath; “list display” icon 496 which causes items to be displayed as small icons with identifying text to one side of the icon; and “report display” icon which causes items to be displayed as a list. *Id.* at 6:4–10. The displayed list may be alphabetized, ordered by size of item, ordered by creation date, ordered by modification data, or ordered by some other data field associated with each item. *Id.* at 6:10–13.

When a user requests the URL for an eRoom, the server returns an HTML file, called a “wrapper” file, that contains an object ID that is used by the client workstation to look up the object in the local database stored on the client workstation. *Id.* at 6:40–52. The local database includes information about the object, including which eRoom template to use and information regarding any “children” the object may have—e.g., items contained in item box 408. *Id.* at 6:52–56.

Generation, display, and management of an eRoom are controlled by a “page builder” application residing on the client workstation. *Id.* at 6:57–59. In some embodiments, the page builder application may be an ActiveX control or a COM object. *Id.* at 6:61–63.

2. *Tittel (1997) (Exhibit 1006)*

Tittel (1997) describes the use of style sheets and ActiveX components. Ex. 1006, 58, 176, 341. Tittel (1997) describes how ActiveX components are automatically downloaded from a server if the object is not already on a user's machine. *Id.* at 341. Tittel (1997) also describes how style sheets define a set of layout parameters for a document to ensure that similar elements in the document appear uniformly. *Id.* at 176.

3. *Parker (Exhibit 1011)*

Parker describes a file service administration method in a computer network having an administrator account and a user account. Ex. 1011, Abstract. The computer network includes at least one sharepoint that is selectively accessible through the user account. *Id.* Parker uses the term “sharepoint” to mean an item—e.g., file, folder, volume, hard disk—that is capable of being shared by network users. *Id.* at 2:24–26. The sharepoint is displayed in accordance with the user's privileges by being represented in a first state when the access privilege for the user is enabled and being represented in a second state when the access privilege for the user is not enabled. *Id.* at Abstract.

Figure 7 of Parker is reproduced below.

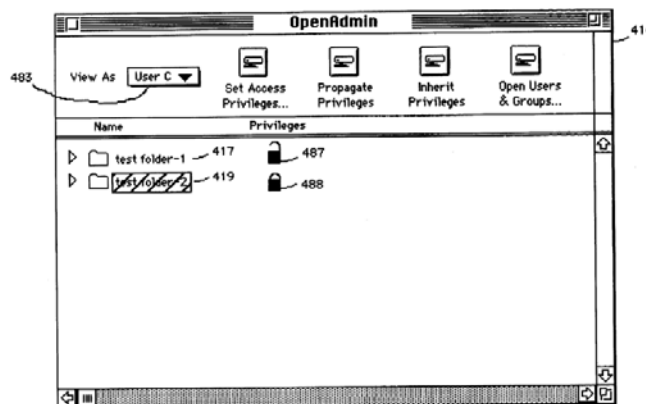


FIG. 7

Figure 7 shows a graphical user interface window in which two sharepoints are displayed in accordance with a user's access privileges. *Id.* at 5:29–32, 11:20–22. As depicted in Figure 7, “test folder-1” (417) is shown as accessible to the user by open lock icon 487 and because it is not ghosted, grayed out, or hidden. *Id.* at 11:40–44. In contrast, “test folder-2” (419) is in a ghosted state indicating that the user does not have access rights to “test folder-2.” *Id.* at 11:44–46. In other embodiments, “test folder-2” (419) may be grayed out, shaded, or hidden altogether. *Id.* at 11:46–47.

4. Analysis

Petitioner has not established, by a preponderance of the evidence, that claims 1, 4, 17, 18, and 26 are unpatentable as obvious over Salas, Tittel (1997), and Parker. Pet. 24–56.

Independent claim 1 recites “sending diary information from the diary server to the user system, the information comprising content data including an associated time, a page design to specify the presentation of the content data, and configuration information for controlling behavior of a cohesive diary page, the configuration information including privacy level information.”

For “content data including an associated time,” Petitioner relies upon entries under “Announcements,” and the representations of items in item box 408. *Id.* at 32–33. The entries are time-stamped, and the representations of items include a creation date and a modification date; both, therefore, “includ[e] an associated time,” as recited. *Id.* at 33–35.

For “page design,” Petitioner relies upon the “wrapper” file sent by the eRoom server to the user system. *Id.* at 35–36. The “wrapper” file “specif[ies] the presentation of the content data,” by specifying an eRoom

template to be used to assemble the page. *Id.* at 35–37. Petitioner also argues that it would have been obvious to modify the “wrapper” file of Salas to include a URL identifying an eRoom template stored on the eRoom server. *Id.* at 37–39 (citing Ex. 1002 (Tittel Decl.) ¶¶ 20–23, 73–75).

For “configuration information including privacy level information,” Petitioner relies upon Salas’s teaching of entries in a database schema including three separate groups (*see, e.g.*, Ex. 1006, 14:30–54) and upon file metadata. Pet. 40–41. Petitioner further relies upon Salas’s teaching that file metadata includes “access information such as which users may open, view and edit the file” and is sent to client workstation 12 when synchronizing “local database metadata.” *Id.*

Patent Owner argues that Salas’s “access information” is not “privacy level information,” as that term was construed in our Decision to Institute, because it does not relate to whether the user may view content on a cohesive diary page. PO Resp. 9. As Patent Owner explains, the “content data” relied upon by Petitioner are the “Announcements” and displayed file icons and associated file information, but not the underlying files themselves. *Id.* at 12–14 (citing Dec. to Inst. 15; Ex. 2013 (Tittel Deposition), 18:14–19:5, 22:25–23:6). According to Patent Owner, Salas’s “access information” file metadata—“such as which users may open, view, and edit the file” (Ex. 1006, 13:54–55)—pertains only to the files themselves, and does not concern the whether the user may view the recited “content data”—i.e., the Announcements and the file icons and associated file information. *Id.* at 14–15.

Petitioner counters that 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.” Pet. Reply 5–6 (quoting Ex. 1005, 13:52–57).

We are persuaded by Patent Owner’s arguments. As discussed above, we construe “privacy level information” to mean “configuration information that describes or specifies a level at, or above, which particular content data is displayed as part of a cohesive diary page.” Salas teaches that file metadata includes “access information such as which users may open, view, and edit *the file*.” Ex. 1005, 13:54–55 (emphasis added). As Patent Owner correctly points out, the file is not “particular content on a cohesive diary page,” as our construction requires; the only “content on a cohesive diary page” related to the file is an icon. Even if the file was “content on a cohesive diary page,” Salas’s access information would still not be “privacy level information” because it does not describe or specify a level at, or above, which the file is displayed as part of a cohesive diary page. In that regard, Petitioner relies upon Parker’s teaching of visually indicating a user’s access level by ghosting out, greying out, shading, or hiding a folder icon and name. Pet. 43–46. According to Petitioner,

This would predictably result in the eRoom system of Salas in which the ActiveX control running in the web browser obtains the file metadata identifying the access privileges of the user (Salas, 13:52-57), and then uses it to generate the eRoom page with an item box (408) listing each file with a visual indication consistent with the viewing user’s access privileges (*e.g.*[,] fully visible, ghosted, grayed out, with a “lock icon,” etc.). (Tittel Decl. ¶ 88.)

Pet. 46. Thus, Petitioner contends that by specifying a category of users permitted to open/view/edit non-content (i.e., a file), Salas’s access information also specifies a level (e.g., users-with-view-privileges level) at,

or above, which the file is displayed as part of a cohesive diary page. For example, the technique of Parker may be used to hide the icon of a file whose file metadata specifies that the user does not have view privileges (i.e., is not at, or above, the users-with-view-privileges level). Ex. 1011, Figs. 6, 7, 11:4-47.

As an initial matter, Salas's user-based privileges are inconsistent with the description of a "privacy level" in the '316 patent. As discussed above when construing "privacy level information," neither the privacy level at which a content object is viewable nor the the privacy level at which a diary is operating depend upon the identity of a particular user. Ex. 1001, 10:29–33, 10:41–43, 11:24–29, 17:22–23, 18:25–27. The "privacy level information" for a content object specifies a level at which, not a user to whom, the object becomes visible. *Id.* Salas's access information, in contrast, specifies users to whom the file is openable, viewable, and/or editable. Ex. 1005, 13:52–57.

Even assuming that the group of users who can view *a file* constitutes a "privacy level," Salas's access information still would not be "privacy level information" because it would describe only a level at which non-content (i.e., a file)—not *content* (i.e., the icon associated with that file)—is displayed.

Accordingly, we are not persuaded that Petitioner has demonstrated, by a preponderance of the evidence, that the combination of Salas, Tittel (1997), and Parker teaches "privacy level information," as recited in independent claims 1 and 17.

a. Alternative construction of “privacy level information”

Even if we were to modify our construction of “privacy level information” in the Decision to Institute only slightly to mean “configuration information that describes or specifies at least one ~~user or~~ category of users permitted to view particular content on a cohesive diary page,” we would still not be persuaded that the combination of Salas and Parker teaches “privacy level information.” Such a construction would be appropriate because our construction of “privacy level information” in the Decision to Institute is too broad. We agree with Patent Owner that “privacy level information” must be more than a password specific to a single user/viewer. As Patent Owner points out, the ’316 patent distinguishes a “privacy level” from a user-specific password. PO Resp. 50 (citing Ex. 1001, 9:2–4 (“The configuration information, such as privacy level, passwords, or the full name of the user, is user-specific.”)); *see also id.* at 50–51 (citing Ex. 1001, 10:29–33, 17:21–23). Thus, although a privacy level may include only one user—e.g., “owner”—it must be capable of including multiple users, which a user-specific password is not. The use of “level” in the singular does not suggest otherwise. The fact that information relating to only one level, as opposed to a plurality of levels, meets the claim limitation does not imply, as Petitioner suggests, that a single user may be a “level.”

Even under this alternative construction, we would still be persuaded by Patent Owner’s arguments that Salas and Parker do not teach “privacy level information.” Salas teaches that file metadata includes “access information such as which users may open, view, and edit *the file*.” Ex. 1005, 13:54–55 (emphasis added). As Patent Owner correctly points out, the file is not “particular content on a cohesive diary page,” as our

construction requires. The only “content on a cohesive diary page” related to the file is an icon and metadata (e.g., filename). The question, then, is whether Salas’s access information describes or specifies at least one category of users permitted to view the icon representing the file and/or the file’s metadata. In that regard, Petitioner relies upon Parker’s teaching of visually indicating a user’s access level by ghosting out, greying out, shading, or hiding a folder icon and name. Pet. 43–46. According to Petitioner,

This would predictably result in the eRoom system of Salas in which the ActiveX control running in the web browser obtains the file metadata identifying the access privileges of the user (Salas, 13:52-57), and then uses it to generate the eRoom page with an item box (408) listing each file with a visual indication consistent with the viewing user’s access privileges (*e.g.*[,] fully visible, ghosted, grayed out, with a “lock icon,” etc.). (Tittel Decl. ¶ 88.)

Pet. 46. Thus, by specifying a category of users permitted to open/view/edit non-content (i.e., a file), Salas’s access information also specifies the category of users permitted to view particular content (i.e., the icon representing that file) on a cohesive diary page. For example, the technique of Parker may be used to hide the icon of a file whose file metadata specifies that the user may not view it.

In the proposed combination, however, the file metadata determines only indirectly which icons (“content”) the user is permitted to view. The file metadata itself describes/specifies access privileges only of non-content—i.e., the files themselves. It is not enough that that information may be used, in the assembling step, to determine what content (e.g., icon) the user is permitted to view because our construction requires that the

“privacy level information” describe or specify at least one category of users permitted to view *particular content*. Moreover, it is not enough for the file metadata to determine the appearance of icons, small icons, or lists in item box 408 (e.g., the visual appearance of items in item list box 408 based upon file metadata such as filename, creation date, modified date, and which application should be used to open and edit the file (*see, e.g.*, Ex. 1005, Fig. 4, 6:4–13)), because that information does not describe or specify a category of users permitted to *view* those icons or lists.

Accordingly, even under this alternative construction, we are not persuaded that Petitioner has demonstrated, by a preponderance of the evidence, that the combination of Salas, Tittel (1997), and Parker teaches “privacy level information,” as recited in independent claims 1 and 17.

5. Conclusion

Petitioner has not demonstrated, by a preponderance of the evidence, that claims 1, 4, 17, 18, and 26 are unpatentable as obvious over Salas, Tittel (1997), and Parker.

C. Claim 20 – Obviousness over Salas, Tittel (1997), Parker, and Angles

Petitioner argues that claim 20 is unpatentable under 35 U.S.C. § 103(a) as obvious over Salas, Tittel (1997), Parker, and Angles. Pet. 56–59. Claim 20 depends indirectly from independent claim 17. Petitioner has not demonstrated, by a preponderance of the evidence, that independent claim 17 is unpatentable as obvious over Salas, Tittel (1997), and Parker for the reasons discussed above. Petitioner relies upon Angles only for the additional limitation recited in claim 20. *Id.* Because Angles does not cure the deficiency noted above with respect to “privacy level information,” Petitioner also has not demonstrated, by a preponderance of the evidence,

that claim 20 is unpatentable as obvious over Salas, Tittel (1997), Parker, and Angles.

III. CONCLUSION

Petitioner has not shown, by a preponderance of the evidence, that claims 1, 4, 17, 18, 20, and 26 of the '316 patent are unpatentable under 35 U.S.C. § 103.

IV. ORDER

Accordingly, it is

ORDERED claims 1, 4, 17, 18, 20, and 26 are not held unpatentable;
and

FURTHER ORDERED that, because this is a Final Written Decision, the parties to the proceeding seeking judicial review of the Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

IPR2014-00415
Patent 6,415,316 B1

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CERTIFICATE OF FILING

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(b), the undersigned hereby certifies that on August 21, 2015, the original of the foregoing Notice of Appeal was filed with the Director of the United States Patent and Trademark Office by Priority Mail Express, at the following address:

Director of the United States Patent and Trademark Office
c/o Office of General Counsel
10B20, Madison Building East
600 Dulany Street
Alexandria, VA 22314-5793

In addition, pursuant to 37 C.F.R. § 90.2(a)(1) and 37 C.F.R. § 42.6(b), the undersigned certifies that on August 21, 2015, a copy of the foregoing Notice of Appeal was filed electronically with the Board through the Board's Patent Review Processing System.

In addition, pursuant to 37 C.F.R. § 90.2(a)(2) and Federal Circuit Rule 15(a)(1), the undersigned certifies that on August 21, 2015, the requisite fee for the appeal and three (3) true and correct copies of the foregoing Notice of Appeal were filed with the Clerk of Court of the United States Court of Appeals for the Federal Circuit by hand-delivery, at the following address:

Daniel E. O'Toole
Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW, Room 401
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CERTIFICATE OF SERVICE

Pursuant to 37 CFR § 42.6(e)(4) and 37 C.F.R. § 90.2(a)(3)(ii), the undersigned certifies that on August 21, 2015, a true and correct copy of the foregoing the Notice of Appeal was served via email on the patent owner by serving the correspondence email addresses of record below:

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