

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Reexam of U.S. Patent No.

6,788,314

Control No.: 95/001,577

Filed: March 16, 2011

For: **Attention Manager for Occupying
the Peripheral Attention of a Person
In the Vicinity of a Display Device**

Confirmation No.: 1540

Art Unit: 3992

Examiner: Hughes, Deandra M.

Atty. Docket: 2230.0001L (2607.335REX1)

**Comments by Third Party Requester to Patent Owner's Response in
Inter Partes Reexamination under 37 C.F.R. § 1.947**

Mail Stop "*Inter Partes* Reexam"

Central Reexamination Unit
Commissioner for Patents
P.O. Box 1450
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Sir:

Pursuant to 37 C.F.R. § 1.947, the Third Party Requester Apple Inc. ("Requester" or "Apple") timely submits herewith Comments to Patent Owner Interval Licensing's ("Patent Owner") Response to First Office Action Under 37 C.F.R. §1.956 filed on July 26, 2011 ("Response"). Requester's comments are directed to points and issues covered by the Office Action mailed May 19, 2011 ("Office Action") and points and issues raised in Patent Owner's Response.

In the Request for *Inter Partes* Reexamination filed on March 16, 2011 ("Request"), Requester presented three groups of rejections of claims 1-15 of the '314 patent. The first group utilized U.S. Patent No. 5,748,190 to Kjorsvik ("Kjorsvik") as the primary reference. The second group utilized U.S. Patent No. 5,913,040 to Rakavy ("Rakavy") as the primary reference. The third group utilized the combination of Kjorsvik and Rakavy. The specific rejections are summarized below:

| | | |
|------------|-------------------------|----------------------------------|
| GROUP I: | § 102(e) Kjorsvik | 1, 3, 5, 7, 9, 10, 12, 13 and 15 |
| | § 103 Kjorsvik + Salm | 2, 4, 6, 8, 11 and 14 |
| GROUP II: | § 102(e) Rakavy | 1, 3, 5, 7, 9, 10, 12, 13 and 15 |
| | § 103 Rakavy + Salm | 2, 4, 6, 8, 11 and 14 |
| GROUP III: | § 103 Rakavy + Kjorsvik | 1, 3, 5, 7, 9, 10, 12, 13 and 15 |

Requester's comments comprise five parts, the first three relating to the three groups of rejections, the fourth relating to the newly presented claims, and the fifth relating to the proper priority date for the claims of the '314 patent.

First, in the Office Action, the Examiner refused to adopt the proposed anticipation rejection over Kjorsvik. Instead, the Examiner initiated a modified rejection of claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as obvious over Kjorsvik. Patent Owner traversed the Examiner initiated rejection in its Response filed on July 26, 2011. Requester's comments on points raised by Patent Owner in its Response regarding the Kjorsvik obviousness rejection are provided in Section I.A. below. Requester's comments on points raised by the Examiner in the Office Action regarding Requester's proposed anticipation rejection based on Kjorsvik are provided in Section I.B below.

Second, in the Office Action, the Examiner further refused to adopt the proposed anticipation and obviousness rejections based on Rakavy (Group II) made in the Request. In its Response, Patent Owner provided specific comments related to the Examiner's decision to not adopt the Rakavy rejections. Requester's comments on points raised by the Examiner and Patent Owner regarding the proposed Rakavy rejections are provided in Section II below.

Third, the Examiner further refused to adopt the proposed obviousness rejections based on the combination of Rakavy and Kjorsvik made in the Request. Requester's comments related to the Examiner's decision are provided in Section III below.

Fourth, Patent Owner amended the original claim set to cancel claims 5 and 6 and add new claims 16 through 31. In an *Inter Partes* Reexamination, a requester is permitted to cite additional prior art which is necessary to rebut a response of the patent owner. 37 C.F.R. § 1.948(a)(1). A requester is permitted under 37 C.F.R. 1.948(a)(1) to provide new proposed rejections, where such rejections are necessitated by patent owner's amendment of the claims. MPEP 2666.05. Accordingly, proposed rejections for newly presented claims 16-31 are provided in Section IV below and in the attached Appendix.

Finally, Requester's comments relating to the proper priority date for the claims of the '314 patent are provided in Section V below.

I. REJECTIONS OVER KJORSVIK

A. **The adopted rejections of the claims as obvious over Kjorsvik and Kjorsvik in combination with Salm should be maintained**

In the Office Action, the Examiner initiated a rejection of claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as being obvious over Kjorsvik. Patent Owner, in its response, traversed the rejection by arguing two points. Patent Owner argued that "Kjorsvik and Salm Fail to Teach or Suggest the Claimed Display 'In an Unobtrusive Manner That Does Not Distract a User of the Display Device ... From a Primary Interaction.'" (Response, pp. 18-24.) Patent Owner's position is based on a claim construction that is contrary to the explicit disclosure of the specification, the claims, and the intrinsic record. As set forth herein, Requester's construction, adopted by the Examiner, is the proper construction. Patent Owner additionally argued that "Kjorsvik and Salm Fail to Teach or Suggest the Claimed 'Without the Content Data Being Aggregated at a Common Physical Location Remote from the Content Display System.'" (Response, pp. 9-17.) As set forth below and in the Declaration of Dr. Mark E. Crovella, a professor of computer science at Boston University, Patent Owner's position is based on a misunderstanding of the technical teachings of Kjorsvik, as those teachings would be appreciated by a person of ordinary skill in the art, and an impermissibly narrow interpretation of the term "*content display system*."

1. **Kjorsvik discloses the claim limitation "*in an unobtrusive manner that does not distract a user of the display device ... from a primary interaction*"**

In its response, Patent Owner argues that both Requester and the Examiner applied an improper claim construction for the limitation "*in an unobtrusive manner that does not distract a user of the display device ... from a primary interaction*" found in each of the independent claims. Patent Owner further argues that under Patent Owner's construction, Kjorsvik fails to

disclose this limitation. Patent Owner's position is contrary to the explicit teachings of the specification, the claims, and the intrinsic record. Under the broadest reasonable interpretation, the construction proposed by the Requester and applied by the Examiner is the proper construction.

"During reexamination, as with original examination, the PTO must give claims their broadest reasonable construction consistent with the specification." *In re Icon Health & Fitness, Inc.*, 496 F.3d 1374, 1379 (Fed. Cir. 2007). Since "applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee." *Id.* "Giving claims their broadest reasonable construction 'serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.'" *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted); *see also* MPEP § 2111.

As detailed below, under the "broadest reasonable construction" standard, the term "*in an unobtrusive manner that does not distract the user of the display device . . . from a primary interaction*" must, contrary to Patent Owner's assertions, include both the screensaver and wallpaper embodiments disclosed in the specification.

(a) *The specification, claims, and intrinsic record require "in an unobtrusive manner . . ." to include both embodiments*

Claims 1, 3, 7, 10, and 13 refer to displaying images "in an unobtrusive manner" and in a way that "does not distract a user." What, exactly, is unobtrusive or does not distract a user is never defined in the specification. To the extent that these terms are definable at all,¹ they must include the only two embodiments disclosed in the specification: (1) a "screensaver" embodiment that displays images during "inactive periods" (*see, e.g.*, '314 Patent, 2:18-21), and (2) a "wallpaper" embodiment "in which a pattern is generated in the background portions on a computer display screen" (*see, e.g., id.* at 2:21-28). Patent Owner's construction, which unreasonably excludes the screensaver embodiment, cannot satisfy the "broadest reasonable construction" rule required by the Federal Circuit and the MPEP, and it contravenes the specification, claims, and prosecution history of the '314 Patent.

¹ The standard for claim construction in reexamination differs from that used in litigation. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1369. Thus, by arguing that the broadest reasonable construction of the "unobtrusive" term includes the preferred embodiments, Requester does not waive, but intends to preserve, the right to assert in litigation that the "unobtrusive" term is incurably subjective and therefore renders the claims indefinite. *See Datamize LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1350 (Fed. Cir. 2005).

First, the specification describes both embodiments as examples of "unobtrusive" displays. The '314 Patent discloses an "attention manager" that "presents information to a person in the vicinity of a display device in a manner that engages the peripheral attention of the person." (*Id.* at 2:12-14.) To engage a user's "peripheral attention," images are displayed using a display device's "unused capacity," namely, capacity that is unused either temporally (i.e., as a "screensaver") or spatially (i.e., as "wallpaper"). (*Id.* at 6:54-60.) The screensaver embodiment uses temporally unused capacity—that is, "while a primary interaction is ongoing, but during inactive periods (i.e., when the user is not engaged in an intensive interaction with the apparatus)." (*Id.* at 6:43-47.) The screensaver is triggered by an idle period, such that it will not "inhibit the user's primary interaction with the computer" or "distract or annoy the user." (*Id.* at 9:2-6.) The wallpaper embodiment uses spatially unused capacity—that is, "information is presented in areas of a display screen that are not used by displayed information associated with the primary interaction." (*Id.* at 6:47-54.) Thus, the specification includes both embodiments within the scope of "unobtrusive." The screensaver is described as being unobtrusive because it activates only when "the user is not engaged in an intensive interaction with the apparatus," and the wallpaper is described as being unobtrusive because it displays only in unused areas of the screen. (*Id.* at 6:43-54.)

Second, the claims demonstrate that the screensaver embodiment is a type of "unobtrusive" display. For example, issued claim 5 recites a computer readable medium comprising "instructions for selectively displaying on the display device, after detection of the idle period and in an unobtrusive manner that does not distract a user of the display device ... from a primary interaction with the display device." Claim 5 calls for the display of information *after an idle period* and is therefore directed at displaying information "in an unobtrusive manner" through the screensaver embodiment. Claim 5 also calls for the display of information in a way "that does not distract a user ... *from a primary interaction* with the display device." Claim 5 would have been nonsensical if, as Patent Owner now contends, the screensaver cannot display information "while the user is engaged in a primary interaction." And although Patent Owner has canceled claim 5 in its Reply, it remains compelling evidence that the screensaver embodiment is within the scope of an "unobtrusive" display.

Similarly, original claims 19 and 20 from the '314 Patent application recite a "system for engaging the peripheral attention of a person," comprising "means for selectively displaying on the display device, in an unobtrusive manner that does not distract a user of the apparatus from a

primary interaction with the apparatus" and "means for detecting an idle period of predetermined duration." These claims are similarly directed at the screensaver embodiment and recite the "in an unobtrusive manner" limitation. It is well established that the "original claims, as part of the original disclosure, constitute their own written description of the invention." *See Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1349 (Fed. Cir. 2010). Accordingly, the broadest reasonable construction of the "in an unobtrusive manner ..." term consistent with the specification must include the screensaver embodiment.

Third, the prosecution history reinforces that displaying information "in an unobtrusive manner" must include both embodiments. During the prosecution of the '314 Patent's parent application, Patent Owner narrowed the scope of claim 1 to overcome prior art:

In contrast, in the system recited in Claim 1, a content display system "selectively display[s], in an unobtrusive manner that does not distract a user of [an] apparatus from a primary interaction with the apparatus, an image or images generated from a set of content data" (emphasis added). This is neither taught nor suggested by Judson. ***The display of images in an unobtrusive manner in a system as recited in Claim 1 can be implemented by, for example, displaying images during an inactive period*** (e.g., when the user has not interacted with the apparatus for a predetermined period of time) of a primary interaction with the apparatus (the 'screensaver embodiment') The display of images in an unobtrusive manner in a system as recited in Claim 1 can also be implemented by displaying images during an active period of a primary interaction with the apparatus, but in a manner that does not distract the user from the primary interaction (the 'wallpaper embodiment') This aspect of the invention makes use of "unused capacity" of a display device ***While a similar statement might be made of the method taught by Judson, it is important to note that the instant invention uses different unused capacity than that used by the method taught by Judson.***

(Prosecution History of App. No. 08/620,641, Response to Office Action dated July 9, 1998, at 13-14 (underlining original; bold/italics added).) With this statement, Patent Owner restricted "unobtrusive" to certain types of displays in order to distinguish prior art. But even under Patent Owner's restricted interpretation, the screensaver embodiment was included as a type of "unobtrusive" display. Now, confronted with new prior art, Patent Owner takes the opposite position and argues that the inclusion of screensaver as an "unobtrusive display" is unreasonable, and that its own prior statements are irrelevant. The law does not support this position, as a patent owner's statement during prosecution must be given weight because the prosecution history plays an important role in claim construction. *See, e.g., In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1368 (evaluating "the discussion of [prior art] in the prosecution history of the

original application" as part of claim construction in a reexamination proceeding). Accordingly, the intrinsic record demonstrates that Patent Owner considered the screensaver embodiment to be well within the reasonable scope of the "unobtrusive" term.

(b) The specification does not limit "in an unobtrusive manner . . ." to the wallpaper embodiment

Patent Owner's arguments are based on the false premise that the screensaver embodiment cannot display information during a "primary interaction with the display device." (See Response, pp. 19-20.) Based on this false premise, Patent Owner contends that the "screensaver" embodiment is excluded because the claims require an unobtrusive display during a "primary interaction." (See *id.*)

Patent Owner's argument relies on an unreasonably narrow reading of "primary interaction" that is contradicted by the specification, which states that the term "'[p]rimary user interaction' is to be construed broadly." (314 Patent, 8:23-27.) The specification explicitly contradicts Patent Owner's reading because it includes "inactive periods" as part of the "primary interaction": "In one embodiment of the invention, the information is presented by the attention manager *while a primary interaction is ongoing, but during inactive periods* (i.e., when the user is not engaged in an intensive interaction with the apparatus)." (*Id.* at 6:43-47 (emphasis added).) In other words, the screensaver embodiment displays information during a "primary interaction," but still during a time while the user is "not engaged in an intensive interaction." (See, e.g., *id.* at 2:18-28, 6:43-54.) Therefore, the inclusion of the screensaver embodiment does not conflict with or render superfluous the limitation "does not distract a user . . . from a primary interaction with the display device."

Additionally, the specification does not provide any reason—and Patent Owner has not presented any reason—for excluding the "screensaver" embodiment from the scope of the "unobtrusive" term. Rather, the specification explains that "the duration of time necessary to constitute an idle period cannot be so short that the attention manager begins operating at times that *inhibit the user's primary interaction* with the computer or that *distract or annoy the user.*" (*Id.* at 9:2-6 (emphasis added).) Accordingly, the "screensaver" is designed to display content in a manner that is unobtrusive (i.e., does not "inhibit the user's primary interaction") and not distracting (i.e., does not "distract or annoy the user").

In conclusion, the "broadest reasonable construction consistent with the specification" for the "unobtrusive" term must necessarily include the "screensaver" embodiment. As Patent Owner admits, Kjorsvik discloses a screensaver that is activated during inactive periods.

(Response, pp. 23-24.) Therefore, under the proper construction of this term, Kjorsvik discloses the claim limitation of "in an obtrusive manner that does not distract the user of the display device ... from a primary interaction."

2. Kjorsvik renders obvious claims 1-4 and 7-15

As discussed in detail in Section I.B below, Requester believes that Kjorsvik discloses all the limitations of claims 1, 3, 7, 9, 10, 12, 13, and 15. To the extent that the Examiner maintains the finding that limitations of the claims are missing from Kjorsvik (a finding with which Requester disagrees), Requester agrees with the Examiner that it would have at least been obvious to modify Kjorsvik to include the allegedly missing limitations.

In the obviousness rejection initiated by the Examiner in the Office Action, the Examiner presented two modifications to Kjorsvik. The Examiner found that Kjorsvik did not disclose the limitation "*for each set the respective content provider may provide scheduling instructions tailored to the set of content data to control at least one of the duration, sequencing, and timing of the display of said image or images generated from the set of content data.*" (Office Action, p. 7 (emphasis in original).) However, the Examiner found that it would have been obvious to modify Kjorsvik to include this limitation. In its response, Patent Owner did not traverse this finding by the Examiner. Therefore, both parties appear to agree with the Examiner that the proposed modification would be obvious.

Additionally, the Examiner found that Kjorsvik did not disclose the limitation "*without the content data being aggregated at a common physical location remote from the content display system prior to being provided to the content display system.*" (*Id.* at p. 6 (emphasis in original).) However, the Examiner found that it would have been obvious to modify Kjorsvik to include this limitation, stating:

[I]t would have been obvious to one of ordinary skill in the art (e.g., a network engineer) to modify the system of Kjorsvik to select presentations directly from external sources, such as other network servers, for the advantage of eliminating the need to compose the presentation within the system.

(*Id.* at p. 7.) Patent Owner traversed this proposed modification in its response on two grounds. First, Patent Owner argued that the modifications proposed by the examiner would render Kjorsvik "unsatisfactory for its intended purpose," and, second, that a person of ordinary skill in the art would not have been motivated to make the proposed modifications to Kjorsvik. (*See* Response, pp. 14-17.) As set forth herein and in the declaration of Dr. Mark Crovella, Patent

Owner's unsupported arguments are based on fundamental misunderstandings of the technology disclosed in Kjorsvik.

(a) ***Aggregation of content in not necessary for the administration module to perform centralized management***

Content storage in a network is separate from management of content. In its Response, Patent Owner binds these two concepts together, arguing:

storing presentations on the remote system database is ***necessary*** for the administration module to perform its centralized presentation management functions for multiple users within the network, including obtaining and editing presentation, assignment of specific presentations and sequences of presentations for display at the individual PCs of the users.

(Response, pp. 14-15 (emphasis in original).) Contrary to Patent Owner's position, a person of ordinary skill in the art would appreciate that storing content on a centralized system database is ***not necessary*** to perform centralized management of that content. (Crovella Decl., ¶30.)

Centralized management of content could be achieved without centralized storage of content through the use of meta data. Individual content, e.g., presentations such as disclosed in Kjorsvik, is associated with accompanying data, commonly referred to as meta data. (Crovella Decl., ¶31.) Prior to the earliest possible priority date of Kjorsvik (March 22, 1996), a person of ordinary skill in the art would recognize that meta data could be separated from the content. (*Id.*) Given this basic understanding, a person of ordinary skill in the art would recognize that an individual PC in Kjorsvik could download content directly from external sources (on its own or at the direction of the administration module) and that the meta data could be provided to the administration module either by the individual PC or the content providing system. (*Id.*) The meta data would provide the administration module with the data required to perform centralized management of all content within a system. (*Id.*) Because management is based on metadata (i.e., data about the content), the centralized storage of the content itself is not necessary for centralized management of that content. (*Id.*)

Thus, the Examiner's proposed modifications would not render the system of Kjorsvik unsatisfactory for its intended purpose because, as described above and contrary to Patent Owner's assertions, the system would still be able to perform centralized management of content.

(b) *Sufficient rationales exist to support the obviousness rejection made by the examiner*

The Examiner has provided an adequate prima facie case to support the obviousness rejection. However, as would be appreciated by a person of ordinary skill in the art, additional rationales exist for the applied obviousness rejection, including the rationale of improving system efficiency.

In support of the rejections, the Examiner provided an exemplary rationale—"eliminating the need to compose the presentation within the system." (*See, e.g.*, Office Action, p. 7.) As pointed out throughout Patent Owner's response, one of the primary functions of the administration module is management of content. (Response, pp. 9-14.) Eliminating the burden on the administration module to generate content or to receive and transmit content, specifically content desired by an individual PC, would provide the administration module with more bandwidth and processing power to perform its core management functions. (Crovella Decl., ¶32.) In this modification, an individual PC can therefore request and acquire content that may be specific to it without placing the burden on the administration module to generate the content or intercede in its acquisition. (*Id.*) Such a modification would increase the efficiency of the administration module. (*Id.*)

Patent Owner does not appear to dispute that it would have been well known to download content directly to an individual PC for display on that PC. As would be recognized by a person of ordinary skill in the art, centralization of all content in a single point would create a bottleneck for the system, particularly given the potential sizes of presentations disclosed in Kjorsvik. (Crovella Decl., ¶33.) Therefore, a person of ordinary skill in the art would recognize that significant efficiencies would be gained by the Examiner's modification to download some or all content directly to an individual PC. Thus, design incentives would have prompted a person of ordinary skill in the art to make the modification suggested by the Examiner. (*Id.*) As discussed above, a person of ordinary skill in the art as of the earliest possible priority date for the claims of the '314 patent could have implemented the modification proposed by the Examiner and the resulting modified system would have been predictable. (*Id.*)

Because sufficient rationale exists for the obviousness rejection proposed by the Examiner, the obviousness rejection of the claims over Kjorsvik should be maintained.

3. Conclusion

For at least these reasons, the Examiner's rejection of claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as unpatentable under 35 U.S.C. § 103 over Kjorsvik should be maintained. Additionally,

Requester notes that Patent Owner did not argue the patentability of the subject matter of dependent claims 2, 4, 6, 8, 11, and 14 over Salm. Therefore, for at least the foregoing reasons and the reasons presented in the Office Action, the Examiner's rejection of claims 2, 4, 6, 8, 11, and 14 as obvious over the combination of Kjorsvik and Salm should be maintained.

B. The Examiner erred in refusing to adopt the proposed rejections of the claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as anticipated by Kjorsvik

In the Office Action, the Examiner refused to adopt Requester's proposed anticipation rejection of claims 1, 3, 5, 7, 9, 10, 12, 13, and 15 over Kjorsvik for two grounds. For ease of reference, the first is called the "aggregation limitation" and the second is called the "scheduling limitation."

First, Kjorsvik does not disclose the limitation "without the content data being aggregated at a common physical location remote from the content display system prior to being provided to the content display system" because Kjorsvik discloses the presentations being stored in a system database located on a network server prior to being provided to the individual network PCs for display on the computer screens.

Second, Kjorsvik does not disclose "for each set the respective content provider may provide scheduling instructions tailored to the set of content data to control at least one of the duration, sequencing, and timing of the display of said image or images generated from the set of content data" because Kjorsvik discloses the duration, sequencing, and timing of the content data (presentations) is controlled by either the administration module #26 (col. 3:41-43, col. 4:17-18) or the user of the individual PC. (col. 5:24-32)

(Office Action, pp. 6-7, 11-12, 16-17, 21-22, 26-27, 31-32.)

The refusal to adopt the proposed anticipation rejections is based on a misinterpretation of the "*content display system*" and the "scheduling" terms combined with a misunderstanding of the technical teachings of Kjorsvik. As explained herein and by Dr. Crovella, when the technical scope of Kjorsvik is fully appreciated, it is apparent that Kjorsvik teaches both the aggregation limitation and the scheduling limitation. Accordingly, the proposed anticipation rejections should be adopted.

1. Kjorsvik discloses the "aggregation limitation"

Kjorsvik discloses at least two embodiments for implementing a "*content display system*." In a first embodiment, the administration module, messenger module, and system database are integrated into the same digital computer (PC). ('314 Patent at 2:51-52.) In a second embodiment, the individual components are distributed among several PCs in a network such as the client-server arrangement of a content display system disclosed in the '314 patent.

(Crovella Decl., ¶27.) As described in detail below, both of these embodiments meet the aggregation claim limitation of the independent claims.

(a) "Content display system"

As would be appreciated by a person of ordinary skill in the art based on the specification, the term "content display system" must be interpreted as having certain structural and functional attributes. The '314 patent discloses that "[t]he application manager 201, content providing systems 202 and content display system 203 can be implemented using appropriately programmed digital computers." ('314 patent, 14:20-21.) The '314 patent also discloses that the "[t]he application manager 201, content providing system 202 and content display systems 203 could also themselves each be implemented by a client-server network of computers." (*Id.* at 14:36-39 (emphasis added).) In short, the specification of the '314 patent expressly states that the content display system may be implemented as a client-server network arrangement. Thus, consistent with this disclosure, a person of ordinary skill in the art would understand that the broadest reasonable interpretation for the term "content display system" can include implementation in a "client-server network of computers" in addition to a standalone digital computer. (Crovella Decl., ¶15.) As set forth herein, Kjorsvik discloses both the client-server arrangement and the single digital computer arrangement contemplated by the '314 patent.

Furthermore, the specification of the '314 patent discloses that the content display system must perform the function of acquiring content and displaying content. FIG. 2 of the '314 patent, reproduced below, is a block diagram of a "system for implementing an attention manager." ('314 patent, 5:63-64.) "The system 200 includes an application manager 201, a multiplicity of content providing systems, shown as Content Providers 1 through n ... and a multiplicity of content display systems, shown as Users 1 through n." (*Id.* at 14:3-9.)

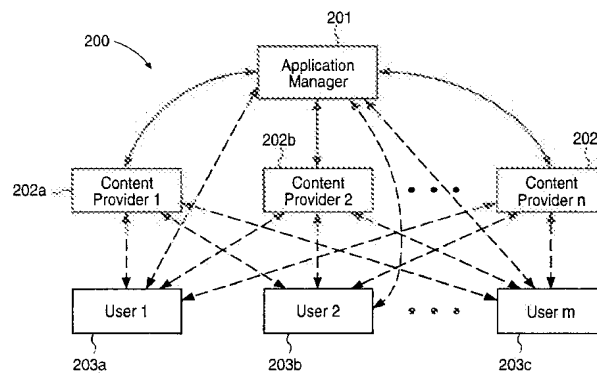


FIG. 2

FIG. 2 clearly illustrates that a function of the content display systems (203a ... c) is acquiring content from the content providers (202a ... c) for display. (Crovella Decl., ¶16.) FIG. 4 of the '314 patent further discusses that the content display system performs the function of acquiring content from the content providing systems for display on the content display system. (See, e.g., '314 patent, 18:40-24:67.) As disclosed in the '314 patent, "each set of content obtained by a content display system 203 can be stored in a database (having any suitable structure) that is stored in a memory of the computer used to implement the content display system 203." (*Id.* at 21:26-29.) Thus, in light of the disclosure in the specification, a person of ordinary skill in the art would understand that the broadest reasonable interpretation for the term "*content display system*" must encompass the functions of acquiring content for display and displaying the content. (Crovella Decl., ¶16.)

(b) *The administration module, system database, and messenger modules of Kjorsvik are components of a content display system*

As discussed above, under the broadest reasonable interpretation of the term "*content display system*," the content display system must perform both the functions of content acquisition and content display. As disclosed in Kjorsvik, the messenger module is responsible for display of presentations on a screen of the network PC as well as control of images in the presentations. (Kjorsvik, Abstract.) As explained in detail in the Request, the administration module of Kjorsvik is responsible for obtaining content either by generating the content itself or by acquiring the content from external sources:

Presentations for use by the messenger module of a network PC in Kjorsvik are created and/or acquired by an administration module. The administration module also "has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images" to acquire presentations and/or other content. (Kjorsvik, 2:58-62.) "[P]resentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik, 4:19-24.)

(Request, p. 28.) Thus, a person of ordinary skill in the art would understand that the messenger module and administration module of Kjorsvik are part of a "*content display system*," under the broadest reasonable construction of this term. (Crovella Decl., ¶24.) Thus, in Kjorsvik, the

content is not aggregated prior to being provided to the content display system (i.e., system including the administration module).

The presentations obtained by the administration module are stored in system database 24 of Kjorsvik after they are obtained by the content display system. (*See*, Kjorsvik, 2:54-57 and 3:44.) This type of storage of acquired content by the content display system was disclosed in the specification of the '314 patent:

Each set of content obtained by a content display system 203 can be stored in a database (having any suitable structure) that is stored in a memory of the computer used to implement the content display system 203.

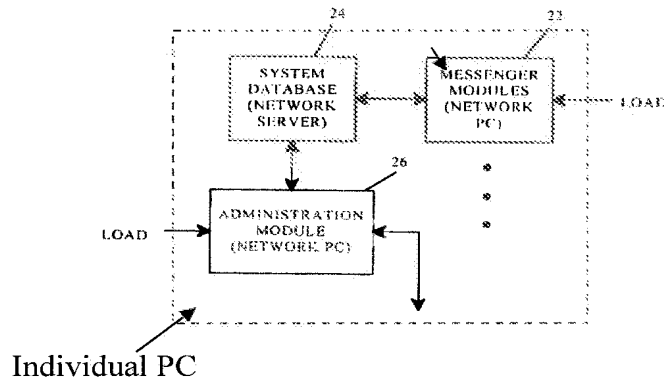
('314 patent, 21:26-29.) Thus, a person of ordinary skill in the art would recognize that the database 24 of Kjorsvik is also part of the content display system. (Crovella Decl., ¶25.)

(c) Kjorsvik discloses an embodiment in which the administration module, messenger module, and system database are integrated on the same PC

In the Office Action, the Examiner argues that Kjorsvik fails to disclose the "aggregation limitation" because "Kjorsvik discloses the presentations being stored in a system database located on a network server prior to being provided to the individual network PCs for display on the computer screens." (Office Action, pp. 6, 11, 16, 21, 26, 31.) Requester respectfully disagrees with the Examiner's understanding of Kjorsvik, because Kjorsvik discloses an embodiment in which the messenger module, the administration module, and the system database are located on the same network PC. In this integrated embodiment, the "aggregation" at the system database could not be remote from the content display system.

As described in the Request, the system 10 of Kjorsvik includes a plurality of individual network personal computers 12, 14, and 16 and a network server PC 18. (Request, p. 26.) Kjorsvik explains that "each network PC has a messenger software module 22." (Kjorsvik, 2:43-45.) Network server PC 18 is a network PC and therefore must have a "messenger software module" as well. Furthermore, the administration module of Kjorsvik "can be loaded into and executed from any PC in the network." (*Id.* at 2:51-52.) That is, any network PC in Kjorsvik, including network server PC 18, can have both a messenger module and an administration module. (Crovella Decl., ¶23.) Kjorsvik discloses that system database 24 is located on network server PC 18. (*See* Kjorsvik, FIG. 2.) Because the messenger module and administration module can be on any PC in the network, including network PC 18, Kjorsvik discloses a content display system in which a messenger module, the administration module, and

the system database are located on the same network PC, such as network server PC 18. (Crovella Decl., ¶27.) This arrangement is illustrated as Embodiment A in annotated FIG. 2 of Kjorsvik below. Furthermore, a person of ordinary skill in the art would readily appreciate that although Kjorsvik discloses content being stored on a system database on network PC 18 after it is obtained by the content display system, the content in Kjorsvik could be stored in memory of any of the network PCs. (*Id.*)



EMBODIMENT A

Presentations in Kjorsvik are not aggregated remotely prior to being provided to the administration module. As further described in the Request, presentations for use by the messenger module of a network PC in Kjorsvik are created and/or acquired by an administration module. Presentations created locally, i.e. by the administration module of the network PC, cannot be remotely aggregated. Moreover, the administration module acquires information over a network from multiple external sources—it "has the capability of communicating with external sources, including other network servers with databases having presentation information, as well as other outside sources of data and images," to acquire presentations and/or other content. (Kjorsvik, 2:58-62.) "[P]resentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (*Id.* at 4:19-24)

The administration module of the network PC can acquire content data (presentations) from a plurality of content providers (e.g., network servers and external sources). The content providers can also provide content data (presentations) independently to the administration module of the network PC. As shown above in FIG. 10 of Kjorsvik, the administration module directly imports presentations from each external network server without content data being

aggregated at a common physical location prior to being provided to the content display system. Thus, in this embodiment of Kjorsvik, the system database is not "remote" from the content display system. Furthermore, the content is acquired by (provided to) the content display system *prior* to being placed on the system database 24.

The Examiner acknowledged in the Office Action that a system that "select[s] the presentation directly from an external network server database eliminates the need to aggregate the presentation at the network server prior to being provided to the individual PC, because the presentation would be coming directly from the external network server." (*See, e.g., Office Action, p. 7.*) This is exactly the type of system explicitly disclosed by Kjorsvik. Thus, contrary to the Examiner's finding, Kjorsvik discloses external network servers and the external administration modules acting as content providers to the administration module of a "content display system" without the content being aggregated at a common physical location remote from the content display system.

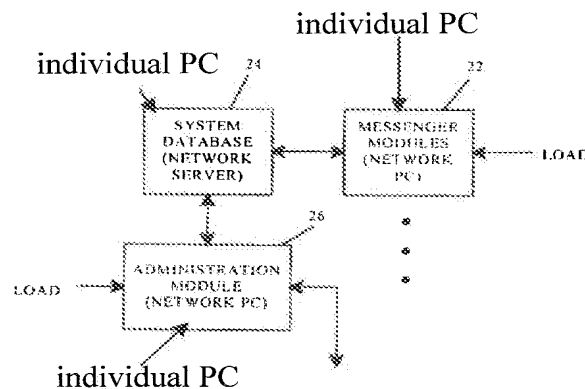
For at least these reasons, Requester requests that the Examiner adopt the rejection of the claims 1, 3, 5, 7, 9, 10, 12, 13, and 15 as anticipated by Kjorsvik.

- (d) ***Kjorsvik discloses a distributed embodiment in which content data is provided to the content display system without being aggregated at a common physical location remote from the content display system***

As discussed above, under the broadest reasonable interpretation, a "*content display system*" includes the "messenger module," the "administration module," and the system database disclosed by Kjorsvik. Thus, regardless of whether these components are implemented in the same network PC or on multiple network PCs, Kjorsvik discloses the aggregation limitation.

The position adopted by the Examiner regarding the "aggregation limitation" is based on overly narrow interpretation of the term "*content display system*." Specifically, the Office incorrectly reasons that "the content data (*presentations*) are aggregated at a common physical location (*system database on the network server*) prior to being provided to the content display system (*individual network PC*)." (*See, e.g., Office Action, p. 6 (emphasis in original).*) Consequently, the Examiner incorrectly restricted the term "*content display system*" to an "individual network PC" and incorrectly interpreted the system database of Kjorsvik as being separate from the "content display system." Rather, the "*content display system*" of the '314 Patent may be "implemented by a client-server network of computers" and therefore may include multiple computers. ('314 patent, 14:36-39.)

Accordingly, in addition to the embodiment in which the "administration module" and "messenger module" are integrated into one network PC (Kjorsvik, 2:51-52), a person of ordinary skill in the art would recognize that Kjorsvik also discloses a distributed embodiment in which the messenger module is, for example, located on network PC 16, the administration module is located on network PC 12 or 14, and the system database is located on network server PC 18. (Crovella Decl., ¶27.) Annotated FIG. 2 below depicts this embodiment as Embodiment B. The '314 patent contemplates such a distributed structure for a content display system by explaining that each content display system could be arranged as "a client-server network of computers." ('314 patent at 14:36-39; Crovella Decl., ¶15.)



Embodiment B

As discussed above, the system database of Kjorsvik is not providing content to the content display system, but, rather, is merely storing the content previously obtained by the content display system after the content display system obtains the content. (Crovella Decl., ¶28.) Accordingly, the system database is part of the content display system. ((Crovella Decl., ¶25.) (*See also*, '314 patent, 21:26-29) (explaining that content obtained by content display system is stored in a database in the content display system).) Thus, even if the administration module, messenger module, and database are implemented as separate computers on a local network, they still, jointly, form a "content display system" under the broadest reasonable interpretation of that term. Furthermore, even assuming arguendo that the database 24 is not part of the content display system, a person of ordinary skill in the art would recognize that the database stores content for the content display system *locally* after the content has been obtained. A person of ordinary skill in the art would, therefore, conclude that Kjorsvik does *not* aggregate *all* content at a *remote* common physical location *prior* to being provided to the

content display system (i.e., the administration module, messenger module, and database of Kjorsvik). (Crovella Decl., ¶34.)

Claims 1 and 3 include the limitation "*a content display system associated with the display device and located entirely in the same physical location as the display device.*" For the integrated embodiment (i.e. when the "administration module" and "messenger module" are launched from the same network PC), it is unquestionable that the "content display system" is located entirely in the same physical location as the display system. (See Kjorsvik, Abstract) ("The presentation is displayed on the screens of the individual PCs in the network by the action of a messenger software module present in each PC ..."). In addition, under the broadest reasonable construction, the term "*same physical location*" should be broadly construed. The specification of the '314 patent does not define the term "*same physical location.*" The dictionary defines the term "location" as "a place where something is or could be located; a site." (Exh. A, THE AMERICAN HERITAGE DICTIONARY 739 (2d. College Ed. 1985).) Therefore, this limitation should be construed as encompassing a physical location of an entity (e.g., a corporate building) that deploys a local client-server network for that corporation. Under this view, the distributed architectural embodiment of Kjorsvik meets the "*same physical location*" limitation as well. Therefore, both embodiments of Kjorsvik disclose the aggregation limitation required by claims 1, 3, 7, 10, and 13.

2. Kjorsvik discloses the scheduling limitation

In the Office Action, the Examiner argues that Kjorsvik fails to disclose the "scheduling limitation," because "Kjorsvik discloses the duration, sequencing, and timing of the content data (*presentations*) is controlled by either the administration module #26 (*col. 3:41-43, col. 4:17-18*) or the user of the individual PC. (*col. 5:24-32*)." (See, e.g., Office Action, p. 7.) The Examiner's position is based on a misinterpretation of the "scheduling" limitation and a misunderstanding of Kjorsvik.

(a) "Scheduling" Limitation

Each independent claim (claims 1, 3, 5, 7, 10 and 13) recites the following scheduling limitation:

wherein for each set the respective content provider may provide scheduling instructions tailored to the set of content data to control at least one of the duration, sequencing, and timing of the display of said image or images generated from the set of content data.

(emphasis added.) Based on the explicit language "*at least one of*," the scheduling instructions must control one, but need not control more than one, of the recited scheduling capabilities—duration, sequencing, and timing of display of an image or images. That is, to meet the claim language, prior art need only allow for the ability to include scheduling instructions that control sequencing of images. As discussed below, this is an inherent capability of the PowerPoint program disclosed in Kjorsvik.

As detailed in the Request, the specification of the '314 patent defines duration, sequencing, and timing instructions. (Request, p. 10.) Specifically, the specification defines the following:

for duration instructions

The content provider can tailor the content data scheduling instructions 322 to **indicate the duration of time that a particular set of content data can be displayed** ("duration instructions"). Generally, the duration instructions can be arbitrarily complex and can vary in accordance with a variety of factors, including, for example, the particular time at which the set of content data 350 is displayed after the attention manager begins operating, or the number of previous times that the set of content data 350 has been displayed during a continuous operation of the attention manager.

for sequencing instructions

The content provider can also tailor the content data scheduling instructions 322 to **indicate an order in which the clips of a set of content data 350 are displayed**, as well as the duration of the display for each clip ("sequencing instructions").

for timing instructions

The content provider can also tailor the content data scheduling instructions 322 to indicate particular times or ranges of times at which a set of content data 350 can or cannot be displayed ("timing instructions") These times can be absolute (e.g., a particular clock time on a particular day, a particular day or days during a week, after or before a specified date) or relative (e.g., not before or after a specified duration of time since the attention manager began operation, first or not first among the sets of content data 350 to be displayed, not after a particular kind or set of content data 350).

(('314 patent, 17:7-30) (emphasis added).)

Furthermore, the entire "*scheduling*" limitation is written as a permissive limitation. That is, the content provider **may provide** scheduling instructions, but is not required to provide scheduling instructions. *See, e.g., In re Johnston*, 435 F.3d 1381, 1384 (Fed. Cir. 2006) ("optional elements do not narrow the claim because they can always be omitted"). Therefore, under the broadest reasonable interpretation consistent with the specification, no scheduling

instruction needs to be provided by any content provider for any set of content data. Therefore, any content provider should be considered as meeting this claim limitation.

(b) *Kjorsvik discloses a content provider providing scheduling instructions to control the sequencing of the display of images generated from the set of content data*

Kjorsvik inherently discloses a content provider providing sequencing instructions, which, as explained above, is a type of "scheduling instructions." As discussed in detail in the Request and herein, Kjorsvik discloses that "presentations may be obtained or provided to external systems and/or other outside sources over external communication lines. This enables the one administration module for the system to obtain or provide presentations directly from or to external sources, so as to eliminate the need for composing them within the system." (Kjorsvik 4:19-24 (emphasis added).) Kjorsvik further describes that presentations are created by "arranging individual slides in a selected sequence." (*Id.* at 3:30-43.) The definition of sequencing instructions provided in the '314 patent is instructions "***to indicate an order in which the clips of a set of content data 350 are displayed.***" ('314 patent, 17:16-18.) Thus, when the administration module receives a presentation created by an external source, that presentation inherently has sequencing instructions that indicate an order of the individual slides in the presentation.

Kjorsvik further explains that the "basic capability of creating [such] slides is available in current PC operating systems. One example is PowerPoint in WINDOWS software from Microsoft, Inc." (Kjorsvik, 3:59-61.) The ability to arrange slides in a sequence is an inherent capability of PowerPoint.

Additionally, as discussed above, because the "scheduling" limitation is an optional element, any content provider providing content should be considered as meeting this limitation.

For at least these reasons, the Examiner erred in finding that Kjorsvik failed to disclose the "scheduling" limitation.

3. Conclusion

For at least these reasons, the Requester respectfully request that the Examiner reconsider and adopt the proposed rejection of claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as unpatentable under 35 U.S.C. § 102(e) as anticipated by Kjorsvik and maintain the rejection of claims 2, 4, 6, 8, 11, and 14 as obvious over the combination of Kjorsvik and Salm.

II. REJECTIONS OVER RAKAVY

A. **The Examiner erred in refusing to adopt Requester's proposed anticipation rejection over Rakavy and the proposed obviousness rejection over Rakavy in view of Salm**

In the Office Action, the Examiner refused to adopt Requester's proposed rejection of claims 1, 3, 7, 9-10, 12-13 and 15 as being anticipated by Rakavy and the proposed rejection of claims 2, 4, 8, 11, and 14 as being obvious over Rakavy in view of Salm. In support of the refusal to adopt the rejection, the Examiner stated:

Rakavy discloses the advertisement feeder #250 is responsible for adding new advertisements to the advertisement database #230. (col. 12:5-8). Rakavy also discloses the advertisement display manager #210 selects and displays advertisements from the user preference and advertisements database #230. (col. 10:43-45) *As such, Rakavy discloses the content data (advertisements) are aggregated at a common physical location (advertisement database #230) prior to being provided to the content display system (local computer).* Consequently, Rakavy does not anticipate this limitation at col. 5:54-57, col. 5:33-35, and col. 12:6-15.

(Office Action, 36-37 (bold/italics added).) The Examiner's position is based on a technical misunderstanding of the teachings of Rakavy. As set forth below, Rakavy discloses that the user preference and advertisements database 230 (referred to also as the interad database in Rakavy) is a component of the local computer 500, meaning that the advertisement database 230 is *not* remote from "the content display system (local computer)."

1. **Advertisement database 230 of Rakavy is a component of the content display system**

The Examiner's position in the Office Action is based on the incorrect assumption that the advertisement database 230 is remote from the local computer 500. Contrary to Examiner's position, both Requester and Patent Owner agree that advertisement database 230 of Rakavy is a component of local computer 500.

As illustrated in FIG. 1, the system of Rakavy (illustrated in FIG. 1, reproduced below) includes a Local Computer 500, coupled to Advertising System Server 600, via a communications network 700. As explained in Rakavy, the "Local Computer 500 preferably includes a Central Processor 510, a Main Memory 511, an Input/Output Controller 512, a Display Device 513, input devices ... and a Mass Storage Device 516." (Rakavy, 4:47-52.) Local Computer 500 of Rakavy is, in short, a "*content display system*." The Examiner appears to agree that Local Computer 500 is a content display system (See Office Action, pp. 36-37.)

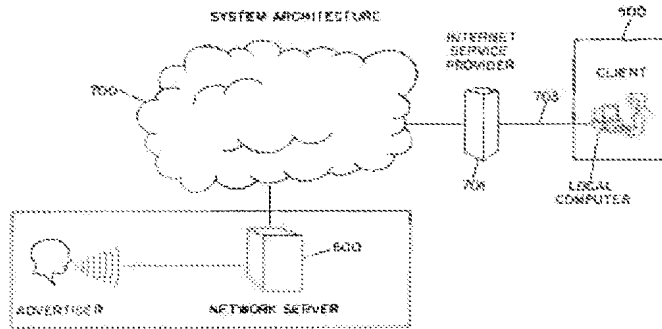


FIG. 1

The explicit language of the claims requires that content cannot be aggregated at a remote location prior to being provided to the content display system. FIGs. 1 and 4 of Rakavy clearly illustrate that advertisement database 230 is integrated in Local Computer 500. FIG. 4 of Rakavy (reproduced below with annotations added) "is a functional block diagram of the software modules and processes of the software architecture for a preferred embodiment of the invention on the Local Computer 500, including ... User Preference and Advertisements Database 230 ... [and] Advertisements Feeder 250." (Rakavy, 7:32-38.) In the embodiment of FIG. 4, Rakavy discloses that the Advertisement Database 230 is a component of the Local Computer 500. (Crovella Decl., ¶37.) Thus, as explicitly taught by Rakavy, database 230 of Rakavy is not remote from the content display system (Local Computer 500).

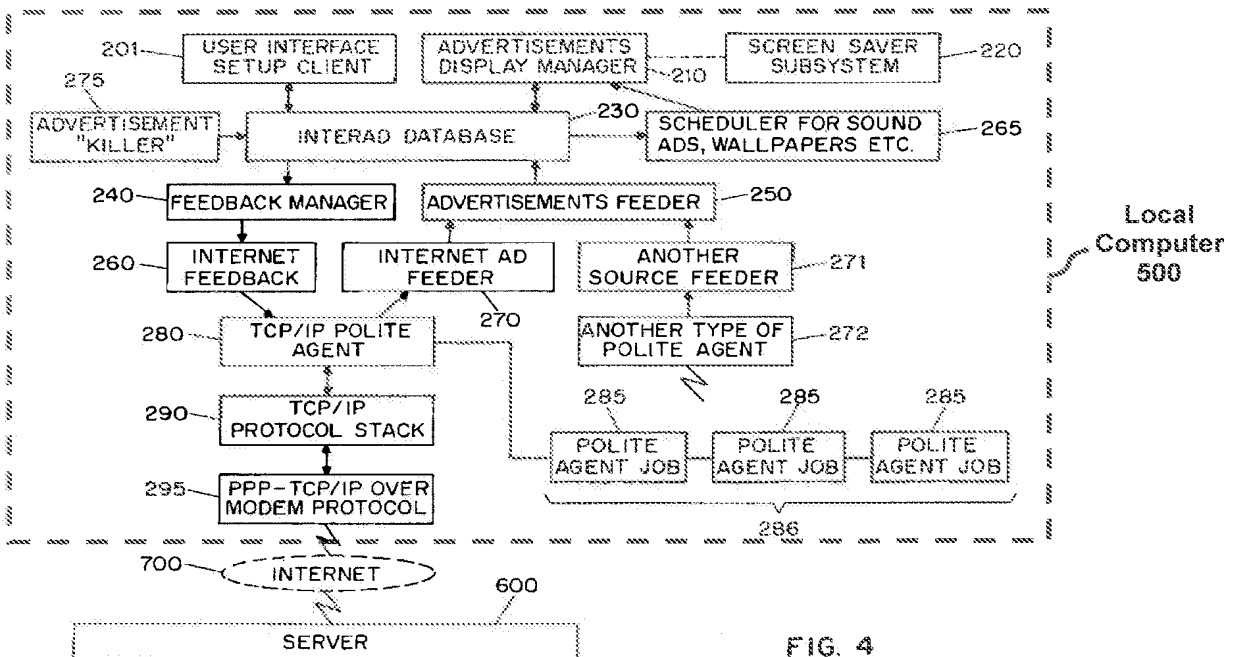


FIG. 4

Patent Owner explicitly agrees with the Requester that interad database 230 is local to computer 500, conceding in its Response that database 230 "may be located locally" as shown in Fig. 4 ..." ((Response, p. 27) (emphasis added).) As part of the Local Computer 500 (i.e. the "content display system"), the interad database 230 of Rakavy cannot be remote from the content display system. (Crovella Decl., ¶37.)

As set forth in the Request, Local Computer 500 obtains advertisements through an Advertisement Feeder 250 from a plurality of advertising system servers 600 or through other feeders from other sources, such as commercial on-line services:

In an alternative embodiment of the present invention, the selected advertisement may be stored on any one of the *plurality of advertising system servers connected to the Network 700*.

(Rakavy, 5:54-57 (emphasis added).)

The Advertisement Feeder 250, is responsible for adding new Advertisements 50 to the User Preference and Advertisement Database 230. Advertisements 50 preferably are provided from the Internet through the Internet Feeder 270, however, *the Advertisements Feeder 250 is not dependent on the type of advertisement source and may receive Advertisements 50 from other sources, such as commercial on-line services, via other feeder mechanisms and other types of polite agents, as shown by references 271 and 272, respectively, in FIG. 4.*

(*Id.* at12:6-15 (emphasis added).) Based on the disclosure of Rakavy, a person of ordinary skill in the art would appreciate that Rakavy discloses that Local Computer 500 may receive content from multiple remote sources, including commercial on-line services and the "plurality of advertising system servers 600." (Crovella Decl., ¶38.)

The interad database 230, which is part of the local computer (as explained above), stores the content obtained by the content display system of Rakavy (i.e., local computer 500) after the content is obtained by the Advertisement Feeder 250. (Crovella Decl., ¶40.) Because both the advertisement (interad) database 230 and the Advertisement Feeder 250 of Rakavy is a component of Local Computer 500, content in Rakavy is not aggregated at a remote physical location prior to being provided to the Local Computer 500. (*Id.*) Because the Local Computer acquires content data from multiple external sources without aggregating that data remotely prior to its acquisition, Rakavy discloses each and every limitation of the independent claims of the '314 patent. (*Id.*)

2. Rakavy discloses that the local computer 500 acquires content from a plurality of advertising system servers 600

In its response, Patent Owner "agree[d] that Rakavy fails to disclose the claim limitation 'without the content data being aggregated at a common physical location remote from the content display system prior to being provided to the content display system.'" (Response, p. 25.) Patent Owner, however, recognized the flaw in the reasoning presented by the Examiner regarding Rakavy and, instead of agreeing with the Examiner's reasoning, presented an alternate reason to support the Examiner's conclusion, stating "[a]lthough the interad database 230 may be located locally as shown in Fig. 4 ..., its location is not important to the overall system architecture because it does not change the need to download the advertisements aggregated in the remote server 600." (Response, p. 27.) Patent Owner's position that the advertisement is aggregated in the remote server 600 is both unsupported and based on a mischaracterization of the teachings of Rakavy.

In its Response, Patent Owner points the Examiner to a discussion of advertisement feeder 250 at column 12:16-40 of Rakavy and discusses this snippet of Rakavy in a manner that distorts its context. As an initial matter, this portion of Rakavy discusses the downloading of a single advertisement. (Crovella Decl., ¶39.) The fact that a single advertisement is downloaded from an advertising server 600 does not imply that *all* advertisements are aggregated on and downloaded from the same advertising server. (Crovella Decl., ¶39.)

To the contrary, Rakavy clearly and unambiguously discloses, as explained above, that Local Computer 500 may acquire advertisements from multiple remote sources. (Crovella Decl., ¶38). In its Response, Patent Owner neglects to disclose these explicit passages to the Examiner. Instead, Patent Owner mischaracterizes the Examiner's reasoning, stating that "Patent Owner therefore agrees with the Examiner that Rakavy discloses remote aggregation of advertisements at a common physical location (the advertising system server 600 ..." (Response, p. 28.) The Examiner did not make such a finding.

To the extent that Patent Owner suggests that the advertising servers 600 of Rakavy aggregates content data "at a common physical location" because each server 600 stores multiple advertisements, this interpretation of the claim term directly contradicts the specification of the '314 Patent. The '314 patent specification emphasizes repeatedly that "[e]ach content providing system can provide more than one set of content data." ('314 patent, 2:34-35, 6:64-66.) It logically follows that, to provide multiple sets of content data, each content providing system of the '314 patent must store multiple sets of content data. Accordingly, the negative limitation

"without the content data being aggregated at a common physical location . . ." does not prohibit each content provider from storing and providing multiple pieces of content data. Thus, Rakavy does not teach aggregating content data from multiple content providers at a common location prior to providing the data to the content display system. Rather, this negative limitation is satisfied by Rakavy, which discloses multiple content providing systems (i.e. commercial on-line services and a "plurality of advertising system servers 600") that provide content data (i.e. advertisements) to a content display system (i.e. Local Computer 500).

3. Conclusion

For at least these reasons, the Examiner should reconsider and adopt the rejection of claims 1, 3, 7, 9, 10, 12, 13, and 15 as being anticipated by Rakavy and the rejections of claims 2, 4, 6, 8, 11, and 14 as being obvious over the combination of Rakavy and Salm.

III. REJECTIONS OVER RAKAVY IN VIEW OF KJORSVIK

A. The Examiner erred in refusing to adopt the obviousness rejection of claims 1, 3, 7, 9-10, 12-13, and 15 over Rakavy in view of Kjorsvik

In the Office Action, the Examiner did not adopt the proposed obviousness rejection based on the combination of Rakavy and Kjorsvik, stating that:

3PR alleges Rakavy anticipates each and every limitation of claims 1, 3, 5, 7, 9, 10, 12-13, and 15 while simultaneously arguing that these claims are also obvious over Rakavy in view of Kjorsvik. (*Request, pgs. 98-122.*) Since this proposed rejection does not set forth the differences between Rakavy and the claims at issue as required by *Graham v. John Deere Co.* to establish a prima facie case of obviousness, proposed rejection (5) is not adopted.

(Office Action, pp. 38-39.) Requester respectfully submits that the Examiner is taking a position regarding the requirements necessary to establish a rejection in an *inter partes* reexamination that is beyond the requirements of the statute, the requirements of 37 CFR 1.915(b), and beyond the guidelines disclosed in the Manual of Patent Examining Procedure (MPEP) for meeting the requirements of Rule 915(b).

The statute requires that a request for *inter partes* reexamination "set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested." 35 U.S.C. §311(b). The Office implemented this section in 37 CFR 1.915(b), which similarly states that states a request for *inter partes* reexamination must include "a detailed explanation of the pertinency and manner of applying the patents and printed publications to every claim for which reexamination is requested." 37 C.F.R. 1.915(b)(3). The Office then provides guidance to

requesters in the MPEP through an exemplary acceptable request that the Office encourages Requesters to use:

2. Claim 2 of U.S. Patent 9,999,999 is unpatentable under 35 U.S.C. 103 as being obvious over Smith in view of Jones, as shown by the following claim chart:

| | |
|---|---|
| <p><u>U.S. Patent 9,999,999</u> Claim 2. The filter of claim 1, wherein the filter material further comprises a mixture of activated carbon and ion exchange resin.</p> | <p><u>Jones</u> Jones teaches "preferably, the filter material mixture includes activated carbon and ion exchange resin." (col. 9, lines 4-5). Smith teaches that the filter materials include "any mixture of known filter materials", including activated carbon (col. 12, lines 1-3). It would have been obvious to utilize the activated carbon and ion exchange mixture of Jones in the housing of Smith since the mixture of Jones is a "mixture of known filter materials" as taught by Smith.</p> |
|---|---|

3. Claims 3-5 of U.S. Patent 9,999,999 are unpatentable under 35 U.S.C. 103 as being obvious over Smith in view of Jones, and further in view of Cooper, as shown by the following claim chart.

| | |
|---|--|
| <p><u>U.S. Patent 9,999,999</u> Claim 3. The filter of claim 2, wherein the ion exchange resin is iodinated exchange resin.</p> | <p><u>Cooper</u> Cooper teaches "the use of iodinated exchange resin in filter material mixtures for its sterilization properties is preferred." (col. 5, lines 8-10). The substitution of the iodinated exchange resin of Cooper for the ion exchange resin of the Smith/Jones combination would have been obvious to provide sterilization properties as taught by Cooper.</p> |
|---|--|

| | |
|---|---|
| <p><u>U.S. Patent 9,999,999</u> Claim 4. The filter of claim 3, wherein the housing is made of metal. Claim 5. The filter of claim 3, wherein the housing is red.</p> | <p><u>Smith</u> Smith teaches a metal housing (col. 7, line 8) and a red-colored housing (col. 11, line 3).</p> |
|---|---|

Conclusion
For the reasons given above, reexamination of claims 1-5 of U.S. Patent 9,999,999 is requested.

Signed,

John Q. Attorney, Reg. No. 29760
Attorney for Requester

((See MPEP, §2614, pp. 2600-15 to 2600-20) (page 2600-20 reproduced above).) The Office cannot encourage Requesters to utilize a certain format for requests and then reject requests that utilize a similar format for being insufficiently detailed to support a *prima facie* case.

Requester met the statutory requirements for establishing a reexamination based on Rakavy and Kjorsvik. Therefore, the Examiner was obligated to handle the reexamination as specified under 37 CFR 1.104(a), which requires:

- (a) *Examiner's action* (1) On taking up an application for examination or a *patent in a reexamination proceeding*, the examiner shall make a thorough study thereof and

shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

(emphasis added.) The Examiner adopted Requester's proposed substantial new question of patentability for both Rakavy and Kjorsvik. Additionally, Requester proposed a rejection of claims 1, 3, 5, 7, 9, 10, 12, 13, and 15 and provided the pertinency and manner of applying the combination of Rakavy and Kjorsvik consistent (and more detailed) than the exemplary request provided in the MPEP. The Examiner was thus obligated under Rule 104 to thoroughly investigate the combination of Rakavy and Kjorsvik, which the Examiner did not.

Furthermore, Requester submits that it did make a prima facie case of obviousness in the Request. As discussed in detail above, Requester believes that Rakavy and Kjorsvik both alone anticipate claims 1, 3, 5, 7, 9, 10, 12, 13 and 15. However, due to potential future procedural estoppels facing the Requester if unpatentability positions (including positions argued in the alternative) are not initially presented in the original Request for Reexamination, the Requester proposed an alternative rejection over the combination of Rakavy and Kjorsvik. The Examiner in the Office Action alleges the Request failed to "set forth the differences between Rakavy and the claims at issue as required by *Graham v. John Deere Co.* to establish a prima facie case of obviousness." (Office Action, pp. 38-39.) Requester disagrees. In the Request, the Requester provided the differences between Rakavy and the claims as "to the extent the Examiner determines that Rakavy is missing a limitation." (Request, p. 125.) The corresponding claim chart then provided citations demonstrating that each limitation was met by both Rakavy and Kjorsvik. In the Office Action, the Examiner did determine that Rakavy was missing a limitation of the claims — the aggregation limitation. Requester provided details regarding how Kjorsvik meets this limitation. Thus, the prima facie case was established and the Examiner was obligated to address the substance of the rejection.

For at least these reasons, the Examiner should reconsider and adopt the rejection of claims 1, 3, 5, 7, 9, 10, 12, 13 and 15 as obvious over the combination of Rakavy and Kjorsvik.

IV. NEWLY ADDED CLAIMS 16-31 ARE UNPATENTABLE.

In its Response, Patent Owner proposed 16 new dependent claims, consisting of claims 16-31. The newly added claims recite four features:

First, claims 16, 18, 20, 22, and 24 recite displaying images in an unobtrusive manner "during an active period of the primary interaction with the display device or apparatus."

Second, claims 17, 19, 21, 23, and 25 recite displaying images "in an area of the display device that is not used by the primary interaction."

Third, claims 26, 28, and 30 recite "wherein the link comprises a Uniform Resource Locator (URL) of the information location."

Fourth, claims 27, 29, and 31 recite "retrieving information" where the information "is related to the selective display of the image or images generated from the set of content data."

As set forth herein, these claims do not include any patentably distinct features and should be rejected under 35 U.S.C. §§ 102 and 103. Claim charts detailing the proposed rejections are provided below and in the attached Appendix.

A. Technical teachings of the prior art

1. Applicant's Admitted Prior Art teaches each of the newly added claim features

Applicant's Admitted Prior Art (AAPA) acknowledges that each of these newly claim limitations was already known in the art before the earliest possible priority date for the '314 patent. In the Background of the '314 Patent, Patent Owner acknowledged that use of computer wallpaper was known in the art, stating "the use of 'wallpaper' (i.e., a pattern generated in the background portions on a computer display screen) in computer display screens has also arisen" ('314 patent, 1:59-62.) During an active period of the user's primary interaction with the display device or apparatus, computer wallpaper embodiments inherently display images. (Crovella Decl., ¶43.) Thus, AAPA discloses the subject matter of claims 16, 18, 20, 22, and 24. Additionally, computer wallpaper embodiments are inherently designed to display images in an area of the display device that is not used by the primary interaction. (*Id.*) Thus, AAPA also discloses the subject matter of claims 17, 19, 21, 23, and 25.

The Background of the '314 patent also acknowledges that a computer can establish a link with an external system over the Internet, stating that "information providers have used public computer networks (e.g., the Internet) ... to disseminate their information." ('314 patent, 1:36-44.) A uniform resource locator (URL) has long been known as a method of specifying the location of publicly available information on the Internet in a specific form. (*See* Crovella Decl., ¶44.) A person of ordinary skill in the art would immediately appreciate that URLs could be used to access information over the Internet as disclosed in the Background of the '314 patent. (*Id.*)

The Background of the '314 patent finally describes that information in these prior art systems "can be displayed to a computer user having access to the network directly in response to a request from the user." ('314 patent, 1:42-44.) A person of ordinary skill in the art would recognize that the retrieval disclosed in AAPA may be "related to the selective display of the image or images generated from the set of content data."

The manner of applying the teachings of AAPA in prior art rejections of newly presented claims 1-15 of the '314 patent is described below and in the attached Appendix.

2. Rakavy teaches each of the newly added claim features

Rakavy discloses the display of advertisements on a user's computer screen. In addition to the screen saver utility, Rakavy discloses that "[o]ther techniques for displaying the advertisement, such as periodic audio-only messages, *screen background wallpaper*, cursor modifications, and *display in a window on the user's computer display* are also available." (Rakavy, 3:30-34.) Computer wallpaper embodiments inherently display images during an active period of the user's primary interaction with the display device or apparatus. (Crovella Decl., ¶43.) Thus, Rakavy discloses the subject matter of claims 16, 18, 20, 22, and 24. Additionally, computer wallpaper embodiments are inherently designed to display images in an area of the display device that is not used by the primary interaction. (*Id.*) Thus, Rakavy also discloses the subject matter of claims 17, 19, 21, 23, and 25.

Rakavy further discloses that the "User requests for additional information may be directed to the advertiser itself or to the advertiser's WEB site on the network." (Rakavy, 3:49-51.) Moreover, Rakavy discloses that a user may interact with the advertisement by "initiating a WEB browser to connect directly to an advertiser WEB page on the Network 700." (*Id.* at 11:41-43.) Accessing content on the world wide web and directing a web browser to a webpage inherently require the use of a URL. (Crovella Decl., ¶45.) Therefore, Rakavy also discloses the limitations added by claims 26, 28, and 30.

As further explained in Rakavy, "[t]he system monitors the user's interaction with the advertisements User requests for additional information may be directed to the advertiser itself or to the advertiser's WEB site on the network." (Rakavy, 3:44-45, 49-51.) Thus, Rakavy discloses retrieving information related to displayed advertisements. Thus, Rakavy discloses the subject matter of claims 27, 29, and 31.

The manner of applying the teachings of AAPA in prior art rejections of newly presented claims 1-15 of the '314 patent is described in the attached Appendix.

B. Proposed rejections of claims 16-31

1. Kjorsvik in view of AAPA

Claims 16-31 are unpatentable under 35 U.S.C. § 103 as being obvious over Kjorsvik in view AAPA. Kjorsvik discloses or renders obvious all of the limitations of independent claims 1, 3, 7, 10 and 13 as discuss above. However, to the extent that Kjorsvik fails to explicitly disclose the subject matter recited in dependent claims 16-31, AAPA discloses the subject matter of each of the dependent claims.

Kjorsvik includes a screen saver embodiment. This embodiment differs from claims 16-24 in that a screen saver is not displayed "during an active period of the primary interaction with the display device or apparatus" or displayed "in an area of the display device that is not used by the primary interaction." However, these functions are accomplished by computer wallpaper. (Crovella Decl., ¶46.) As disclosed in AAPA, computer wallpaper was well known in the prior art prior to the earliest filing date of the '314 patent. (*Id.*) A person of ordinary skill in the art could have substituted the screen saver embodiment of Kjorsvik with the wallpaper embodiment of AAPA. (*Id.*) To a person of ordinary skill in the art, the results of the substitution would have been predictable. (*Id.*)

A person of ordinary skill in the art would have been motivated to combine Kjorsvik with the wallpaper embodiment of AAPA to achieve the incentive of obtaining a greater share of the user's attention. (*Id.* at ¶47.) This incentive would have prompted a person of ordinary skill in the art to add the wallpaper embodiment of the AAPA to the screen saver disclosed in Kjorsvik. (*Id.*) To a person of ordinary skill in the art, the results of the combination would have been predictable. (*Id.*)

A claim chart summarizing the rejection over Kjorsvik and AAPA is provided in the Appendix.

2. Kjorsvik in view of Rakavy

Claims 16-31 are unpatentable under 35 U.S.C. § 103 as being obvious over Kjorsvik in view Rakavy. Kjorsvik discloses or renders obvious all of the limitations of independent claims 1, 3, 7, 10 and 13 as discussed above. However, to the extent that Kjorsvik fails to explicitly disclose the subject matter recited in dependent claims 16-31, Rakavy discloses the subject matter of each of the dependent claims.

Kjorsvik includes a screen saver embodiment. This embodiment differs from the claims 16-24 in that a screen saver is not displayed "during an active period of the primary interaction

with the display device or apparatus" or displayed "in an area of the display device that is not used by the primary interaction." However, these functions are accomplished by computer wallpaper. (Crovella Decl., ¶46.) As disclosed in Rakavy, computer wallpaper was known in the prior art prior to the earliest filing date of the '314 patent. A person of ordinary skill in the art could have substituted the screen saver embodiment of Kjorsvik with the wallpaper embodiment of Rakavy. (*Id.*) To a person of ordinary skill in the art, the results of the substitution would have been predictable. (*Id.*)

A person of ordinary skill in the art would have been motivated to combine Kjorsvik with the wallpaper embodiment of Rakavy to achieve the incentive of obtaining a greater share of the user's attention. (*Id.* at ¶48.) This incentive would have prompted a person of ordinary skill in the art to add the wallpaper embodiment of the Rakavy to the screen saver disclosed in Kjorsvik. (*Id.*) To a person of ordinary skill in the art, the results of the combination would have been predictable. (*Id.*)

A claim chart summarizing the rejection over Kjorsvik and Rakavy is provided in the Appendix.

3. Rakavy

Claims 16-31 are unpatentable under 35 U.S.C. § 102 as being anticipated by Rakavy. Rakavy discloses all of the limitations of independent claims 1, 3, 7, 10 and 13 as discussed above, as well as the subject matter recited in dependent claims 16-31. Therefore, Rakavy anticipates dependent claims 16-31.

A person of ordinary skill in the art would have been motivated to combine Kjorsvik with the wallpaper embodiment of AAPA to achieve the incentive of obtaining a greater share of the user's attention. (*Id.* at ¶47.) This incentive would have prompted a person of ordinary skill in the art to add the wallpaper embodiment of the AAPA to the screen saver disclosed in Kjorsvik. (*Id.*) To a person of ordinary skill in the art, the results of the combination would have been predictable. (*Id.*)

A claim chart summarizing the rejection over Rakavy is provided in the Appendix.

V. PRIORITY CLAIM

In the Request, the Requester made an argument that the claims of the '314 patent are only entitled to the filing date of the '314 patent, March 20, 2000. The issue of priority impacts the proposed anticipation rejections presented by the Requester. Specifically, both Kjorsvik and Rakavy become prior art under 35 U.S.C. § 102(b) if the claims of the '314 patent are not

entitled to the benefit of the filing dates of the '399 application or the '652 patent. The Examiner did not address the Requester's priority argument in the Office Action. Requester respectfully requests that in the next action, the Examiner provide a decision regarding the proper priority date for the claims of the '314 patent.

VI. CONCLUSION

For these reasons, Requester respectfully requests that the Office issue an Action Closing Prosecution that (1) maintains the previously adopted rejections, (2) adopts the non-adopted grounds of rejection proposed in the Request, and (3) rejects all of Patent Owner's newly added claims.

Respectfully submitted,

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APPENDIX – CLAIM CHARTS

| Claims | Kjorsvik + AAPA | Kjorsvik + Rakavy | Rakavy |
|---|---|---|---|
| <p>16. The method of claim 1, wherein the set of instructions for enabling the content display system to selectively display said image or images generated from the set of content data in an unobtrusive manner enables said image or images to be displayed during an active period of the primary interaction with the display device or apparatus.</p> | <p>"As computer display screen technology has progressed, the use of screen savers to preserve the display screen has become increasingly unnecessary. However, the use of screen savers has continued—even proliferated—likely due to the aesthetic or entertainment value provided by the imagery of many screen savers. Further, the use of "wallpaper" (i.e., a pattern generated in the background portions on a computer display screen) in computer display screens has also arisen, largely one would suspect because of the aesthetic or entertainment value of the wallpaper imagery." (314 patent, 1:54-62)</p> <p>"During an active period of the user's primary interaction with the display device or apparatus, computer wallpaper embodiments inherently display images in an area of the display device that is not used by the primary interaction." (Crovella Decl., ¶43.)</p> | <p>"Other techniques for displaying the advertisement, such as periodic audio-only messages, screen background wallpaper, cursor modifications, and display in a window on the user's computer display are also available." (Rakavy, 3:30-34)</p> <p>"During an active period of the user's primary interaction with the display device or apparatus, computer wallpaper embodiments inherently display images." (Crovella Decl., ¶43.)</p> | <p>"Other techniques for displaying the advertisement, such as periodic audio-only messages, screen background wallpaper, cursor modifications, and display in a window on the user's computer display are also available." (Rakavy, 3:30-34)</p> <p>"During an active period of the user's primary interaction with the display device or apparatus, computer wallpaper embodiments inherently display images." (Crovella Decl., ¶43.)</p> |
| <p>17. The method of claim 16, wherein the set of instructions for enabling the content display system to selectively display said image or images generated from the set of content data in an unobtrusive manner enables said image or images</p> | <p>"[C]omputer wallpaper embodiments are inherently designed to display images in an area of the display device that is not used by the primary interaction." (Crovella Decl., ¶43.)</p> | <p>"[C]omputer wallpaper embodiments are inherently designed to display images in an area of the display device that is not used by the primary interaction." (Crovella Decl., ¶43.)</p> | <p>"[C]omputer wallpaper embodiments are inherently designed to display images in an area of the display device that is not used by the primary interaction." (Crovella Decl., ¶43.)</p> |

| Claims | Kjorsvik + AAPA | Kjorsvik + Rakavy | Rakavy |
|--|-----------------|--|--------------------------------------|
| to be displayed in an area of the display device that is not used by the primary interaction. | | primary interaction." (Crovella Decl., ¶43.) | interaction." (Crovella Decl., ¶43.) |
| 18. The computer readable medium of claim 3, wherein the set of instructions for enabling the content display system to selectively display said image or images generated from the set of content data in an unobtrusive manner enables said image or images to be displayed during an active period of the primary interaction with the display device. | See Claim 16 | See Claim 16 | See Claim 16 |
| 19. The computer readable medium of claim 18, wherein the set of instructions for enabling the content display system to selectively display said image or images generated from the set of content data in an unobtrusive manner enables said image or images to be displayed in an area of the display device that is not used by the primary interaction. | See Claim 17 | See Claim 17 | See Claim 17 |
| 20. The content display system of claim 7, wherein the display apparatus effects the selective display of the image or images generated from the set of content data during an active period of the primary interaction with the display device or apparatus. | See Claim 16 | See Claim 16 | See Claim 16 |
| 21. The content display system of claim 20, wherein the display apparatus effects the selective display of the image or images generated from the set of content data in an area of the display device that is not used by the primary interaction. | See Claim 17 | See Claim 17 | See Claim 17 |
| 22. The method of claim 10, wherein said selectively displaying further comprises the selective display of the image or images generated | See Claim 16 | See Claim 16 | See Claim 16 |

| Claims | Kjorsvik + AAPA | Kjorsvik + Rakavy | Rakavy |
|---|--|---|--|
| <p>from the set of content data during an active period of the primary interaction with the display device or apparatus.</p> | | | |
| <p>23. The method of claim 22, wherein said selective displaying further comprises the selective display of the image or images generated from the set of content data in an area of the display device that is not used by the primary interaction.</p> | <p>See Claim 17</p> | <p>See Claim 17</p> | <p>See Claim 17</p> |
| <p>24. The computer readable medium of claim 13, wherein said selectively displaying further comprises the selective display of the image or images generated from the set of content data during an active period of the primary interaction with the display device or apparatus.</p> | <p>See Claim 16</p> | <p>See Claim 16</p> | <p>See Claim 16</p> |
| <p>25. The computer readable medium of claim 24, wherein said selectively displaying further comprises the selective display of the image or images generated from the set of content data in an area of the display device that is not used by the primary interaction.</p> | <p>See Claim 17</p> | <p>See Claim 17</p> | <p>See Claim 17</p> |
| <p>26. The system of claim 9, wherein the link comprises a Uniform Resource Locator (URL) of the information location.</p> | <p>"For example, information providers have used public computer networks (e.g., the Internet) and private computer networks (e.g., commercial online services such as America Online, Prodigy and CompuServe) to disseminate their information." (314 patent, 1:36-41.)</p> | <p>"User requests for additional information may be directed to the advertiser itself or to the advertiser's WEB site on the network" (Rakavy, 3:49-51) "The user may interact with the Advertisement Display</p> | <p>"User requests for additional information may be directed to the advertiser itself or to the advertiser's WEB site on the network" (Rakavy, 3:49-51) "The user may interact with the Advertisement Display Manager 210 through a number</p> |

| Claims | Kjorsvik + AAPA | Kjorsvik + Rakavy | Rakavy |
|--|---|---|---|
| | <p>"A uniform resource locator (URL) has long been known as a method of specifying the location of publicly available information on the Internet in a specific form." (See Crovella Decl., ¶44.)</p> <p>"A person of ordinary skill in the art would immediately appreciate that URLs could be used to access information over the Internet as disclosed in the Background of the '314 patent." (Crovella Decl., ¶44.)</p> | <p>Manager 210 through a number of ways, including answering questioners, initiating a WEB browser to connect directly to an advertiser WEB page on the Network 700, or automatically initiating a voice connection through the Modem 520 to the advertiser." (Rakavy, 11:41-43.)</p> <p>"Accessing content on the world wide web and directing a web browser to a webpage inherently require the use of a URL." (Crovella Decl., ¶45.)</p> | <p>of ways, including answering questioners, initiating a WEB browser to connect directly to an advertiser WEB page on the Network 700, or automatically initiating a voice connection through the Modem 520 to the advertiser." (Rakavy, 11:41-43.)</p> <p>"Accessing content on the world wide web and directing a web browser to a webpage inherently require the use of a URL." (Crovella Decl., ¶45.)</p> |
| <p>27. The system of claim 9, wherein the system control device uses the established link to retrieve information from the information from the information location, wherein the information is related to the selective display of the image or images generated from the set of content data.</p> | <p>"This information can be displayed to a computer user having access to the network directly in response to a request from the user or indirectly (i.e., without request by the user) as a result of another action taken by the user." ('314 patent, 1:41-47.)</p> | <p>"The system monitors the user's interaction with the advertisements and produces raw data on how many times a particular advertisement was accessed as well as the user's response to advertisements. All pertinent information is stored and sent back to a network server where it is made available to the advertisers. User requests for additional information may be directed to the</p> | <p>"The system monitors the user's interaction with the advertisements and produces raw data on how many times a particular advertisement was accessed as well as the user's response to advertisements. All pertinent information is stored and sent back to a network server where it is made available to the advertisers. User requests for additional information may be directed to the advertiser itself or to the</p> |

| Claims | Kjorsvik + AAPA | Kjorsvik + Rakavy | Rakavy |
|--|-----------------|---|---|
| 28. The method of claim 12, wherein the link comprises a Uniform Resource Locator (URL) of the information location. | See Claim 26 | advertiser itself or to the advertiser's WEB site on the network." (Rakavy, 3:44-51.) See Claim 26 | advertiser's WEB site on the network." (Rakavy, 3:44-51.) See Claim 26 |
| 29. The method of claim 12, further comprising retrieving, via the established link, information that is related to the selective display of the image or images generated from the set of content data. | See Claim 27 | See Claim 27 | See Claim 27 |
| 30. The computer readable medium of claim 15, wherein the link comprises a Uniform Resource Locator (URL) of the information location. | See Claim 26 | See Claim 26 | See Claim 26 |
| 31. The computer readable medium of claim 15, wherein the instructions for controlling aspects of the operation of the system further comprises instructions for retrieving, via the established link, information that is related to the selective display of the image or images generated from the set of content data. | See Claim 27 | See Claim 27 | See Claim 27 |

EXHIBIT A

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