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Paper 40
Entered: November 10, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAS INSTITUTE, INC.,
Petitioner,

v.

COMPLEMENTSOFT, LLC,
Patent Owner.

Case IPR2013-00226
Patent 7,110,936 B2

Before KEVIN F. TURNER, JUSTIN T. ARBES, and JENNIFER S. BISK, *Administrative Patent Judges*.

BISK, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

SUMMARY

SAS Institute, Inc. ("Petitioner") requests rehearing of the Board's Final Decision ("Dec."), dated August 6, 2014 (Paper 38). In the Final Decision, we determined that claims 1, 3, and 5–10 of U.S. Patent No. 7,110,936 B2 (Ex. 1001) (the "'936 patent") were unpatentable, but that Petitioner had not shown that claim 4 was unpatentable. Petitioner requests rehearing on two issues: (1) Petitioner's contention that we are required to conduct an *inter partes* review of "all claims of the '936 patent, including claims 2 and 11–16"; and (2) the proper interpretation of the claim term "data flows." Paper 39, 3 ("Req. Reh'g"). For the reasons that follow, Petitioner's request for rehearing is *denied*.

DISCUSSION

A party challenging a final written decision by way of a request for rehearing must identify specifically all matters the party believes the Board misapprehended or overlooked. 37 C.F.R. § 42.71(d). The challenging party bears the burden of showing that the decision should be modified. *Id.*

We are not persuaded by Petitioner's argument that we overlooked the contention that 35 U.S.C. § 318(a) requires that we address in the Final Decision the patentability of all claims challenged by Petitioner, including claims 2 and 11–16. Req. Reh'g 3–5. All claims at issue in this trial (claims 1 and 3–10) were addressed in the Final Decision. As stated in the Final Decision, trial was not instituted on claims 2 and 11–16, because Petitioner did not show a reasonable likelihood of prevailing on its challenges to those claims. Dec. 41. Accordingly, the unpatentability of claims 2 and 11–16 was not at issue in this trial. Dec. 41.

We also are not persuaded by Petitioner's argument that we misapprehended the construction of the claim term "data flows." Req. Reh'g 5–15. Petitioner argues on rehearing that in the Decision to Institute, "the Board interpreted 'data flow' to mean 'a depiction of a map of the path of data through the executing source code." *Id.* at 6. Further, Petitioner asserts that "neither party challenged that interpretation during the IPR" and that the construction adopted in the Decision to Institute "is consistent with the broadest reasonable construction." *Id*. at 6, 12. This assertion is contrary to the argument in Petitioner's reply brief that "the 'executing' requirement for 'data flows' is improper, especially in view of the BRI [broadest reasonable interpretation] standard." Paper 24 ("Reply") 4; *see* Dec. 18. Thus, Petitioner *did* challenge the interpretation of "data flows" during the IPR.[1]

Moreover, we are not persuaded by Petitioner's assertion that the construction of "data flows" in the Final Decision was erroneous. Petitioner asserts that our interpretation of "data flows" results in claim 4 reciting "graphical representations of a graphical representation," which is "obviously repetitive." Req. Reh'g 11. Similarly, Petitioner asserts that there is a difference between a "data flow" and the depiction of a "data flow." We agree that the Final Decision could have further defined "data flow diagrams" and "graphical representations of

[1] To the extent Petitioner contends that it was prejudiced by not being able to respond to the interpretation of "data flows" in the Final Decision, Petitioner had the opportunity in the Petition to argue its position on claim interpretation and explain why it believes the prior art teaches "data flows." *See, e.g.*, 37 C.F.R.

data flows" to be equivalent. However, we are not persuaded that our interpretation of "data flows" was erroneous.

As discussed in the Final Decision, the '936 patent defines "data flow diagrams" as "comprised of icons depicting data processing steps and arrows to depict the flow of the data through the program." Dec. 18 (citing Ex. 1001, 2:40-42). The '936 patent does not explicitly define the term "data flows," or "graphical representations of data flows," but uses the term "data flows" interchangeably as meaning both the flow of data ("data flows") and visualization of the flow of data ("data flow diagrams" and "graphical represenations of flows"). *See, e.g., id.* at 4:12-13 ("FIG. 17 is an exemplary screen shot *depicting a data flow* for a selected file.") (emphasis added), 16:3-5 ("By assigning meanings and attributes to tokens 144, the document view engine 200 allows the *visualizer to create* program flows 122 and *data flows 124*.") (emphasis added). Petitioner appears to agree on this point because its own proposed construction of the term "data flows" conflates the flow of the data with the visualization of that flow—"*a depiction of a map* of the path of data through the executing source code." Req. Reh'g 6, 12 (emphasis added).

Petitioner asserts that the '936 patent reasonably supports a reading that "data flows" may be illustrated with more general "program flow icons" that do not necessarily depict data processing steps. *Id*. at 9–10 (citing Ex. 1001, Abstract, 8:8–14, 16:12–30). "Program flow icons" are used in the '936 patent to represent

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§ 42.104(b) (requiring a petition to explain "[h]ow the challenged claim is to be construed" and "[h]ow the construed claim is unpatentable").

both program "code sections" and "data blocks." *See, e.g.*, Ex. 1001, 8:8–14 ("For viewing the program flow and data flow of a selected program . . . the visualizer 120 . . . displays the code for the selected program, *representing each program and data block with a program flow icon 126*.") (emphasis added), 15:63–67 ("Using information provided by the parser layer 140, the document view engine can . . . represent the procedures and data blocks as program flow icons 126."). It does not follow that visualization of a data flow may be shown by program code sections that are unrelated to data processing. Instead, the '936 patent consistently differentiates the visualization of program flows and data flows; the visualization of program flows as "program block icons and arrows to depict the code's program flow" and the visualization of data flows as "icons depicting data processing steps and arrows to depict the flow of the data through the program." *Id.* at 2:38–42, 8:8–14, 16:6–30. We are not persuaded by Petitioner's arguments to the contrary. *See* Req. Reh'g 5–15. Thus, we are not persuaded that our interpretation requiring the visualization of "data flows" to include "icons depicting data processing steps and arrows to depict the movement of data through source code" was erroneous.

CONCLUSION

We have reviewed and considered all arguments in Petitioner's request for rehearing and determine that Petitioner has not carried its burden of demonstrating that the Board misapprehended or overlooked any matters in rendering the Final Decision. 37 C.F.R. § 42.71(d). The request for rehearing is *denied*.

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