

Nos. 2023-1006 and 2023-1008

IN THE
United States Court of Appeals
for the Federal Circuit

SOFTVIEW LLC,

Appellant,

v.

APPLE INC. and MOTOROLA MOBILITY LLC

Appellees

APPEAL FROM
THE UNITED STATES PATENT AND TRADEMARK OFFICE,
PATENT TRIAL AND APPEAL BOARD
IN REEXAMINATION CONTROL NOS. 95/000,635 AND 95/002,126

**CORRECTED APPELLANT SOFTVIEW'S COMBINED PETITION FOR
PANEL REHEARING AND REHEARING *EN BANC***

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CERTIFICATE OF INTEREST

FORM 9. Certificate of Interest

Form 9 (p. 1)
July 2020

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 2023-1006 and 2023-1008
Short Case Caption SoftView LLC v. Apple Inc.
Filing Party/Entity SoftView LLC

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

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Date: 07/24/2024

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Name: R. Alan Burnett

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FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.
<input type="checkbox"/> None/Not Applicable	<input checked="" type="checkbox"/> None/Not Applicable	<input checked="" type="checkbox"/> None/Not Applicable
SoftView LLC		

Additional pages attached

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FORM 9. Certificate of Interest

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4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court’s decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable Additional pages attached

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

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All emphasis herein shown in **bold**, *bold italics*, and **bold italics underlined** added unless otherwise noted.

POINTS OF LAW OR FACTS OVERLOOKED OR MISAPPREHENDED BY THE COURT

In issuing a summary affirmance under Rule 36 the Court overlooked or misapprehended points of law and facts including failure to consider obviousness under *Graham*, failure to address all claim limitations, required claim construction *de novo* under *Phillips*, and acceptance of unsupported core factual findings by the Board in violation of *Zurko* and *K/S HIMPP*.

The Court also failed to address legal issues of first impression that warrant a precedential opinion:

1. Whether Applicant's Admitted Prior Art (AAPA) qualifies as a basis for a ground of rejection as prior art under 35 U.S.C. §§ 301(a)(1) and 311 (pre-AIA) and 37 C.F.R. §§ 1.906(a) and 1.915?
2. Whether the Board's new grounds are permitted under 37 CFR §§ 41.77 and 41.67(c)(1)(vi).

"[T]o the extent necessary to the decision and when presented, the reviewing court shall decide all relevant questions of law." 5 U.S.C. § 706. *In re Comiskey*, No. 2006-1286, 8 (Fed. Cir. Jan. 13, 2009). This Court did not address all relevant questions of law necessary to the decision.

REASONS FOR GRANTING THE PETITION

While *KSR* set out an expansive and flexible approach to determine obviousness based on *Graham*, that approach did not discard the core tenants of *Graham*. Rather, the Supreme Court reiterated that 35 U.S.C. § 103 requires an assessment that focuses on the knowledge and motivations of a person having ordinary skill in the pertinent art (“PHOSITA”). Under the decisions on appeal, those core tenants, including resolving the level of ordinary skill in the pertinent art, are nowhere to be found.

KSR addresses obviousness in the context of known elements, known devices, and known methods. The scope of teachings for prior art concerning known elements, devices and methods in the chemical, mechanical and electrical arts is relatively easy to assess, and this Court has addressed many post-*KSR* cases involving these arts. While this Court has addressed some post-*KSR* obviousness cases involving software, those cases have involved relatively simple software and/or minor improvements. However, post-*KSR* or otherwise, this Court has not addressed any software-related cases involving highly complex software where the alleged known prior art is not a prior art patent or publication but rather is software.

The state of computer science (CS) and software arts has advanced greatly in the past 30 years, yet one would never know this in reviewing cases from this

Court, where opinions cite precedential software-related cases addressing the state of CS and software in the 70's and 80's. This case presents an opportunity to address the use of "known" software under *KSR* and in view of the state of CS and software arts at the time of the invention.

Under precedential case law, Board experience can be relied on for only factual "conclusions as to peripheral issues"—not to core factual findings or the ultimate patentability conclusion. *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001); *K/S HIMPP v. Hear-Wear Techs., LLC*, 751 F.3d 1362, 1365 (Fed. Cir. 2014). Judge Dyk's dissent in *K/S HIMPP* raised issues concerning limitations relating to use of examiner or Board knowledge in obviousness determinations for which clarification and/or reconsideration is warranted.

BACKGROUND

I. THE SOFTVIEW PATENTS

The SoftView Patents (7,461,353, Appx1981 and 7,831,926, Appx0109) disclose processes for translating HTML code – including “elements such as tables, column definitions, graphic images, paragraphs” and the like – into a scalable resolution-independent representation (also called a vector representation) for display on a mobile device. '926 Patent, 15:43-18:32. FIGs. 4A-4G show translation and scaling processes for a Web page (4A) that is processed to generate HTML objects (4B) that are translated into a scalable representation (4C), and FIG. 5 sets forth an exemplary translation process.

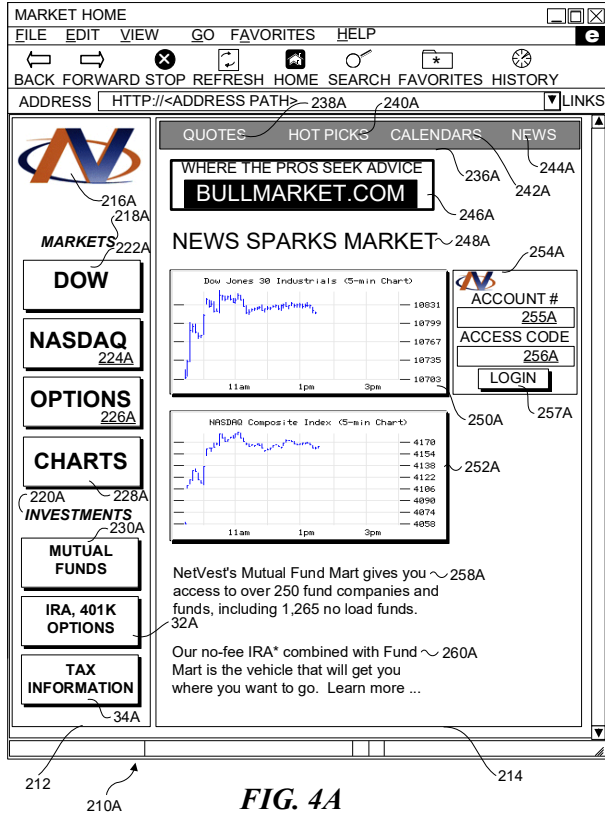


FIG. 4A

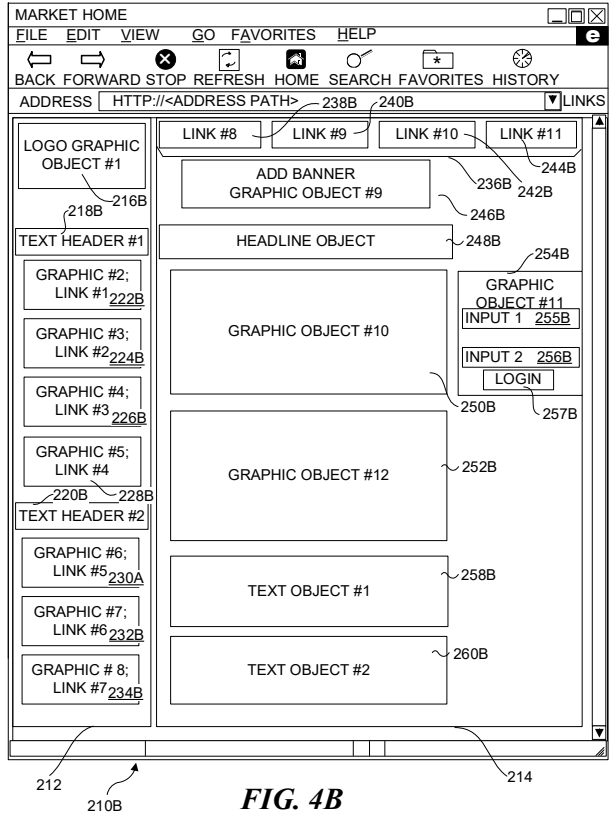


FIG. 4B

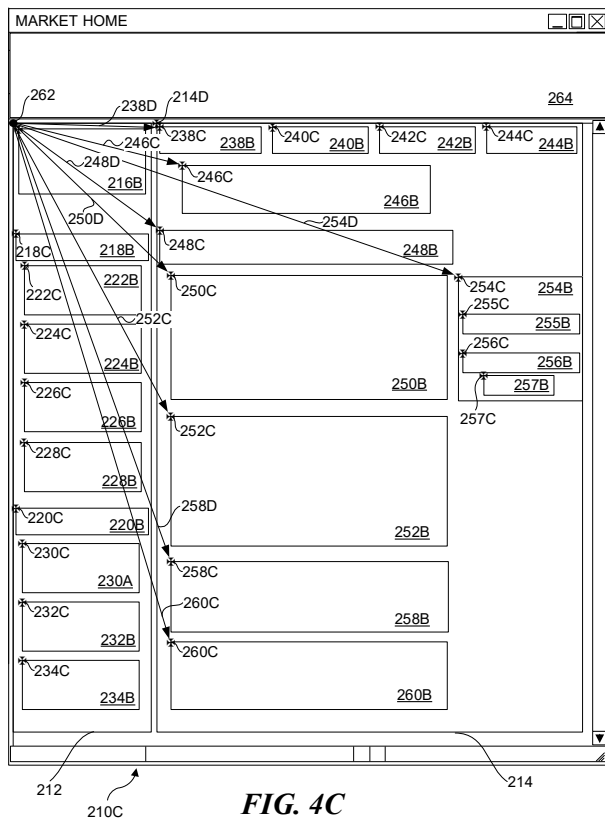


FIG. 4C

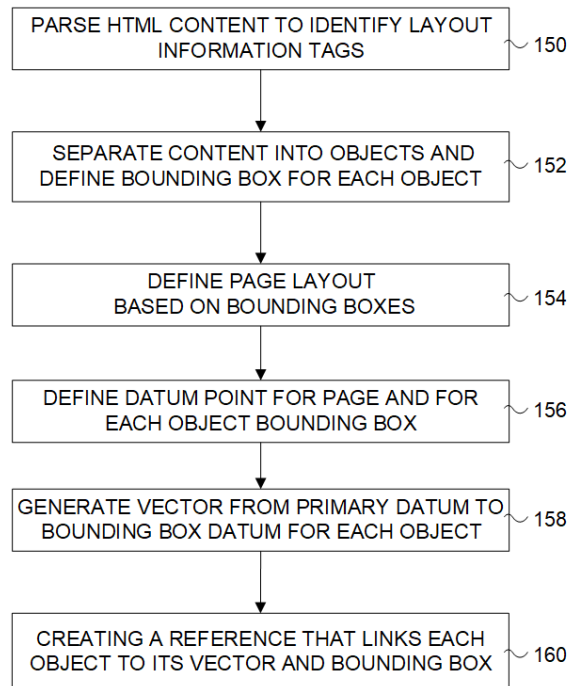
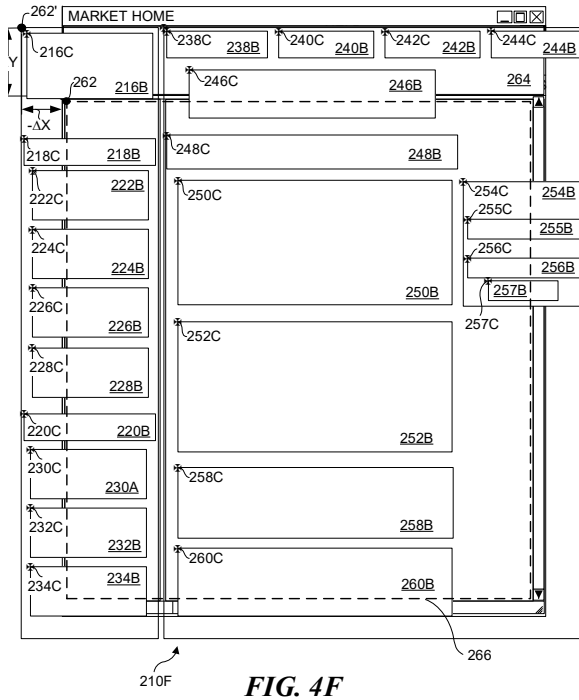
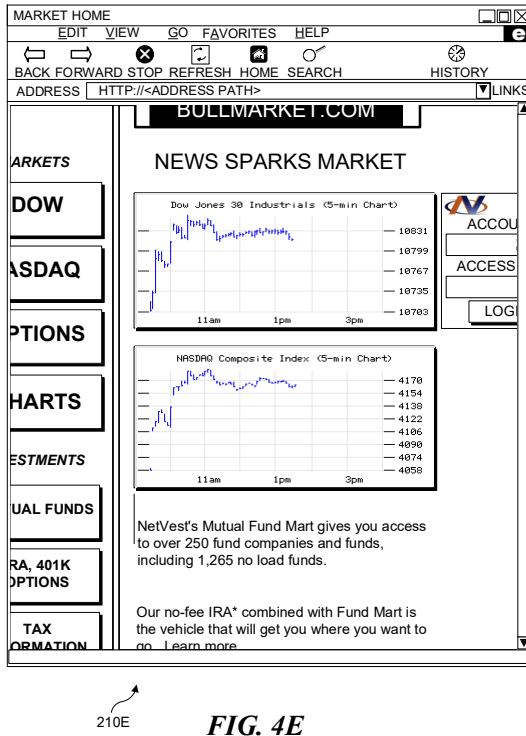
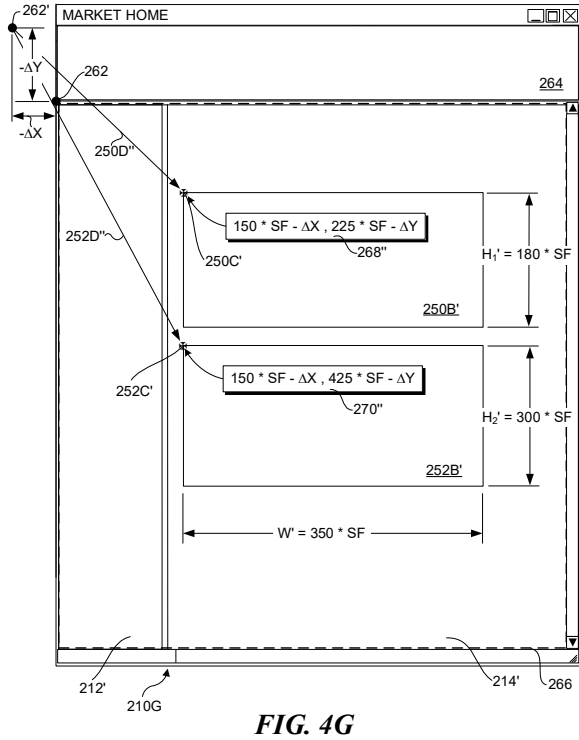
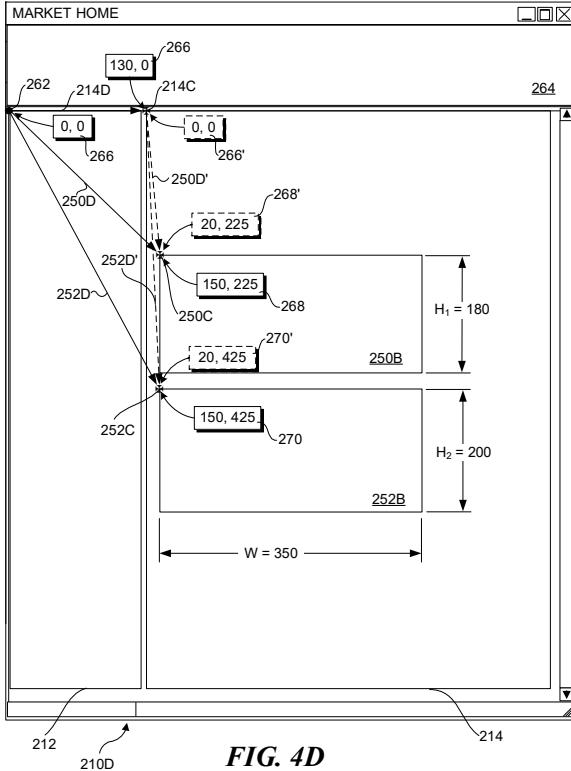


FIG. 5

FIGS. 4D and 4G show scaling of two HTML objects, FIG. 4E shows a scaled page, and FIG. 4F shows scaled bounding boxes for the scaled page.



A Web page's HTML-based content (HTML, CSS, XML, JavaScript) is retrieved and processed using an HTML- and CSS-compliant rendering engine (e.g., Mozilla "Gecko") to perform the functions in blocks 150, 152, and 154 of FIG. 5. *Id.*, at 17:31-41. The various object layout data is used to generate a scalable vector representation of the original page content. '926 Patent, 15:43-18:32.

A critical aspect of the SoftView Patents is these translation processes preserve the original page layout, functionality, and design of the Web content as defined by the HTML-based Web content (*i.e.*, HTML Code and CSS code). Such preservation enables "users of . . . handheld devices with small screens . . . to view and interact with Web pages in a manner independent of the screen resolution of such device's built-in or associated display, while maintaining the look and feel of browsing such pages with a conventional desktop browser." '353 Patent, 2:50-56 (Appx2006) (emphasis added).

An overall end-to-end view illustrating an implementation using the SoftView™ browser client is shown in FIG. 1 below (Appx1964, Appx2124). Non-limiting examples of mobile and hand-held devices include PDAs, Pocket PCs, and mobile phones. *Id.*, at 20:49-51.

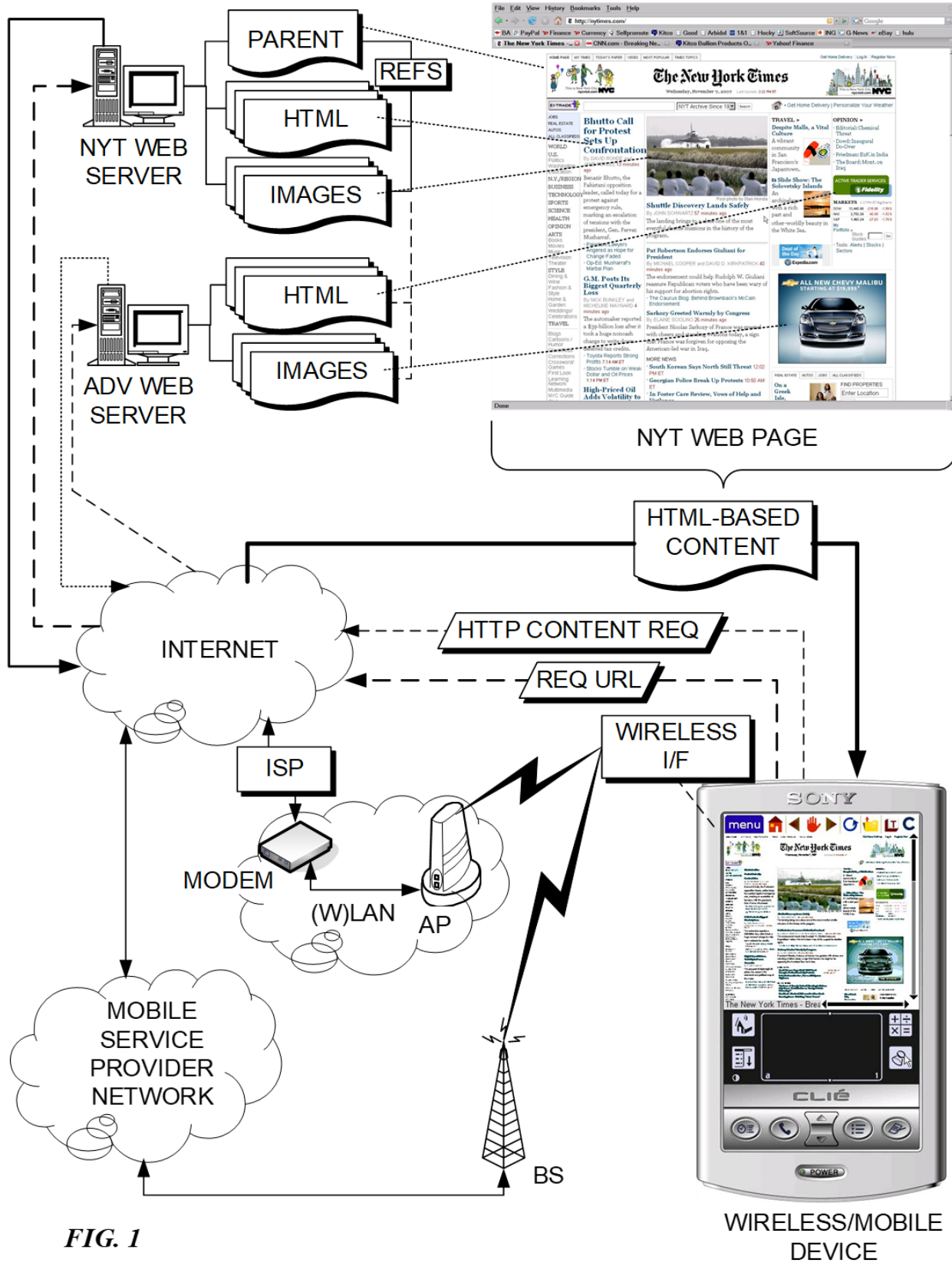


FIG. 1

II. THE PRIOR ART

A. The Pad++ Tour

The Pad++ Tour¹ (Appx0600) is a collection of Web pages describing the Pad++ Zoomable User Interface (ZUI) and three example applications including an HTML browser². It also includes Frequently Asked Questions.³

B. HTML 4.0 Specification

The HTML 4.0 Specification was a W3C Recommendation published on December 18, 1997⁴ that defines the HyperText Markup Language (HTML), version 4.0, the publishing language of the World Wide Web. Appx2522

C. The “Known” Pad++ HTML Browser

Discussion of the Web browser begins on p.86 (Appx0686) and includes the following (screenshots captured from the Web pages for better quality, beginning at <https://www.cs.umd.edu/hcil/pad++/tour/html1.html#z1>):

¹ A Brief Tour Through Pad++, April 1997. [cs.umd.edu/hcil/pad++/tour/](https://www.cs.umd.edu/hcil/pad++/tour/)

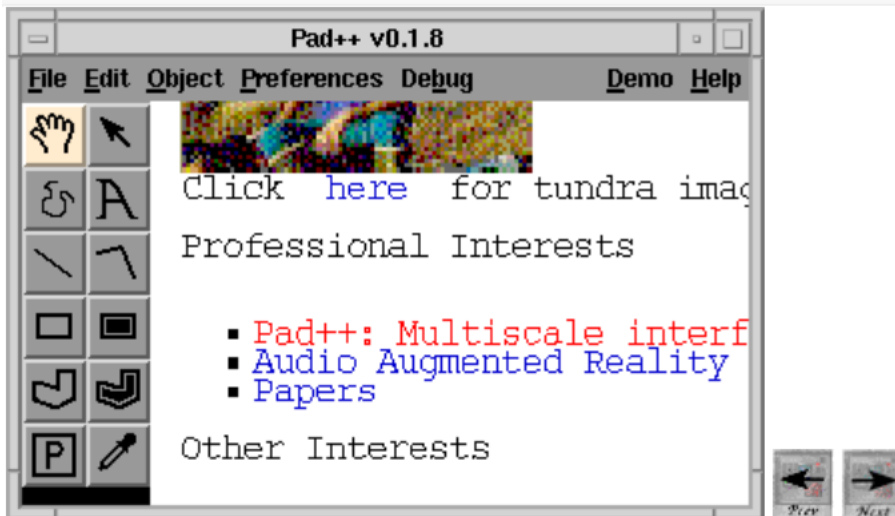
² <https://www.cs.umd.edu/hcil/pad++/tour/html.html#a11>

³ <https://www.cs.umd.edu/hcil/pad++/faq.html>

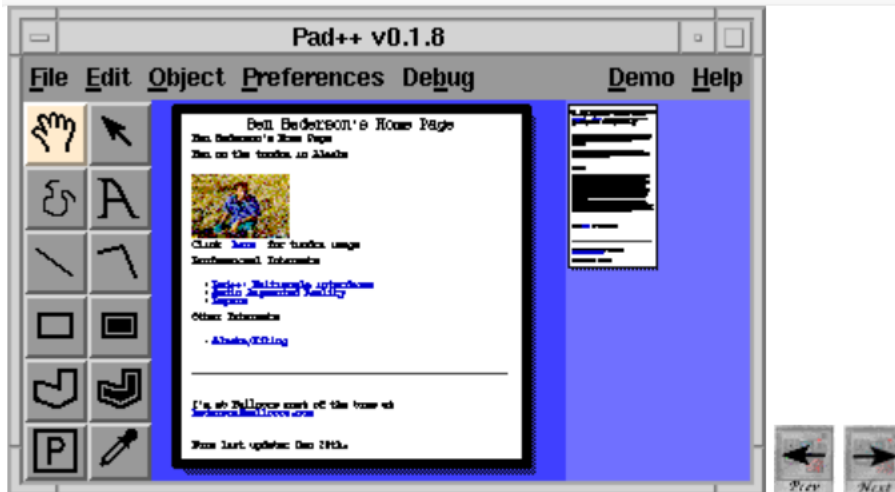
⁴ <https://www.w3.org/TR/REC-html40-971218/>



Here is a screen snapshot showing Pad++ displaying an HTML document.

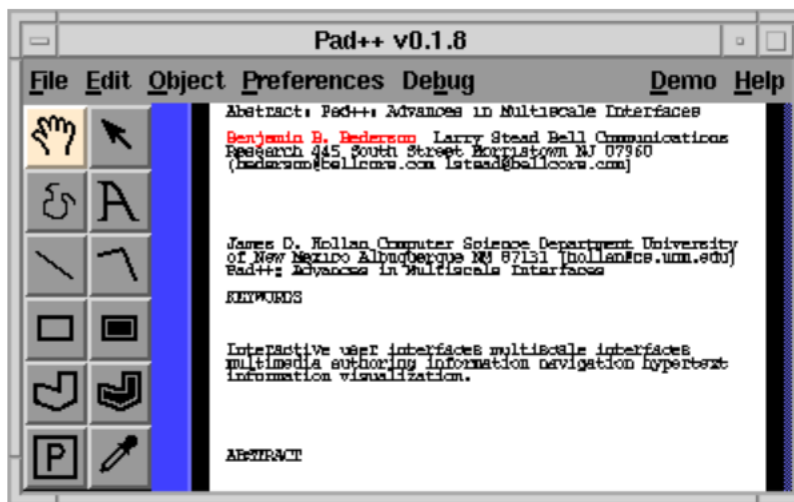


Here is a zoomed in view of the document. Hotwords are shown in blue - positioning the pointer over a hotword changes its color to red. In this snapshot the pointer was over the 'Pad++: Multiscale interfaces' link.



When you follow a link, the relevant document is loaded into Pad++ and placed on the surface to the right of the original document, at a smaller scale. Here you can see the 'Pad++: Multiscale interfaces' document loaded beside the home page.

The Pad++ HTML browser will lay out sub-documents in two columns next to the parent document. Because Pad++ is zoomable, there is always enough space between those two columns for placing further documents reached from those sub-documents!



Simply zoom in on the sub-document to read it.

Preserving history in the HTML browser

You can see the history of the user's interaction implicitly in the layout of the documents on the Pad++ surface. Here's what the Pad++ surface looks like after we've done a little browsing. Four documents were accessed via Ben's home page. From the first of these, another two documents were visited. Just zoom in to view the documents.



The following show navigation aspects of the “tree” browser described and shown in *A Zooming Web Browser* (Appx0418) and *Pad++: A Zoomable Graphical Sketchpad* (Appx0431) (Pad++ v0.2.6):

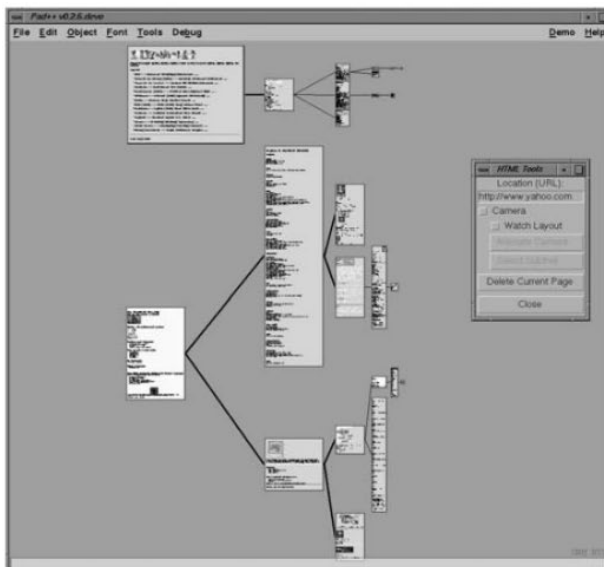


Figure 1: Snapshot of Pad++ Web Browser.

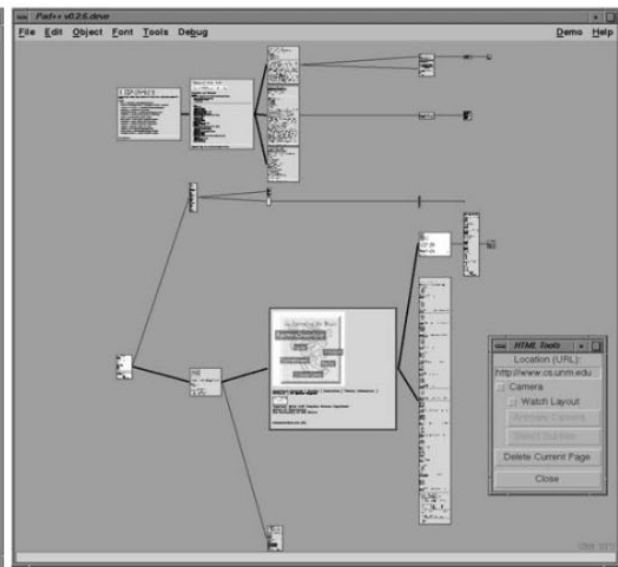


Figure 2: Another view of same web pages.

Appx0421

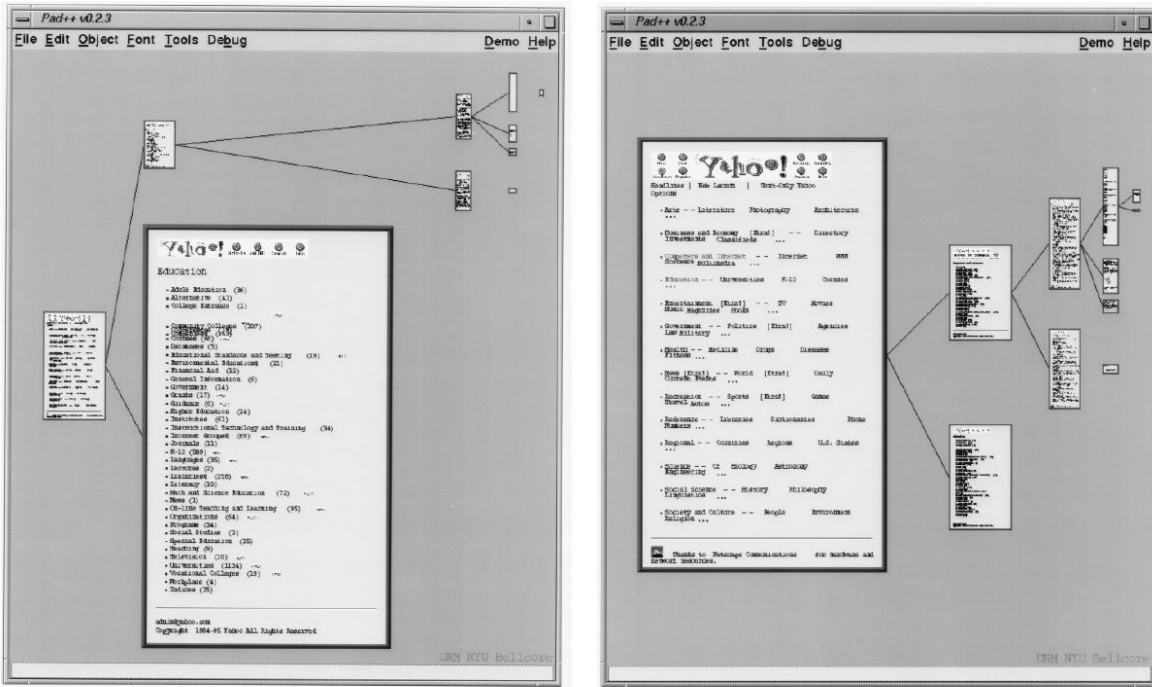
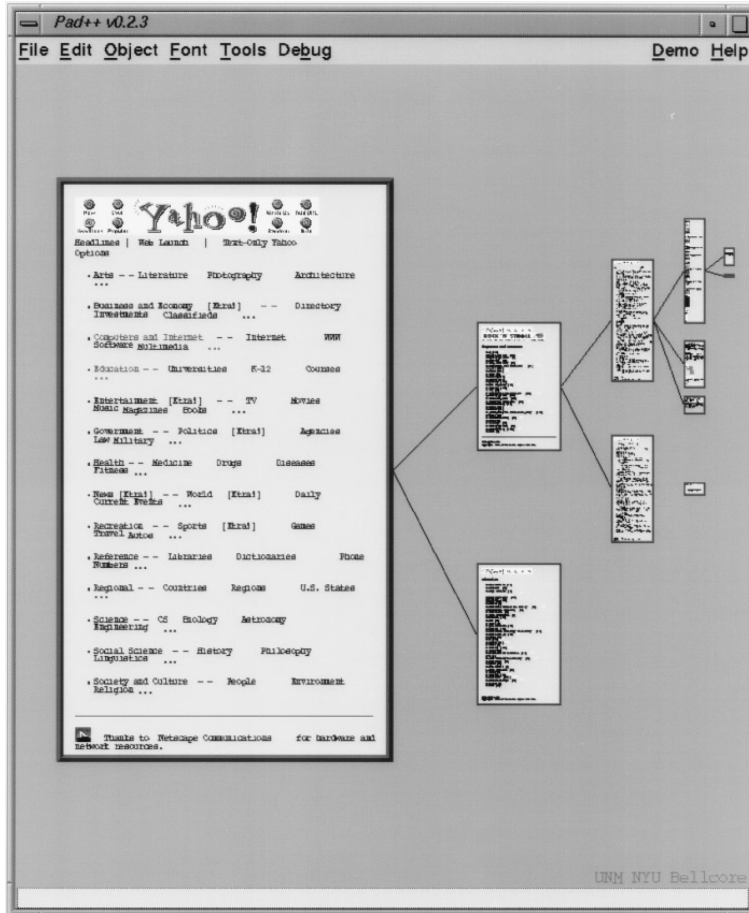


Figure 5. Many different HTML documents loaded in Pad++. Their layout implicitly shows the history of the user's interaction. The two views show the same tree focused on different nodes

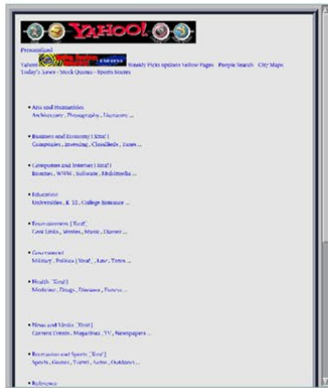
Appx0477-0478

The following compares Pad++ browser rendering of well-known Web pages with how those pages should appear when rendered as defined by the pages' HTML-based content (using Netscape 6 employing the Mozilla rendering engine).



Appx1724

Pad++ v0.9 was the version for which source code was available at the time of the invention and rendered pages as follows.



www.yahoo.com (April 18, 1997)



www.yahoo.com (April 4, 2001)



www.msn.com (April 3, 2001)



www.nytimes.com (Nov. 9, 2000)

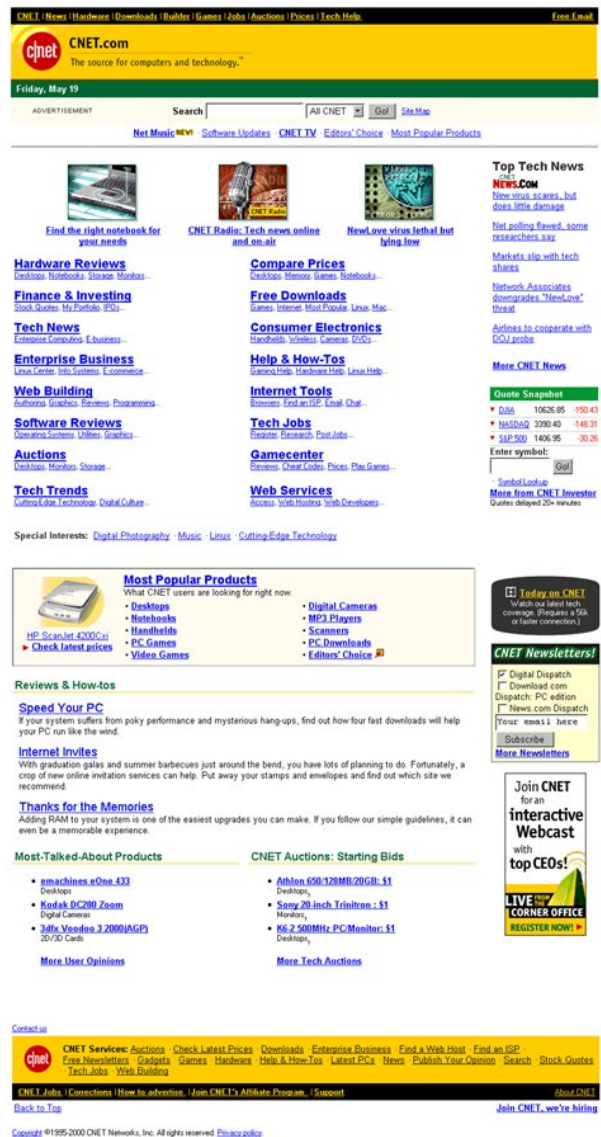


www.aol.com (April 1, 2001)



www.about.com (April 1, 2001)





Appx1828 (May 19, 2000)

What is also known:

- In 1995 Bederson *et al.* built a prototype browser with “HTML 1.0.”

Appx0739

- The source code (HTML.cpp, 2/9/1997, Appx2031) shows the browser employed a single-pass HTML parser that was modified in an

attempt to support HTML 2.0, which was an abysmal failure.

Appx2467, Appx1803-1805

- Further development was abandoned in 1998 in view of the “the web [having] advanced greatly.” Appx0739-0740.

Bederson testified (Appx1927-1933):

- Pad++ never implemented on a PDA
- Code could not run on a PDA
- Target platform computer that could run Linux and X graphics system

ARGUMENT

I. STANDARD OF REVIEW

The Board's decision is reviewed under the standards set forth in 5 U.S.C. § 706 of the Administrative Procedure Act. *Yeda Research v. Mylan Pharm. Inc.*, 906 F.3d 1031, 1040 (Fed. Cir. 2018). Those standards require this Court to "decide all relevant questions of law" and to set aside agency actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Agency action is an abuse of discretion when it "(1) is clearly unreasonable, arbitrary, or fanciful; (2) is based on an erroneous conclusion of law; (3) rests on clearly erroneous fact findings; or (4) involves a record that contains no evidence on which the [agency] could rationally base its decision." *In re Vivint, Inc.*, 2020-1992 (Fed. Cir. Sep. 29, 2021)

II. HISTORICAL TREATMENT OF SOFTWARE CASES

In *Is Patent Law Technology-Specific?* (2002) law professors Dan Burk and Mark Lemley discuss historical treatment of computer science as a predictable art under this Court, arguing the Court had failed to recognize the increasing complexity, difficulty, and unpredictability of computer programming. Their observations include:

The court has a perception of both [biotechnology and computer science] fields that was set in earlier cases but which does not reflect the modern realities of either industry. ... [W]e believe the courts

must take more care than they currently do to ensure that their assessments of patent validity are rooted in understandings of the technology that were accurate at the time the invention was made. *Id.* at 1157.

In short, the court thinks of programmers as people of astonishing skill, capable of implementing any idea in a computer program as a matter of course. ... But as a matter of computer science, there is ample evidence that the court's assumptions are contrary to actual practice. *Id.* at 1192 (citations omitted).

Historically, this Court has treated CS and software cases in the context of relatively simple inventions and/or minor improvements to known art, primarily addressing the state of the art in the 1970's and 1980's. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931 (Fed. Cir. 1990) addressed enablement of US 3,760,375 (1969 priority date), which claimed an improved method for entering, verifying, and storing data with a data entry terminal.

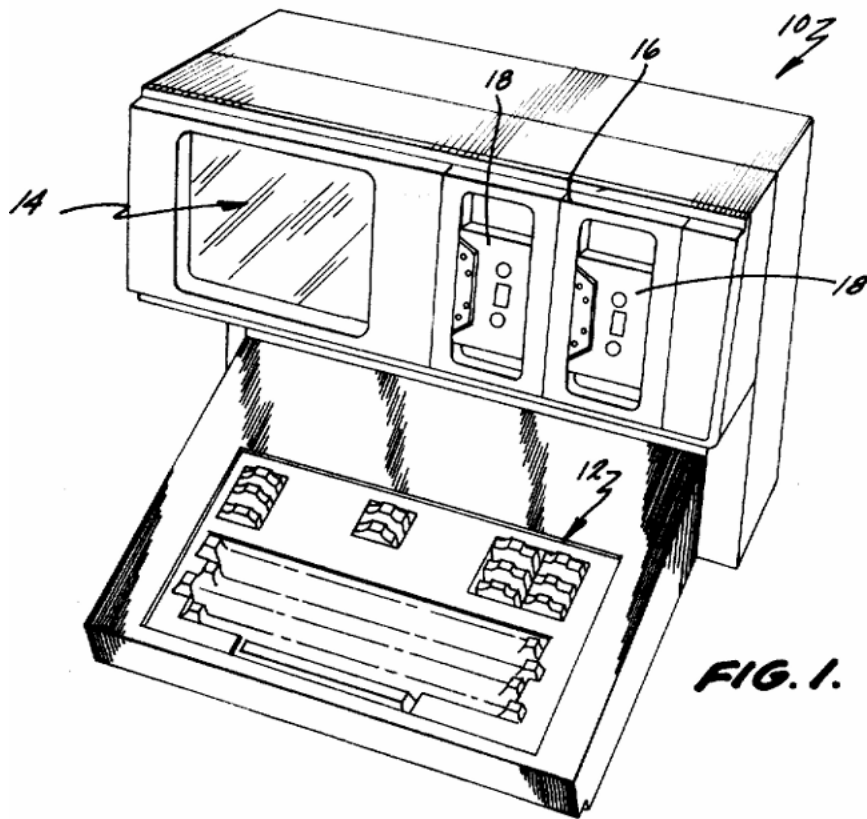


FIG. 1.

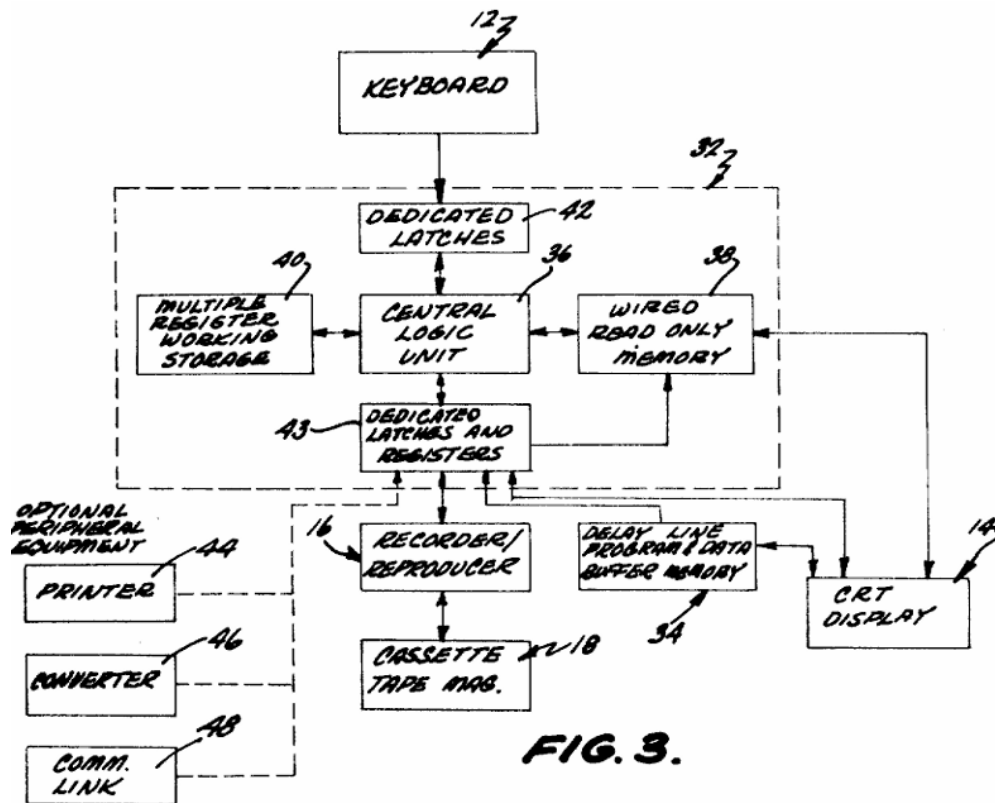


FIG. 3.

Citing *In re Sherwood*, 613 F.2d 809, 204 USPQ 537 (CCPA 1980) the Court found,

[T]he conversion of a complete thought (as expressed in English and mathematics, i.e. the known input, the desired output, the mathematical expressions needed and the methods of using those expressions) into a language a machine understands is necessarily a mere clerical function to a skilled programmer.

In *Fonar Corp. v. General Elec. Co.*, 107 F.3d 1543 (Fed. Cir. 1997), the Court found,

As a general rule, where software constitutes part of a best mode of carrying out an invention, description of such a best mode is satisfied by a disclosure of the functions of the software. This is because, normally, writing code for such software is within the skill of the art, not requiring undue experimentation, once its functions have been disclosed. *Id.* at 1549.

Recently, this Court cited this same assertion from *Fonar* where there was undisputed expert testimony “the software modifications needed to combine the prior art references would be "straightforward" and "simple" for a skilled artisan.” *Keynetik, Inc. v. Samsung Elecs. Co.*, No. 2022-1127, 3 (Fed. Cir. Feb. 15, 2023).

III. NEW GROUND 2: PATENTABILITY OF CLAIMS 29 AND 78 IN VIEW OF PAD++ TOUR AND THE HTML 4.0 STANDARD

A. Appeal Decision

Claims 29 and 78 were rejected under two new grounds:

Ground 1: Pad++ Tour and the Mozilla Rendering Engine (AAPA);

Ground 2: Pad++ Tour and the HTML 4.0 Standard.

For Ground 2, the Board asserted (Appx0023-0024),

A person of ordinary skill in the art would have recognized that incorporating the *cascading style sheets of HTML 4.0 Standard* with the Pad++ HTML browser of Pad++ Tour *would have improved Pad++ Tour by providing the advantage of improving the appearance of Web pages, including style information from several sources*. See *KSR Int 'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("*I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.*"). Alternatively, the combination of HTML 4.0 Standard and Pad++ Tour is nothing more than adding the *known cascading style sheet of HTML 4.0 Standard* with the *known HTML browser of Pad++ Tour, to yield predictable results*. See *id.* at 416 ("The combination of familiar elements according to *known methods* is likely to be obvious when it does no more than *yield predictable results*."). Accordingly, the combination of Pad++ Tour and HTML 4.0 Standard teaches the limitation "wherein the HTML-based Web content includes cascading style sheet content defining layout and presentation attributes for the Web page."

B. *Graham* and PHOSITA

Citing *Graham*, *KSR* states,

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined.

550 U.S. 406.

The pertinent art is Web browser arts including HTML- and CSS-compliant rendering engines and browsers. The '926 patent was written, and the claims drafted in view of how a PHOSITA would understand the invention(s). A PHOSITA would have had significant experience working with HTML and CSS at the time of the invention – under Wolf’s PHOSITA, at least two years’ industry or educational experience with creating and testing HTML-based and CSS content (Appx1764). None of the APJs are PHOSITAs, much less have expertise in the pertinent art at issue.

C. The Board’s Core Factual Findings Cannot Stand

Board experience can be relied on for only factual “conclusions as to peripheral issues”—not the ultimate patentability conclusion. *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001); *K/S HIMPP v. Hear-Wear Techs., LLC*, 751 F.3d 1362, 1365 (Fed. Cir. 2014). As stated in *HIMPP*,

“With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience....”). HIMPP must instead “point to some concrete evidence in the record in support of these findings.” 258 F.3d 1386

The Board baldly asserts the following as known and familiar elements:

- cascading style sheet of HTML 4.0 Standard; and
- HTML browser of Pad++ Tour

and implies incorporating the former into the latter could have been accomplished by a PHOSITA at the time of the invention with known methods to yield predictable results.

These are conclusions relating to core factual issues the Board cannot make without identifying “concrete evidence in the record in support of these findings,” which the Board does not provide in either the Appeal or Rehearing Decisions. The Board’s action here rests on clearly erroneous fact findings.

D. No Known Method or Software for Adding CSS Support to an HTML Browser

The Board refers to the “known cascading style sheet of HTML 4.0 Standard” without identifying any record evidence to support what is “known.” There was no known CSS element, device, nor software. HTML 4.0 section 14 Style Sheets (Appx2692) discloses how to incorporate inline or external CSS content into a Web page, while the CSS mechanisms enabling style to be attached

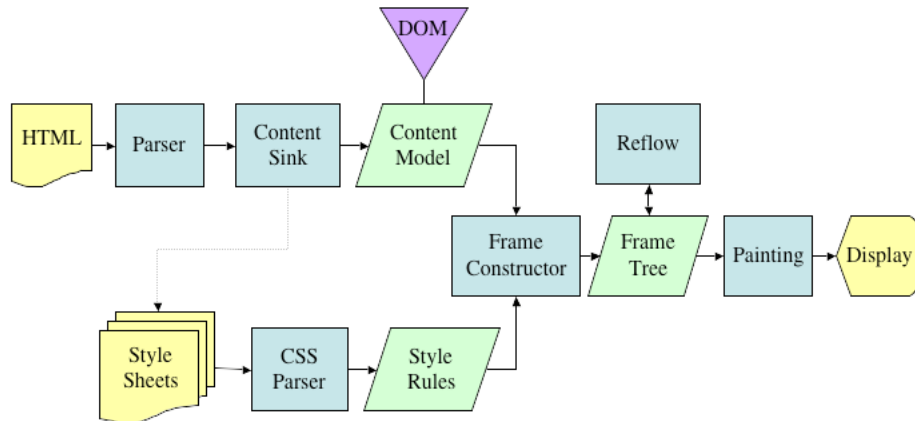
to HTML documents are described in separate CSS1 and CSS2 specifications (Appx2885, Appx2948). The combination of rules in the HTML 4.0 Standard and CSS1/CSS2 specifications define how HTML and CSS content is to be rendered by a user agent (UA).

Wolf testified there was no known techniques/methods for modifying a browser to support CSS content, nor known software for implementing CSS in a Web browser. Appx1765-1766. This fact-based evidence was not refuted.

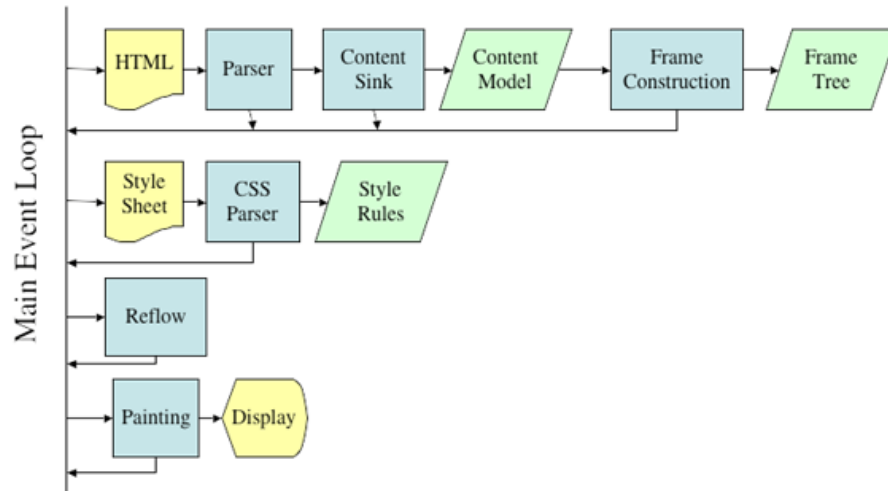
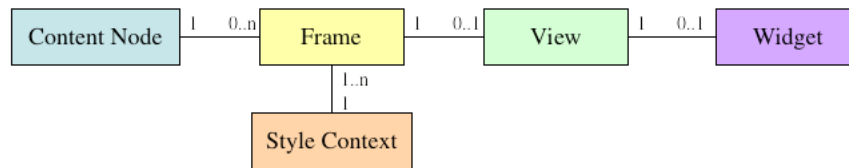
Code for implementing CSS support in a rendering engine must be integrated with other code (*e.g.*, modules) that is specific to that rendering engine. Wolf provides details of Mozilla “Gecko’s” rendering engine architecture with reference to the following diagrams (Appx1767-1768).

Basic Data Flow

- Source document arrives via network APIs
- Incrementally “pumped” through the single-threaded layout engine
 - Parse, compute style, render; repeat
 - CSS used for rendering *all* content
- Content theoretically separate from “presentation”



Key Data Structures



E. What is the Scope of Teachings of Known Software?

The case law needs clarification concerning the scope of teachings of known software. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565 (Fed. Cir. 1997) addressed whether the SABRE system, which was connected to the reservation systems for most of the other airlines by 1970, qualified as prior art. This Court found “American's public use of the high-level aspects of the SABRE system was enough to *place the claimed features of the '359 patent in the public's possession.*” *Id.* at 1570.

When software is in “public use,” what features and/or functional aspects are in the public’s possession? Does public use place all features/functional aspects of a software application in the public’s possession, regardless of the level of complexity necessary to implement such features and functional aspects and/or considerations of platform hardware and operating system? For example, as Microsoft Internet Explorer (IE) 5 for Macintosh was publicly available in March 2000, would this mean fundamental functionality such as rendering Web pages with full (>99%) CSS 1 support would be in the public’s possession and implementation of this functionality within the skill of a PHOSITA at that time? If so, how does this square with Microsoft’s epic CSS implementation failures for IE 5, and 5.5 for Windows? *See* Difficulty of Adoption, Appx1514-1515⁵.

⁵ <https://en.wikipedia.org/wiki/CSS>

What about the “known” Pad++ HTML browser? Does non-expert Board member interpretation of screenshots on Tour Web pages trump expert testimony based on testing of actual Pad++ software, review of Pad++ documentation (Pad++/Bederson references) and source code available at the time of the invention?

F. Mozilla and Enablement

The Board cites ‘926 patent 17:31-41 as Patent Owner’s admission (Appx0033),

As will be recognized by those skilled in the art, the functions performed in blocks 150, 152, and 154 [of Figure 5] are commonly performed by conventional browsers during a pre-rendering process. In some browsers, these functions are performed by the Mozilla rendering engine, which comprises open source software that is readily available for use by developers. At present, the software for the Mozilla rendering engine may be accessed via the Internet at www.mozilla.org. Accordingly, in one embodiment, the present invention uses core functionality provided by the Mozilla rendering engine source code to perform the functions of block 150, 152, and 154.

This does not admit a PHOSITA would be able to implement the functions performed in blocks 150, 152, and 154, but rather a PHOSITA, as of the priority date of the patent, would recognize that browsers that supported CSS performed these functions. This paragraph was included to address the enablement PHOSITA

– without access to source code to perform these functions, the claims would not be enabled, as implementing these functions would have been well-beyond the skill of a PHOSITA (Wolf, Appx1770).

IV. THE BOARD FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF OBVIOUSNESS

To establish obviousness under 35 U.S.C. § 103 and *Graham*, the Board must consider all four *Graham* factors. 383 U.S. at 17-18. There is no mention of *Graham* nor consideration of the *Graham* factors in either the Appeal or Rehearing Decisions, including resolving the level of ordinary skill in the pertinent art.

The Board must address all claim limitations, and the claim must be read as whole. *In re Gulack*, 703 F.2d 1381 (Fed. Cir. 1983). For claim 29, the Board did not address all the limitations of claim 1, including the preserving limitation under which both layout *and* presentation attributes defined by the cascading style sheet content must be preserved. Gray Br. pp.39-40, Req. Reh'g (Appx2446).

The Board's rejections do not identify any mobile device that would be modified to obtain the claimed inventions and provide no evidence addressing reasonable expectation of success. For claims 64, 66, and 78, the Examiner's and Board's rejections did not address all limitations of claims 52, including the "rendering engine" limitation, the preserving limitation, nor identify any mobile device that would be modified to obtain the claimed inventions. These are clear legal errors.

A. Claim Construction under *Phillips*

None of the rejected claims were construed under *Phillips*, as required since the '926 patent expired while on appeal. *In re Rambus, Inc.*, 753 F.3d 1253, 1256 (Fed. Cir. 2014). Appellant proposed claim construction under *Phillips* for claim 64 and 66 that are substantially different than the Board’s erroneous constructions. Req. Reh'g (Appx2468-2472).

Limitation	Appellant	Examiner/Board
[in response to] tapping on column/paragraph	limited to tapping	may comprise dynamically zooming in Appx0015, Appx0041
64. displayed <u>across</u> the touch-sensitive display	plain meaning, FIGs. 7A and 7B	“Displayed across at least one of a width ... <u>of a display area</u> ” Appx0044

Column zoom example, '926 Patent 20:56-67.



FIG. 7A

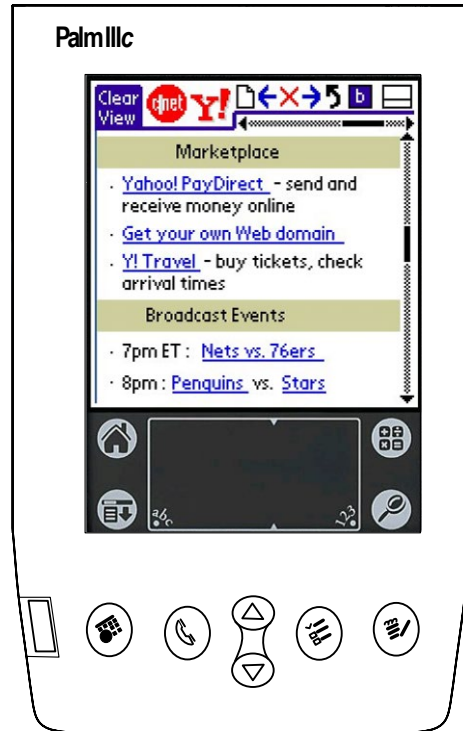
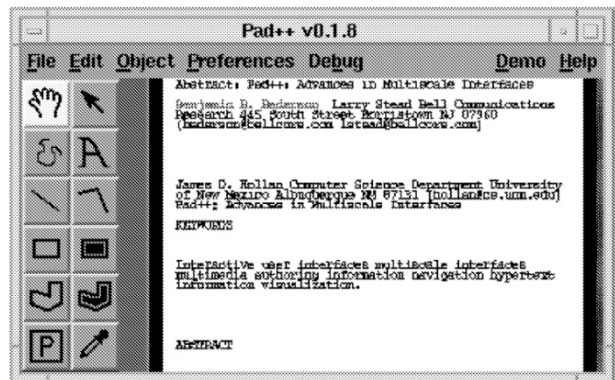
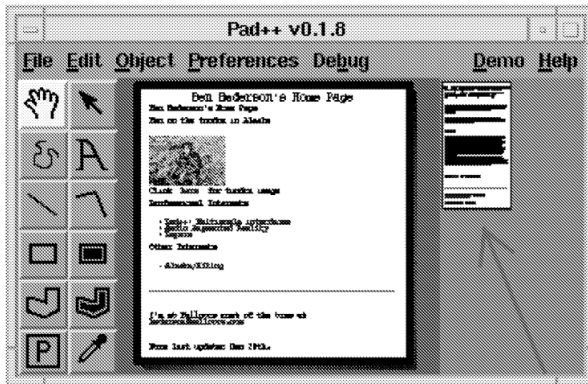
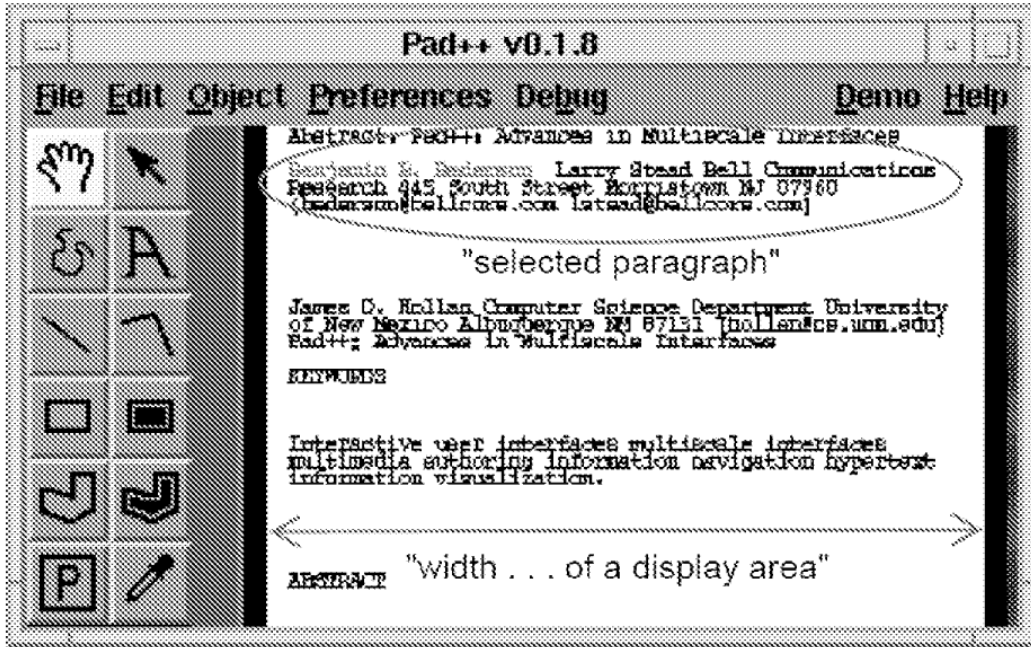


FIG. 7B

Appx2472

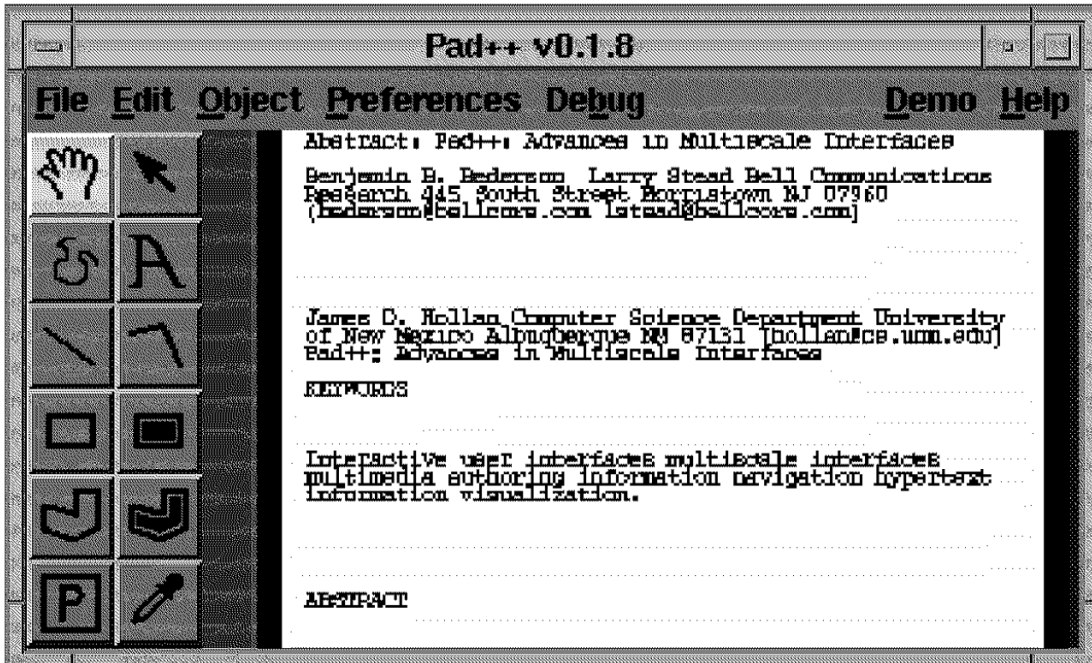


Appx0016-0017



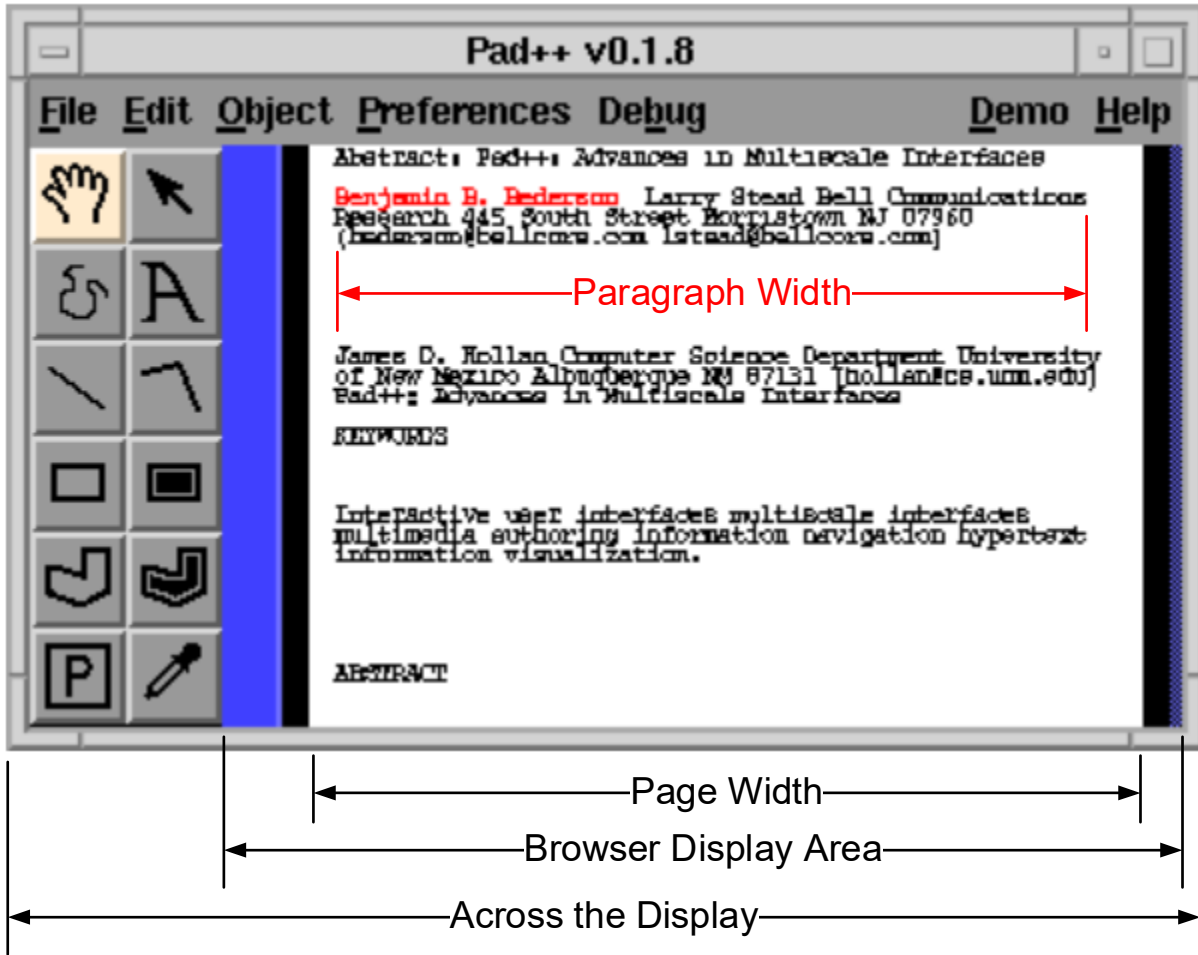
The above figure illustrates Pad++ displaying an HTML document.

Appx0043



Simply zoom in on the sub-document to read it.

Appx0693



Gray Br. p.81

Test and documented evidence:

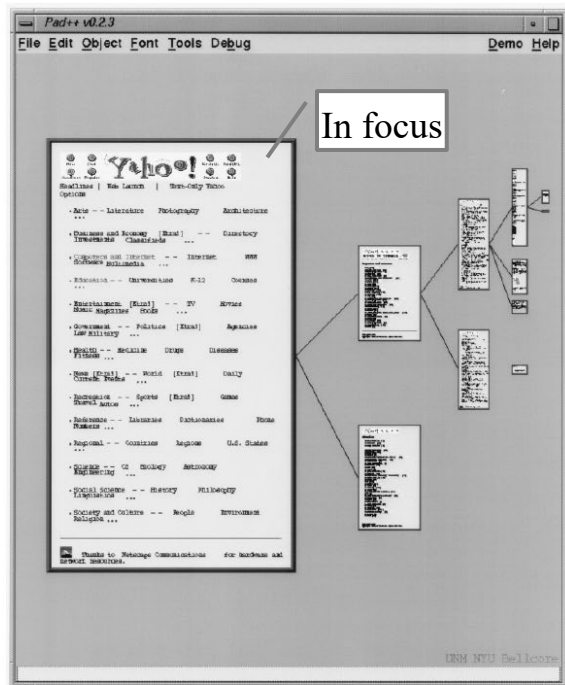
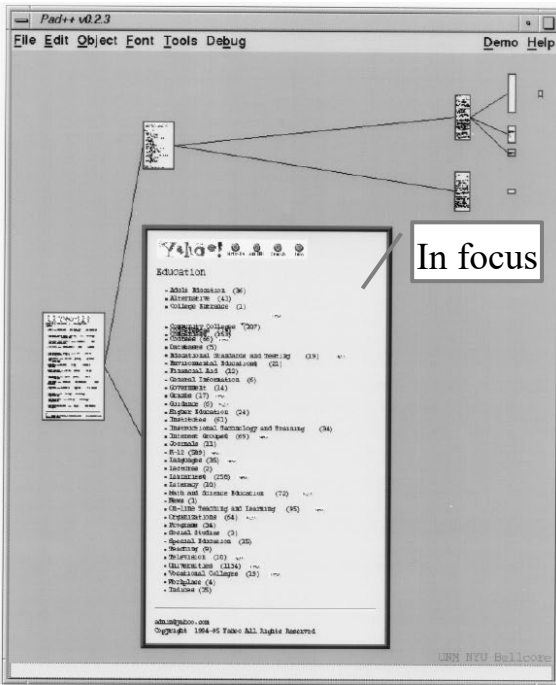
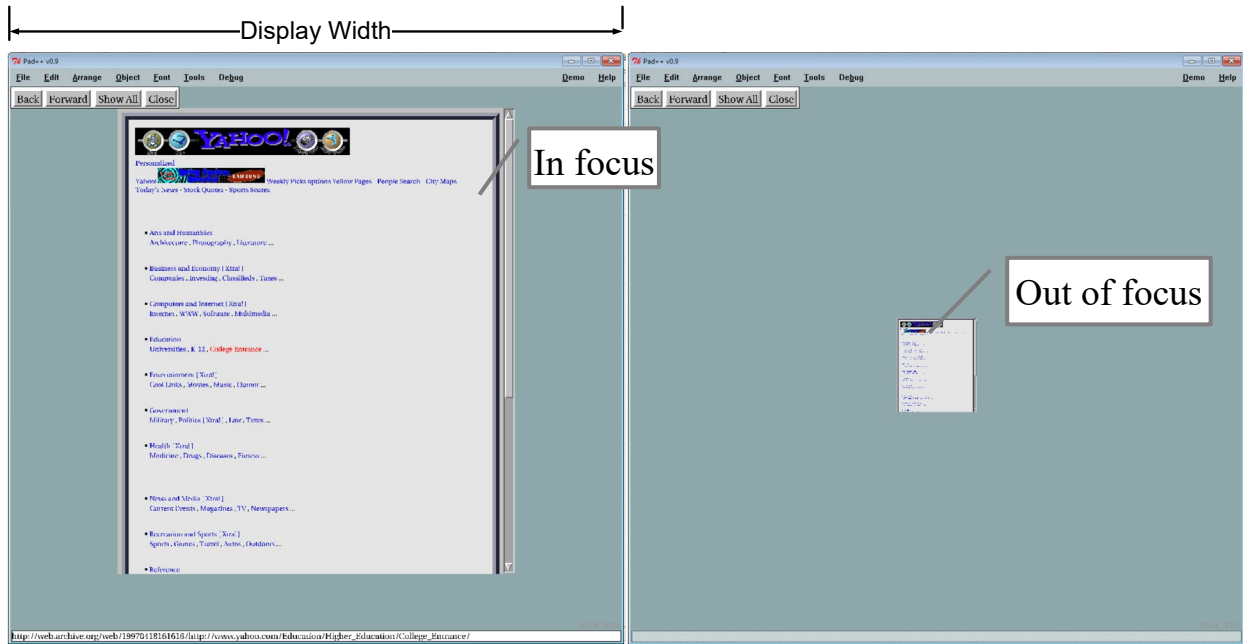


Figure 5. Many different HTML documents loaded in Pad++. Their layout implicitly shows the history of the user's interaction. The two views show the same tree focused on different nodes

Appx1736

V. Violation of the Administrative Procedure Act (APA)

Claim 29 was confirmed patentable in *ex-parte* reexamination 90/009,995 (Appx0151). The '995 Board reversed the Examiner's rejection of claim 29 based on Wolf's declaration evidence, concluding,

[W]e are persuaded by Patent Owner's argument as follows:

It would have been well-outside the capabilities of a PHOSITA to add CSS support to Pad++, there would be no motivation to attempt to do so, and no expectation of success. Additionally, CSS could not merely be added to an existing browser.

Appx0262-0264

The Board also stated (Appx0263),

The Examiner has not provided any commentary with respect to adequacy of Patent Owner's declaration evidence, which is legal error. *See In re Alton*, 76 F.3d 1168, 1174 (Fed. Cir. 1996) ("the summary dismissal of the declaration, without an adequate explanation" is error).

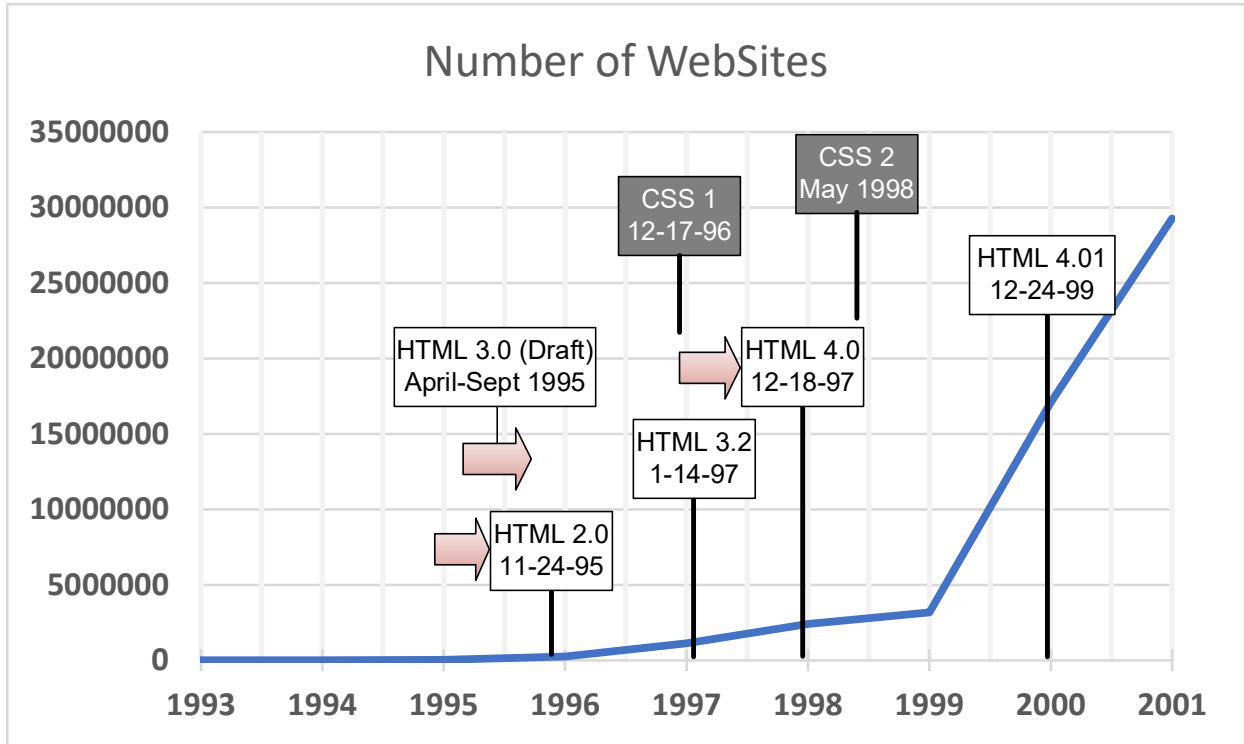
That identical legal error was made by the Board in the Rehearing Decision.

The Board quotes Appellant's arguments concerning Wolf's statements three times (Appx0032, Appx0033, Appx0037) without an adequate explanation of why this unrefuted declaration evidence failed to rebut the Board's *prima facie* case. *Id.*

The Board argues, "Patent Owner's arguments are not commensurate in scope with claim 29, because the claim neither recites a specific HTML version

nor a specific CSS version.” Appx0013. This is in direct contradiction to the Board’s conclusion in the ’995 reexamination presented above, and wholesale dismissal of Wolf’s and Howard’s unrefuted declaration evidence that a PHOSITA would have no motivation to modify Pad++ to support any of HTML 4, CSS 1 or CSS 2, nor have a reasonable expectation of success (Appx1770-1772, Appx1828-1835). The foil to judicial hindsight is the testimony of persons experienced in the field of the invention. *Outside the Box Innovations, LLC v. Travel Caddy, Inc.*, 695 F.3d 1285, 1297 (Fed. Cir. 2012)

Up through the ’995 Appeal Decision and the ’635 RAN, the prior art, evidence, and arguments considered in both reexaminations for claim 29 were substantially similar (Appx1685). The difference is under the new ground 2 the HTML 4.0 Standard is explicitly identified. It stretches credulity to believe that under Wolf’s and Howard’s PHOSITA the artisan would not have accessed the published HTML and CSS standards.



Gray Br. p.25

The Board's decision is arbitrary and capricious, rests on clearly erroneous fact findings and erroneous conclusion of law and violates 5 U.S.C. § 706(2)(A).

CONCLUSION

The petition should be granted.

Dated: July 24, 2024

Respectfully submitted,

By: /s/ R. Alan Burnett

LAW OFFICE OF R. ALAN BURNETT, PS

*ATTORNEYS FOR APPELLANT
SOFTVIEW LLC*

ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

SOFTVIEW LLC,
Appellant

v.

APPLE INC., MOTOROLA MOBILITY LLC,
Appellees

2023-1006, 2023-1008

Appeals from the United States Patent and Trademark Office, Patent Trial and Appeal Board in Nos. 95/000,635, 95/002,126.

JUDGMENT

ALAN BURNETT, Law Office of R. Alan Burnett, Bellevue, WA, argued for appellant.

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THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (LOURIE, BRYSON, and REYNA, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

June 6, 2024
Date



Jarrett B. Perlow
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 2023-1006 and 2023-1008

Short Case Caption: SoftView LLC v. Apple Inc.

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Date: 07/24/2024

Signature: /s/ R. Alan Burnett

Name: R. Alan Burnett