

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC., GOOGLE INC., and MOTOROLA MOBILITY LLC,  
Petitioner,

v.

ARRENDI S.A.R.L.,  
Patent Owner.

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Case IPR2014-00207  
Patent 7,496,854 B2

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Before HOWARD B. BLANKENSHIP, SALLY C. MEDLEY, and TREVOR M. JEFFERSON, *Administrative Patent Judges*.

JEFFERSON, *Administrative Patent Judge*.

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

## I. INTRODUCTION

### *A. Background*

Apple Inc., Google Inc., and Motorola Mobility LLC (collectively “Petitioner”) filed a Petition (Paper 3, “Pet.”) to institute an *inter partes* review of claims 1–18, 36–56, 86–95, 97, 98, 100, and 101 of U.S. Patent 7,496,854 B2 (Ex. 1001, “the ’854 patent”). Pet 1; *see* 35 U.S.C. § 311. Arendi S.A.R.L. (“Patent Owner”) filed a Preliminary Response (Paper 7, “Prelim. Resp.”). Pursuant to 35 U.S.C. § 314, in our Decision to Institute (Paper 9, “Dec.”), we instituted this trial as to claims 1–12 and 36–49. Dec. 23–24.

After the Decision to Institute, Patent Owner filed a Patent Owner Response (Paper 16, “PO Resp.”) and Petitioner filed a Reply to the Patent Owner Response (Paper 20, “Reply”). An oral hearing (Paper 31, “Tr.”) was held on February 4, 2015.

### *B. Related Matters*

Patent Owner has sued Petitioner for infringement of the ’854 patent in *Arendi S.A.R.L. v. Apple Inc.*, No. 1:12-cv-01596-LPS (D. Del.); *Arendi S.A.R.L. v. Google Inc.*, No. 1:13-cv-00919 (D. Del.); and *Arendi S.A.R.L. v. Motorola Mobility LLC*, Case No. 1:12-cv-01601-LPS (D. Del.). Pet. 1; Paper 6, 2–3. The ’854 patent is also the subject of a petition in IPR2014-00206, also filed by Petitioner. *Id.* at 3–4. We instituted *inter partes* review as to claims 19, 20, 22–26, 28–30, 57, 58, 60–74, 76–78, 85, and 96 of the ’854 patent in *Apple Inc. v. Arendi S.A.R.L.*, Case IPR2014-00206, slip op. at 22 (PTAB June 11, 2014) (Paper 9).

### *C. References Relied Upon*

Petitioner relies upon the following prior art references:

<b>Reference</b>	<b>Exhibit</b>
U.S. Patent No. 6,085,206 (“Domini”)	Ex. 1007
U.S. Patent No. 6,377,965 (“Hachamovitch”)	Ex. 1008

*D. The Alleged Grounds of Unpatentability*

We instituted this trial based on the ground of unpatentability set forth in the table below. Dec. 14–16, 17–22, 23.

<b>Reference</b>	<b>Basis</b>	<b>Claims Challenged</b>
Domini	35 U.S.C. § 102(e)	1–12, 36–38, 40–45, and 49
Hachamovitch	35 U.S.C. § 102(e)	1–12 and 36–49
Hachamovitch	35 U.S.C. § 103(a)	3–5, 9–11, 38–41, and 45–48

*E. The '854 Patent*

The '854 patent, titled “Method, System and Computer Readable Medium for Addressing Handling From a Computer Program,” relates to computer implemented processes for providing a computer program, such as a word processing program or spreadsheet program, that is coupled to an information management source, such as a database program or contact management program. Ex. 1001, 1:19–50.

Figures 3 and 4 of the '854 patent are reproduced below.

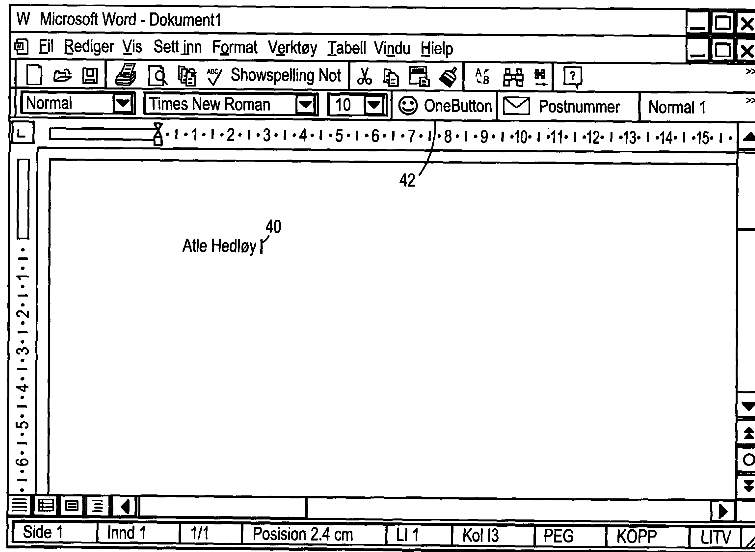


FIG. 3

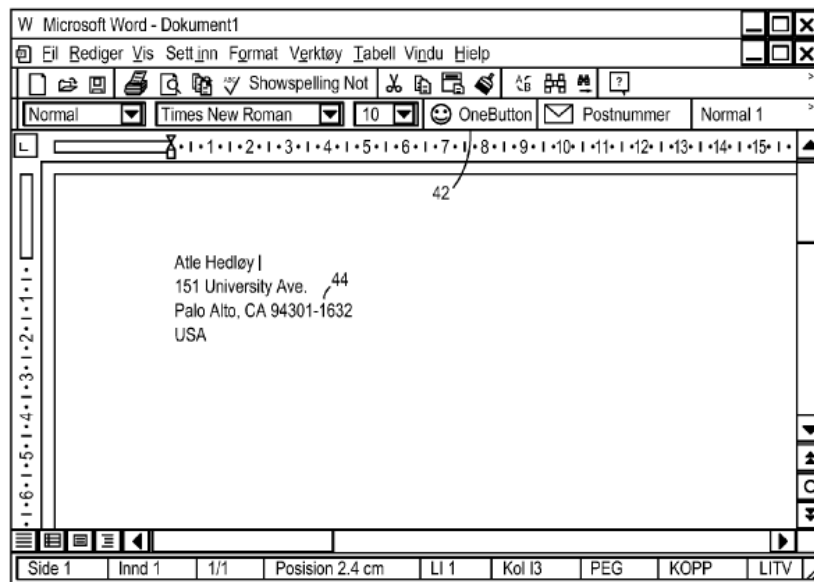


FIG. 4

Figure 3 illustrates the inputting of a name to be searched into a document. Figure 4 illustrates a retrieved address that is inserted into a document. Ex. 1001, 2:51–57. The user types a name into the document. When the user clicks on OneButton 42, the claimed process is launched, retrieving name 40 from the document,

searching a database for name 40, and inserting the retrieved address associated with the name 40 into the document as shown in Figure 4. *Id.* at 5:60–6:5.

Figure 2 of the '845 patent, illustrating a flow chart of a method for address handling within a computer program, is reproduced below.

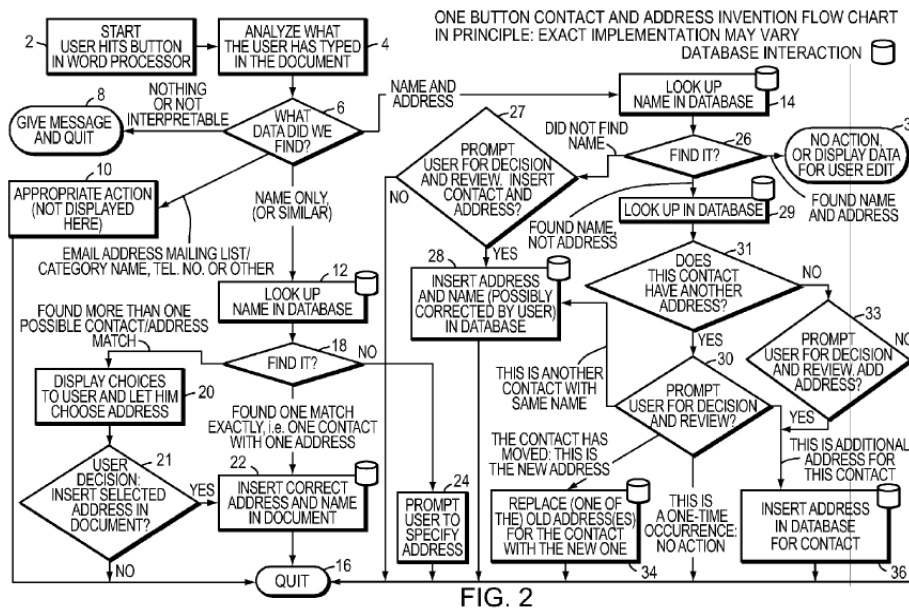


Figure 2 depicts a flow chart of the address handling process initiated by the user clicking on OneButton 42 of Figure 4. At step 4, text typed by the user in a document is analyzed for contact information. At step 6, if the identified contact information includes a name, a search occurs in the database at step 12. When the database finds a name with more than one possible matching address, the user is prompted for a decision, and that selected information is added to the document at step 22. *Id.* at 5:10–22, 6:4–5.

Independent claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for information handling within a document created using a first application program comprising the steps of:

entering a first information in the first application program;

marking without user intervention the first information to alert the user that the first information can be utilized in a second application program; and

responding to a user selection by inserting a second information into the document, the second information associated with the first information from a second application program.

## II. ANALYSIS

### *A. Claim Construction*

The Board interprets claims of an unexpired patent using the broadest reasonable construction in light of the specification of the patent in which they appear. *See* 37 C.F.R. § 42.100(b); *In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 1279–81 (Fed. Cir. 2015). Claim terms generally are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

#### *1. “marking . . . the first information to alert the user”*

The claim phrase “marking without user intervention the first information to alert the user” appears in independent claims 1 and 7. In the Decision to Institute, we preliminarily construed “marking without user intervention the first information to alert the user” to mean that the first information is detected and has some form of marking applied to it without user intervention claim. Dec. 7–8. We also determined that “marking” included the acts of highlighting, designating, or displaying the information in a separate screen or window to draw a user’s attention. *Id.*

The parties do not dispute this preliminary construction. Based on the record before us, we determine that “marking” includes highlighting, designating, or displaying the information in a separate screen or window to draw a user’s attention.

2. “*associated*”

“Associated” appears in the claim phrase “second information associated with the first information from a second application program” recited in each of the challenged independent claims 1, 7, 36, and 43. In the Decision to Institute, we determined preliminarily that “associated” is construed as “connected or related.” Dec. 9–10.

Patent Owner contends that because “associated” in dependent claim 3 describes searching for the second information “associated” with the first information, this indicates that the “association” is equivalent to the association of a data in a database record. PO Resp. 16–17. Patent Owner argues that the context of the claims and embodiments of the ’854 patent “requires that the association between the first and second information is a ‘pre-existing relationship,’ such as, the association between field entries for a database record in a database.” PO Resp. 20. Patent Owner further contends that the ’854 patent embodiments refer to finding and inserting the second information, such that “there must be a pre-existing relationship for an action to be based upon the second information, such as the act of insertion.” PO Resp. 17–18 (citing Ex. 1001, 5:65–6:3).

We are not persuaded by Patent Owner’s argument that a “pre-existing” relationship is required for “second information associated with the first information from a second application program.” The ’854 specification refers to related information that may match the searched data or data that corresponds to

part of a typed name. Ex. 1001, 3:63–67, 4:43–58. Indeed, the '854 patent written description states that there may be “more than one *possible* contact/address match” to the first information and that “the program displays menu choices to the user to let him choose an appropriate answer” to insert. Ex. 1001, 4:46–49 (emphasis added). Thus, Patent Owner has not demonstrated that a pre-existing relationship is described in the '854 specification.

Patent Owner's arguments limiting the term “associated” to the examples in the '854 specification referring to databases also is not commensurate in scope with the breadth of the claims or the broadest reasonable interpretation. We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *See In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (stating that “limitations are not to be read into the claims from the specification”). In the present case, Patent Owner has not shown persuasively that a person of ordinary skill would have understood the “second information associated with the first information from a second application program” as being limited to a “pre-existing relationship” between two pieces of information based on the claims, embodiments, and examples in the '854 specification. To the contrary, the '854 specification describes that a program operation based on a name or initials (the first information) could return more than one possible matching second information for insertion. Ex. 1001, 4:43–58.

In sum, under a broadest reasonable interpretation, we do not find that “associated” as recited in “second information associated with the first information from a second application program” is limited to a pre-existing relationship. We determine that “associated” is construed as “connected or related” and that that “second information associated with the first information from a second



application program” includes second information that is related to or connected with the first information from a second application program.

3. “*application program*”

In the Decision to Institute, we determined that “application program” encompasses an independent executable program. Dec. 10. In so determining, we rejected Patent Owner’s narrow proposed construction of application program as “an independently executable computer program designed to assist in the performance of a specific task, such as word processing or spreadsheet processing or contact management or e-mail or calendaring.” Prelim. Resp. 9; Dec. 10.

Patent Owner contends that it agrees with our interpretation (PO Resp. 11) of an “application program” as an independently executable program, but attempts to interpret “independently executable program”<sup>1</sup> in a manner that excludes programs with certain attributes. *See* PO Resp. 10–16. Based on the background section of the ’854 patent that refers to retrieval of information from sources external to a word processor, such as a database or contact management program, Patent Owner asserts that the claimed invention is limited to obtaining information from an information management program that can be used separately and independently from the word processor. PO Resp. 12 (citing Ex. 1001, 1:34–37, 1:45–46).

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<sup>1</sup> Patent Owner suggests that the Decision to Institute’s use of the term “independent” rather than “independently” in construing “‘application program’ to encompass an independent executable program” (Dec. 11) was a typographical error. PO Resp. 10–11. Patent Owner does not explain how “independent” differs from “independently” and defines the term “independent” as part of its analysis. *Id.* at 10–11. For purposes of this Decision, we address Patent Owner’s contentions as if they apply to both “independent” and “independently.”

Patent Owner's interpretation of "application program" is based on the commonly shared features of the example programs from the specification. PO Resp. 14 ("Given that the specification identifies word processors, spreadsheet programs, information management programs and database programs as examples of application programs, the definition of an 'application program' can be construed from the commonly shared features."). Patent Owner relies on the Declaration of Dr. John Levy (Ex. 2003), paragraphs 42–43, to support its interpretation that subsidiary programs, which extend the functionality of the controlling application, are not "independently executable computer programs" as recited in the claims. PO Resp. 12.

We disagree with Patent Owner's narrow interpretation. The term "application program" does not appear in the specification of the '854 patent. However, we are not persuaded that the term is limited by the commonly shared features of the examples in the '854 patent specification. *See Van Geuns*, 988 F.2d at 1184 ("[L]imitations are not to be read into the claims from the specification."). Patent Owner has not provided sufficient evidence to limit "application program" to programs that are not under the control of another program or run synchronously under the control of a separate application program (PO Resp. 13–14). We do not find Dr. Levy's testimony persuasive that the broadest reasonable interpretation of "application program" by one of ordinary skill in the art at the time of the invention is defined by "commonly shared features" of examples of computer programs in the patent specification. *See* PO Resp. 11–16 (citing Ex. 2003 ¶¶ 42–44). Construing "application program" as Patent Owner suggests improperly limits the claim term to the embodiments and examples in the '854 patent specification and imports negative limitations unsupported by the intrinsic evidence.

Patent Owner has not shown that the broadest reasonable construction of “application program” excludes subsidiary programs. *See* PO Resp. 11–16; Reply 6–10. On the full record, we determine that “application program” is construed as an independent executable program.

*B. Unpatentability Based on Domini (Ex. 1007)*

Petitioner contends that Domini anticipates claims 1–12, 36–38, 40–45, and 49 under 35 U.S.C. § 102(e). Pet. 31–39.

*1. Domini (Ex. 1007)*

Domini discloses identifying and correcting spelling and grammar errors in a document created by a word processing program. Ex. 1007, Abstract, 4:65–5:11. Figure 1, below, shows an embodiment of the invention. *Id.* at 4:39–41.

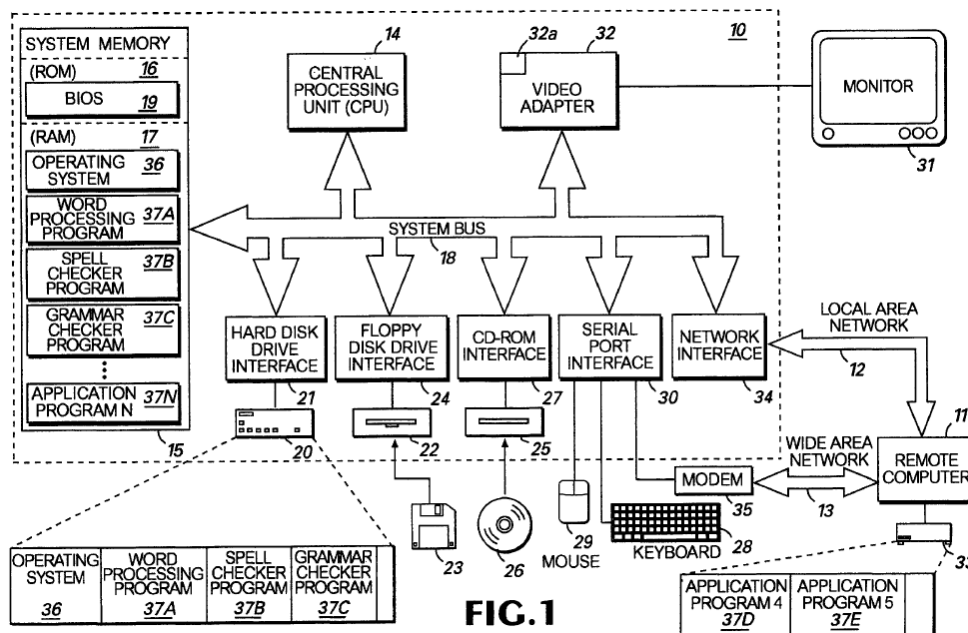


Figure 1 depicts personal computer 10 connected by networks 12 and 13 to remote computer 11. *Id.* at 7:13–16. Domini discloses that “[t]hose skilled in the art will understand that program modules such as an operating system 36, application

programs 37, and data are provided to the personal computer 10.” *Id.* at 7:41–43. Thus, personal computer 10 and remote computer 11 contain program modules, such as operating system 36, application programs 37. *Id.* at 6:33–42, 7:41–44. Domini states further that:

[t]he *application programs 37* may include a number of different programs such as a word processing program 37a, a *spell checker program 37b*, and a grammar checker program 37c. In the preferred personal computer 10, the local hard disk drive 20 is used to store data and programs, including the operating system and programs.

*Id.* at 7:46–52 (emphasis added).

In the spelling and grammar programs disclosed in Domini, the user selects the “Spelling and Grammar” command to initialize the spell check program. *Id.* at 16:13–16. Without user intervention, the spell check program identifies misspelled words and presents them in red, bold typeface. *Id.* at 17:27–33, 4:12–16. The spell check program also displays a list of suggested corrections that may be selected and entered into the document by the user. *Id.* at 1:42–44, 12:1–5, 12:61–64.

## 2. *Anticipation based on Domini (Ex. 1007)*

### a. *“application program”*

Patent Owner argues that the spell checker program in Domini is a “module” operating under the control of the first application program and fails to disclose the “second application program” as recited in claims 1–12, 36–38, 40–45, and 49. PO Resp. 30–35.

Patent Owner’s arguments and analysis are based on its proposed claim interpretation that excludes subsidiary programs from “application program” as recited in the challenged claims. PO Resp. 30–31 (contrasting subsidiary programs with application programs and stating that it “would be understood by one of

ordinary skill in the art at the time of the invention, an ‘application program’ is an ‘independently executable program’ that is independent of and not under the control of another program.” (citing Ex. 2003 ¶¶ 42–48)). As discussed above, we do not construe “application program” to exclude subsidiary programs based on characteristics of the example programs in the ’854 patent specification. *See* Section II.A.3, *supra*. Accordingly, we are not persuaded by Patent Owner’s arguments and testimony of Dr. Levy that the program modules in Domini that are explicitly identified as “application programs” do not meet the claim limitation for “application program.” PO Resp. 30–35. Dr. Levy’s narrow interpretation of application program reads limitations into the claim (PO Resp. 30), that are not supported by the ’854 specification. *See* Reply 8–9 (citing Ex. 1001, 7:25–8:7).

Patent Owner’s argument that one of ordinary skill in the art would have understood spell checker program 37b to be a program module (PO Resp. 30–31) and not an application program—as it is expressly described—is not supported by a plain reading of the Domini disclosure. Patent Owner’s arguments and evidence fail to address the term “application program” as it is used in Domini and show that it differs from the “application program” as recited in the challenged claims. Indeed, Dr. Levy has not provided testimony that the term “application program” as used in Domini (Ex. 1007, 7:41–52, Fig. 1) differs from or is inconsistent with “application program” as recited in the challenged claims. *See* Tr. 35:13–20 (stating that Patent Owner’s expert found Domini consistent with Patent Owner’s construction).

With respect to application programs in Domini, Patent Owner concedes that Domini discloses stand-alone spell checkers (PO Resp. 35–36 (citing Ex. 1007, 1:56–2:26; Ex. 2003 ¶ 24)), but argues that “a stand-alone spell checker would not be capable of inserting text into a word processor” (PO Resp. 36 (citing Ex. 2003

¶¶ 24–25, 35)). We agree with Petitioner (Reply 11), however, that Domini discloses incorporating changes into a document by replacing words in the word processing document. Ex. 1007, 12:59–13:31, 14:42–67.

We disagree with Patent Owner’s narrow interpretation of the term “application program” that excludes spell checker program 37b explicitly disclosed in Domini (Ex. 1007, 7:46–52). PO Resp. 25–29. We find that spell checker program 37b and other application programs in Domini disclose the “application program” recited in the challenged claims. Based on the complete record, we find that Domini discloses an “application program.” Based on the complete record and in light of Patent Owner’s and Petitioner’s arguments and evidence, we find, by a preponderance of the evidence, that Domini discloses an “application program” as recited in the challenged claims.

*b. “the second information associated with the first information from the second application program”*

Patent Owner’s argument that Domini fails to disclose “the second information associated with the first information from the second application program” is based on its claim construction that “associated” requires a pre-existing relationship between the first and second information. PO Resp. 37–39. Because we determined previously that “associated” is construed as “connected or related” (Section II.A.2, *supra*), we are not persuaded by Patent Owner’s argument. Patent Owner’s argument that Domini does not disclose a pre-existing relationship, “such as the relationship between field entries of a database record” (PO Resp. 37) is premised on an overly narrow interpretation of the claim term that is not commensurate in scope with the challenged claims.

*c. searching in response to a user selection*

Patent Owner contends that dependent claims 3, 9, 38, and 45, require that searching for second information is initiated or prompted by a user selection. PO Resp. 39–40. Claim 1 of the '854 patent recites “responding to a user selection by inserting a second information into the document.” Claim 3, which depends from claim 1, requires that “the step of inserting further comprises: searching using the second application, for the second information associated with the first information and retrieving the second information.” Patent Owner argues that Petitioner has failed to show that Domini discloses searching as a result of a user selection, because the suggested substitute terms for insertion are already obtained when the user makes the selection. PO Resp. 40–41 (citing Pet. 31–32).

Petitioner responds that Patent Owner’s interpretation of the claim limitation is improper as it excludes disclosed embodiments of the '854 invention. Reply 13 (citing Ex. 1001, Fig. 1, 4:46–50). Petitioner argues that claims 3, 9, 38, and 45 “simply state that *insertion* must be done in response to user selection” and “[t]here is no required ordering between searching and user selection to insert.” Reply 13–14.

Based on the record, we are not persuaded the Petitioner has shown by a preponderance of the evidence that the searching steps of claims 3, 9, 38, and 45, occur in response to a user selection. Dependent claims 3, 9, 38, and 45, and the claims that depend therefrom, provide additional limitations on the insertion step that takes place in response to a user’s selection. The evidence cited by Petitioner refers only to insertion of the already retrieved suggestions. *See* Pet. 31–36 (claim chart showing claims 3, 9 and 38 and applying same analysis to claim 45). Accordingly, we find that Petitioner has not shown by a preponderance of the

evidence that dependent claims 3–5, 9–11, 38, 40, 41, and 45 are anticipated by Domini.

*d. Conclusion*

Based on the complete record and the evidence and argument presented by Petitioner and Patent Owner, we find, by a preponderance of the evidence, that Domini anticipates claims 1, 2, 6–8, 12, 36, 37, 42–44, and 49. Petitioner has not shown by a preponderance of the evidence that Domini anticipates claims 3–5, 9–11, 38, 40, 41, and 45.

*C. Unpatentability Based on Hachamovitch (Ex. 1008)*

Petitioner contends that Hachamovitch anticipates claims 1–12 and 36–49 under 35 U.S.C. § 102(e). Pet. 40–45. In addition, Petitioner contends that claims 3–5, 9–11, 38–41, and 45–48 are obvious under 35 U.S.C. § 103(a) in view of Hachamovitch. Pet. 45–49.

*1. Hachamovitch (Ex. 1008)*

Hachamovitch discloses a word completion utility that automatically predicts word completion for data entry in a data file, such as a word processor or email application. Ex. 1008, 4:10–13. The word completion system is used in conjunction with an individual application program or operates independently across multiple application programs. *Id.* at 4:21–25. The user’s partially typed word is compared to the name-completion pairs and if a match is found within the list a suggestion list will be presented to a user. *Id.* at 4:58–5:6. A suggested word is presented to the user in a pop-up user interface within a word processing application as shown in Figs. 2A and 2B below.



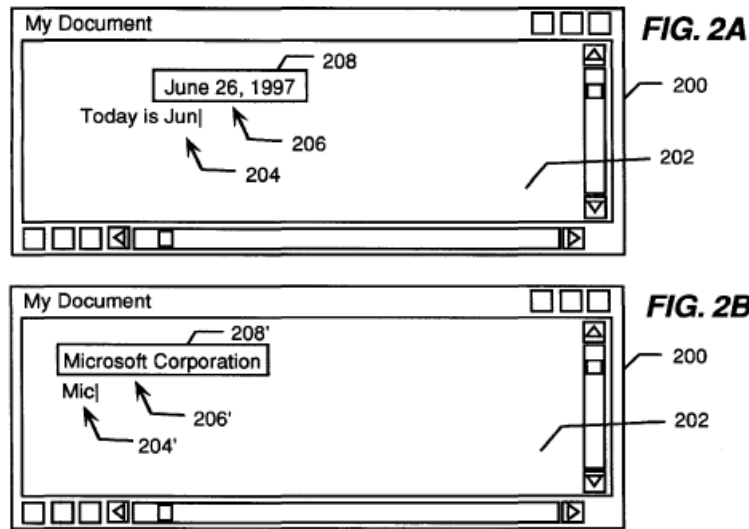


Figure 2A illustrates a word completion suggestion where the name completion pair is tied to a date or system parameter. *Id.* at 10:18-21; 10: 57-61. Figure 2B illustrates a word completion suggestion where the name-completion pair is tied to predefined properties, such as an initial capitalized letter. *Id.* at 11: 4-14. Once a word completion is displayed, the user may accept the word completion using an acceptance keystroke (e.g. tab or enter). Once accepted, the word completion utility replaces the partial data entry with the completion entry in the data file. *Id.* at 5:7-10; 7:4-5.

## 2. Anticipation Based on Hachamovitch (Ex. 1008)

Petitioner argues that Hachamovitch fails to disclose or teach a “second application program” as recited in independent claims 1, 7, 36, and 43, because the word completion utility is a subsidiary program that cannot be used independently of the host application. PO Resp. 41–42 (citing Ex. 1008, Fig. 1; Ex. 2003 ¶¶ 27–29). Patent Owner’s arguments are based on its proposed claim interpretation that excludes subsidiary programs from the “second application program” recited in the challenged claims. PO Resp. 41–44. As discussed above, we disagree that the

construction of application program excludes subsidiary programs that are deployed within other applications or synchronously accessed by multiple applications. *See* Section II.A.3, *supra*.

Based on the record, we find that Petitioner has shown that Hachamovitch discloses that the word completion utility can be deployed as a “stand-alone” “application-independent” utility. Pet. 38 (Ex. 1008, 7:65–8:5). Hachamovitch states that “[t]o deploy the word completion system as an application-independent utility, an interface is defined within each application program through which the word completion utility may communicate with each application program.” Ex. 1008, 8:6–9. Although the utility described in Hachamovitch operates through the application program, the reference expressly states that the utility can be part of the application program or operates independent of the applications as a “stand-alone” utility. Ex. 1008, 7:65–8:5. We find that the preponderance of the evidence indicates that “stand-alone” utility in Hachamovitch is an “application program” as recited in the claims.

We have reviewed Petitioner and Patent Owner’s argument and evidence. We find that Petitioner has shown by a preponderance of the evidence that Hachamovitch anticipates claims 1–12 and 36–49. In addition, Petitioner has shown by a preponderance of the evidence that claims 3–5, 9–11, 38–41, and 45–48 are obvious in view of Hachamovitch.

#### *D. Patent Owner’s Motion to Exclude Evidence*

Patent Owner moves to exclude the deposition transcript of Petitioner’s expert, Dr. Daniel A. Menascé, Exhibit 1014. Paper 23. Dr. Menascé was deposed by Patent Owner’s counsel on August 7, 2014 for this proceeding and for proceedings IPR2014-00206 and IPR2014-00207. Ex. 1014, 1. Patent Owner

contends the Menascé transcript is irrelevant and improper supplemental information that is not submitted in compliance with 37 C.F.R. § 42.123. Paper 22, 9–12.

With respect to Exhibit 1014, Petitioner argues and we agree that 37 C.F.R. § 42.53(f)(7) states that deposition testimony must be filed by its proponent as an exhibit. Paper 26, 3–4. Consistent with Petitioner’s position, the rule recently has been clarified. *See* Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board, 80 Fed. Reg. 28,561, 28,563 (May 19, 2015) (“To clarify that either party is permitted to file testimony as an exhibit, the Office amends 37 CFR 42.53(f)(7) to delete the phrase ‘by proponent’ in the second sentence.”). Because either party is permitted to file testimony as an exhibit, Petitioner’s filing of the exhibit is proper. Accordingly, we *deny* Patent Owner’s motion to exclude Exhibit 1014, the deposition transcript of Petitioner’s expert, Dr. Daniel A. Menascé.

Patent Owner also seeks to exclude “Exhibit 1015,” Visual Studio 2012 (“VS2012”), filed as an attachment to the deposition transcript of John V. Levy, Ph.D. (Ex. 1013).<sup>2</sup> Paper 23, 4–8. Patent Owner implicitly acknowledges that Petitioner’s Reply to Patent Owner’s Response does not expressly discuss or rely on VS2012. Paper 23, 5. Because we do not consider or rely on VS2012, or the portion of Dr. Levy’s testimony discussing VS2012, in reaching our determinations in this Decision, Patent Owner’s motion to exclude “Exhibit 1015” of Exhibit 1013 is *dismissed* as moot.

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<sup>2</sup> Although the attachment is labelled “Exhibit 1015,” VS2012 was not entered into the file as Exhibit 1015.

### III. CONCLUSION

Petitioner has demonstrated, by a preponderance of the evidence, that claims 1–12 and 36–49 are unpatentable based on the following grounds of unpatentability:

(1) Claims 1, 2, 6–8 12, 36, 37, 42–44, and 49 under 35 U.S.C. § 102(e) as anticipated by Domini;

(2) Claims 1–12 and 36–49 under 35 U.S.C. § 102(e) as anticipated by Hachamovitch;

(3) Claims 3–5, 9–11, 38–41, and 45–48 under 35 U.S.C. § 103(a) for obviousness over Hachamovitch.

### IV. ORDER

For the reasons given, it is

ORDERED that, based on a preponderance of the evidence, claims 1–12 and 36–49 of U.S. Patent No. 7,496,854 B2 are held unpatentable; and

FURTHER ORDERED that Patent Owner’s motion to exclude “Exhibit 1015” is *dismissed*, and the motion to exclude Exhibit 1014, the deposition transcript of Dr. Daniel A. Menascé, is *denied*; and

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

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Patent 7,496,854 B2

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