

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN MEGATRENDS, INC.,
MICRO-STAR INTERNATIONAL CO., LTD,
MSI COMPUTER CORP.,
GIGA-BYTE TECHNOLOGY CO., LTD., and
G.B.T., INC.
Petitioners,

v.

KINGLITE HOLDINGS INC.,
Patent Owner.

Case IPR2015-01079
Patent 6,373,498 B1

Before GLENN J. PERRY, TREVOR M. JEFFERSON, and
BRIAN J. McNAMARA, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

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

BACKGROUND

On October 29, 2015 we instituted an *inter partes* review of claims 1–45 of U. S. Patent No. 6,373,498 B1 (“the ’498 Patent”). Paper 17 (“Dec. to Inst.”). Patent Owner filed a Patent Owner Response. Paper 31 (“PO Resp.”), Petitioner filed a Petitioner Reply. Paper 39 (“Pet. Reply”). Patent Owner also filed a Corrected Contingent Motion to Amend. Paper 33 (“Mot. To Amend”). Petitioner filed an Opposition to the Motion to Amend. Paper 40 (“Opp. To Mot. To Amend”). Patent Owner filed a Reply to Petitioner’s Opposition to the Motion to Amend. Paper 41 (“Reply to Opp. To Mot. To Amend”). Petitioner filed a Motion to Exclude. Paper 42 (“Mot. To Exclude”). Patent Owner filed an Opposition to Petitioner’s Motion to Exclude. Paper 45 (“Opp. To Mot. To Exclude”). Petitioner filed a Reply to Patent Owner’s Motion to Exclude. Paper 46 (“Reply to Opp. To Mot. To Exclude”). A transcript of an oral hearing held on June 29, 2016 (Paper 48, “Hr’g Tr.”) has been entered into the record.

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. §318(a). We base our decision on the preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d).

Having reviewed the arguments of the parties and the supporting evidence, we conclude that Petitioner has demonstrated by a preponderance of the evidence that the challenged claims are unpatentable. For the reasons discussed below, we deny Patent Owner’s Motion to Amend and Petitioner’s Motion to Exclude.

THE ’498 PATENT

The ’498 Patent concerns manipulating the display presented to a user during operating system (OS) transitions, e.g., during boot-up and shutdown.

Ex. 1001, col. 1, ll. 65–67. According to the invention, a graphic file replaces a boot-up system file and/or a shutdown system file, so that images other than OS standard images can be displayed when the OS boots up and/or shuts down. *Id.* at col. 1, l. 67–col. 2, l. 4. In one example, the first time a computer completes Power-On Self-Test (POST) an initial payload image is displayed as the system loads the OS. *Id.* at Fig. 4A. After establishing a communication link with an intermediary, based on user preferences and other criteria, another payload (Payload 1-N) is downloaded and the memory is updated, so that on a subsequent execution of the POST, the downloaded payload is displayed. *Id.* at Fig. 4A, 4B; col. 8, l. 47–col. 9, l. 65. As shown in Figure 6 of the '498 Patent, this display is achieved by creating the graphic files in a bitmap file format, saving the original LOGO.SYS, LOGOW.SYS, and LOGOS.SYS files in a temporary directory with different extensions or names, renaming the created boot-up and shutdown graphics files as LOGO.SYS, LOGOW.SYS, and LOGOS.SYS system files respectively, and transferring these renamed boot-up and shutdown files to appropriate directories so that they are retrieved by the operating system. *Id.* at Fig. 6; col. 10, ll. 2–16, col. 11, ll. 5–21. Figure 7 of the '498 Patent illustrates another embodiment in which the graphic data can be extracted from graphics memory. *Id.* at Fig. 7; col. 11, l. 29–col. 12, l. 60.

ILLUSTRATIVE CLAIM

Claim 1 is illustrative:

1. A method to display an image during a transition of an operating system in a computer system, the method comprising: obtaining the image having an image format compatible with the operating system; and,

creating content of a system file using the image, the system file to be accessed during the transition of the operating system, said image to correspond to a user profile.

GROUNDINGS OF INSTITUTION

In our Decision to Institute, we instituted trial on the following challenges to patentability:

Claims 1–40 and 44 as obvious under 35 U.S.C. § 103 over the combination of PC Tools¹ and Gerace²;

Claims 1–40 and 44 as obvious under 35 U.S.C. § 103 over LogoMania³;

Claims 41–43 and 45 as obvious under 35 U.S.C. § 103 over the combination of Lee⁴ and Piwonka⁵ and PC Tools and Gerace; and

Claims 41–43 and 45 as obvious under 35 U.S.C. § 103 over the combination of Lee and Piwonka and LogoMania.

CLAIM CONSTRUCTION

In the Decision to Institute, we applied the following claim constructions:

User Profile: data describing characteristics of a user, including, but not limited to, user preferences. Dec. to Inst. 8.

¹ PC Tools PC Software & Windows Tools Change the Startup and Shutdown Screens (*Windows 95/98/Me*) Popular; <http://www.pctools.com/guides/registry/detail/254/>; © 1998–2014 PC Tools (Ex. 1004)

² U.S. Patent No. 5,848,396 issued Dec. 8, 1998 (Ex. 1005)

³ Go Crazy with LogoMania!, Neil J. Rubenking, Mar. 25, 1997 (Article, Ex. 1007); Web Version (Ex. 1006)

⁴ U.S. Patent No. 6,269,441 B1 issued July 31, 2001 (Ex. 1008)

⁵ U.S. Patent No. 6,073,206, issued June 6, 2000 (Ex. 1009)

Correspond: ordinary meaning, i.e., having a direct relationship. *Id.*
System file: a file of a computer system that facilitates functioning of the computer's operating system. *Id.* at 9.

Operating System: a set of one or more programs which control the computer system's operation and the allocation of resources. *Id.*

BIOS memory: a memory that stores a BIOS. *Id.* at 10.

The parties have not disputed these constructions, and we adopt those constructions for the reasons given in the Decision to Institute.

ANALYSIS OF PRIOR ART CHALLENGES

Obviousness of Claims 1–40 and 44 Over the Combination of PC Tools and Gerace

Petitioner cites PC Tools as disclosing a “virtually identical” method as that described in the '498 Patent. Pet. 17–18. As an initial matter, we note Patent Owner's objection to Petitioner's citation of PC Tools because the specific reference has not been shown to be authentic, i.e., Patent Owner's objection states there is insufficient evidence PC Tools is a document published in February 1999. PO Resp. 2–3; Paper 19 (“PO's Objections to Evidence”), 4. A motion to exclude must be filed to preserve any objection. 37 C.F.R. § 42.64(c). Patent Owner did not file any motions to exclude any evidence introduced by Petitioner. Thus, all of Patent Owner's objections to evidence have been waived.⁶

⁶ Patent Owner also objected to (i) Ex. 1010 (this appears to be a typographical error, as Patent Owner's objection states that each page of the document bears a legend indicating that it was provided under Federal Rule of Evidence 408 for settlement discussion purposes only—although that is not true of Ex. 1010, which is an Intel Application Note, each page of Ex.

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