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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THEODORE FROILAN RIVERA, DAVID LLOYD SCHMIDT,
ADAM TATE, and SCOTT ALLEN WILL

Appeal 2010-008730
Application 11/237,411¹
Technology Center 2100

Before JEFFREY S. SMITH, STANLEY M. WEINBERG, and
JOHN A. EVANS, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134(a) involving claims to business processes to predict quality of software using objective and subjective criteria. The Examiner has rejected the claims as obvious, indefinite, and as directed to non-statutory subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest is International Business Machines Corporation.

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Rather than reiterate the arguments of Appellants and the Examiner, we refer to the Appeal Brief (filed Jan. 19, 2010) and the Examiner's Answer (mailed Mar. 2, 2010). We have considered in this decision only those arguments Appellants actually raised in the Briefs. Any other arguments which Appellants could have made but chose not to make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2013).

STATEMENT OF THE CASE

The claims relate to systems and methods for providing predictive quality analysis during software development. (Abstract). Claims 1-12 are on appeal Claims 1, 5, and 9 are independent. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below:

1. A computer-implemented method comprising:

tracking a process for a software development, said process comprising at least one phase and action items associated with the at least one phase that are individually quantifiable;

dynamically assigning a point total, up to a pre-established maximum total, for each of the action items based on a subjective analysis of the quality value associated with each action during the development process, wherein the subjective analysis corresponds to receipt of one or more relative values received via a user interface and which indicates a non-empirical value assigned to one or more of the action items;

a measurement instrument determining a final quality level of the software developed via the development process by adding together each point total for each of the action items, wherein the subjective analysis is utilized to provide a more accurate quality result than an objective analysis not based on entries received via the user interface.

The claims are rejected as follows:

1. Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph, as Indefinite. (Ans. 3-4).
2. Claims 5-8 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. (Ans. 4).
3. Claims 1-12 are rejected under 35 U.S.C. § 103(a) as obvious over White (US 5,446,895, issued Aug. 29, 1995, filed Mar. 31, 1994) and Ohyama (US 7,152,016 B2, issued Dec. 19, 2006, filed Feb. 10, 2003). (Ans. 5-12).

THE INDEFINITENESS REJECTIONS

ISSUE AND ANALYSIS

The Examiner has rejected claims 1-8 under 35 U.S.C. § 112, second paragraph, as indefinite. (Ans. 3-4). The Examiner finds that the claim 1 recitation “more accurate” is a relative term which renders the claims indefinite because it is undefined. (Ans. 3).

Appellants present no arguments pertaining to this ground of rejection, we, therefore, summarily sustain these rejections. *See* MPEP §

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1205.02, 8th ed., Rev. 8, July 2010 (“If a ground of rejection stated by the examiner is not addressed in the appellant's brief, that ground of rejection will be summarily sustained by the Board.”).

THE NON-STATUTORY SUBJECT MATTER REJECTIONS ISSUE AND ANALYSIS

The Examiner has rejected claims 5-8 under 35 U.S.C. § 101 as directed to non-statutory subject matter. (Ans. 4). Appellants do not respond to this ground of rejection. We, therefore, summarily affirm.

THE OBVIOUSNESS REJECTIONS CONTENTIONS AND ISSUE

The Examiner has rejected claims 1-12 under 35 U.S.C. § 103(a) as obvious over White and Ohyama. The Examiner finds that White as modified by Ohyama teaches each claimed limitation. (Ans. 5-12).

Appellants argue claims 1-8 as a first group and claims 9-12 as a second group. However, with respect to claims 9-12, Appellants advance the same arguments urged in favor of claims 1-8. Therefore, we analyze claims 1-12 as a group. With respect to claims 1-8, Appellants contend that White and Ohyama fail to teach or suggest “dynamically assigning a point total, up to a pre-established maximum total, for each of the **action items** based on a subjective analysis.” (App. Br. 11). Appellants contend that White teaches that certain characteristics, such as “Installation Ease” and “Facilitate

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Change,” are “general processing **characteristics of applications** that affect productivity” and are not the claimed “**action items**.” (App. Br. 11 (citing White, col. 7:64-66; Table V).

The Examiner’s finds that White teaches a “measurement analysis repository for software development and maintenance processes.” (Ans. 13 (citing White, 1:10-13)). The Examiner finds that White teaches that his method “captures all process model information at the project and application level.” (Ans. 13 (citing White, 4:48-52)). The Examiner further finds that White teaches that a project is “a collection of work tasks ... that creates new applications or maintains existing ones.” (Ans. 13 (citing White, 4: 56-58)). The Examiner finds that the overall scope of the White reference encompasses the measurement and assessment of software development processes. (Ans. 13 (citing White, 16: 27-29)). Accordingly, the Examiner finds that White addresses both the measurement of the quality software application development processes per se and the measurement of the quality of the software applications themselves. The Examiner finds that the claims require that a subjective quality value be assessed to action items corresponding to actions taken during the development process, which White discloses. (Ans. 13). Appellants do not reply to the Examiner’s Answer.

The issue is whether White’s teachings of “general processing characteristics of applications that affect productivity,” are distinct from Appellants’ “action items.”

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ANALYSIS

Appellants have not persuasively argued that the claimed “action items” are distinct from White’s “general processing characteristics of applications that affect productivity,” as found by the Examiner. We adopt as our own, the Examiner’s findings that White addresses both the measurement of the quality software application development processes *per se* and the measurement of the quality of the software applications themselves and that the claims require that a subjective quality value be assessed to action items corresponding to actions taken during the development process, which White discloses. (Ans. 13).

SUMMARY

We affirm the rejection of claims 1-12 as obvious. We summarily affirm the rejection of claims 1-8 as indefinite and of claims 5-8 as directed to non-statutory subject matter.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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