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EXAMINER
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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* HANS-HERMANN WIPPERSTEG

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Appeal 2010-010057  
Application 10/051,876  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, JOSEPH A. FISCHETTI, and BIBHU  
R. MOHANTY, *Administrative Patent Judges*.

MOHANTY, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF THE CASE

The Appellant seeks our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 53-74 which are all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

## SUMMARY OF THE DECISION

We AFFIRM.

## THE INVENTION

The Appellant's claimed invention is directed to a method of repair of mobile machines (Spec. 1:4-5). Claim 1, reproduced below, is representative of the subject matter on appeal.

53. A method for generating a repair plan for anyone of a plurality of combines or harvester machines, said repair plan comprising step by step instructions for a human being to repair one of said machines, said method comprising:

providing a central processor and at least one remote processor, each of said processors having a network interface for operative communication through a computer network

and each of said processors being associated with a memory;

recording in one of said memories individual data uniquely associated with each individual of said plurality of machines, said individual data comprising a first data set comprising a plurality of base repair plans for each individual of said plurality of machines said base repair plans having a work path;

recording in one of said memories a second data set comprising a pre service life design change of any individual of said plurality of machines;

configuring one of said processors to record in said memory a third data set comprising any service life conversions of parts of each individual of said plurality of machines; and

configuring at least one of said processors to generate a current repair plan when a repair plan is requested by a user identifying an individual one of said plurality of machines

according to a unique identifier of that individual machine, said current repair plan being a modification of said base repair plan and of said work path from said first data set according to any pre service life design changes from said second data set and according to any service life conversions of parts from said third data set.

### THE REJECTIONS

The Examiner relies upon the following as evidence in support of the rejections:

Parrillo	US 5,442,553	Aug. 15, 1995
Abelow	US 5,999,908	Dec. 7, 1999

The following rejections are before us for review:

1. Claims 53-74 are rejected under 35 U.S.C. § 103(a) as unpatentable over Parrillo and Abelow.

### FINDINGS OF FACT

We find that the findings of fact used in the Analysis section below are supported at least by a preponderance of the evidence:<sup>1</sup>

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<sup>1</sup> See *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Patent Office).

## ANALYSIS

The Appellant first argues that the rejection of claim 53 is improper because the rejection of record fails to define the level of ordinary skill of one in the art (Br. 25).

We disagree with this contention by the Appellant. The level of ordinary skill in the art may be evidenced by the prior art references. *In re GPAC Inc.*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (“Although the Board did not make a specific finding on skill level, it did conclude that the level of ordinary skill in the art ... was best determined by appeal to the references of record .... We do not believe that the Board clearly erred in adopting this approach.”). Here, the level ordinary skill in the art is evidenced by the prior art references themselves.

The Appellant secondly argue that the references used are non-analogous arts (Br. 26-28). We disagree with this contention by the Appellant as well. Parrillo is directed to a wireless motor vehicle diagnostic and upgrade system in which data is transmitted from a vehicle to a remote station to determine needed repairs (Title, Abstract). Abelow is similarly directed to a customer-based product design in which two-way dialogues are used between the customer and product and design development team (Title, Abstract, Figure 1). Thus, both Parrillo are analogous arts in that they are directed to two way communication between the customer or product and the manufacturer to obtain better performance.

The Appellant thirdly argues that the rejection of record fails to teach a “second data set being associated with a pre-service life design change” (Br. 29) but this cited claim language is a recitation of mere data and is non-functional descriptive material that does not affect how the processor

substrate operates and is not considered a limitation to the claim. The PTO need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Gulack*, 703 F.2d 1381, 1386 (Fed. Cir. 1983). *See also In re Ngai*, 367 F.3d 1336, 1338 (Fed. Cir. 2004); *In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994). Similarly, the recitation to the first and third data sets are also non-functional descriptive material and not accorded patentable weight.

The Appellant lastly argues that there is no motivation for the cited combination of references (Br. 30, Reply Br. 5-6). We disagree. In Parrillo, at the remote station data is diagnosed and for minor repairs and a fix is transmitted back to the Vehicle (Abstract). A below includes a customization of learning's which are modified as the product is iteratively improved over time (Col. 31:35-39). Here the modification of the system of Parrillo to include updated repair plans based on new data would have been an obvious modification to have to all of the information available. Note again that the recitations to the first, second, and third data sets are comprised of non-functional descriptive material in the claim and not accorded patentable weight. For these above reasons the rejection of claim 53 is sustained.

With regards to claim 69 we agree with and adopt the Examiners analysis found at page 6 of the Answer as it would have been obvious to use a repair vehicle to carry out the repairs.

The Appellant has provided the same arguments for the remaining claims and these rejections are sustained for the same reasons given above.

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Application 10/051,876

### CONCLUSIONS OF LAW

We conclude that Appellant has not shown that the Examiner erred in rejecting claims 53-74 under 35 U.S.C. § 103(a) as unpatentable over Parrillo and Abelow

### DECISION

The Examiner's rejection of claims 53-74 is sustained.

AFFIRMED

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