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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATTHIAS GRUETZNER, WITOLD SZCZEPONIK, STEFAN PUEHL, and MARC FIAMMANTE

Appeal 2013-000284
Application 12/353,195
Technology Center 2100

Before CARLA M. KRIVAK, DANIEL N. FISHMAN, and JESSICA C. KAISER, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–15 and 17, all pending claims of the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

The invention relates to a method for processing a graph containing a set of nodes. (*See* Spec. ¶ 1.) Claim 1 is illustrative and is reproduced below:

> 1. A computerized method for processing a graph containing a set of nodes processing a graph containing a set of nodes [sic], said method comprising:

> providing a forest of trees corresponding to a directed acyclic graph containing a set of nodes, each of said nodes having a type chosen from a set of types;
>
> determining a depth for each node in said forest of trees;
>
> in a breadth-first traversal manner, comparing the depth and type of each node in said forest of trees to a predefined matrix, said matrix defining for each depth and type combination one of the following actions to be carried out: no action, creating a new sub-tree, triggering exception handling.

REJECTION AT ISSUE

The Examiner rejected claims 1–15 and 17 under 35 U.S.C. § 103(a) as unpatentable over the combination of Tian (US 2005/0289088 A1; published Dec. 29, 2005) and Grimse (US 6,850,924 B2; issued Feb. 1, 2005). (Final Act. 3.)

ISSUE

The issue presented by Appellants' arguments and the Examiner's rejection is: did the Examiner err in finding Tian teaches or suggests "providing a forest of trees corresponding to a directed acyclic graph containing a set of nodes," as recited in claim 1?

ANALYSIS

Appellants argue Tian does not teach "providing a forest of trees corresponding to a directed acyclic graph containing a set of nodes," as recited in claim 1. (App. Br. 4–8.) Specifically, Appellants argue a "forest of trees" in claim 1 must be a "set of multiple related (but not connected) trees." (*Id.* at 6–7.) In support of this construction, Appellants cite two

articles including one on Wikipedia. (*Id.* at 7.) The Examiner finds the broadest reasonable interpretation of a "forest of trees" includes a single tree. (Ans. 3.) Specifically, the Examiner finds the Wikipedia article, on which Appellants rely, states: "As special cases, an empty graph, ***a single tree***, and the discrete graph on a set of vertices (that is, the graph with these vertices that has no edges), ***all are examples of forests***." (*Id.* at 2–3.) In reply, Appellants agree "[a] person skilled in the art would understand that a single tree is a special case of a forest when the forest contains only one tree," but argue "the forest of trees according to claim 1 contains a plurality of trees corresponding to the plurality of nodes (a set of nodes) of the directed acyclic graph, not just one tree as in the special case." (Reply Br. 5.)

As noted above, a person of ordinary skill in the art would understand that a "forest of trees" can include a single tree. We disagree with Appellants, however, that "a forest of trees," as recited in claim 1, requires a plurality of trees because the set of nodes could correspond, consistent with the Specification, to a single tree in the context of claim 1. (*See* Spec. ¶ 27 (referring to "each tree" and "all trees" but not precluding the "forest" from including a single tree).)

Appellants' argument that Tian does not teach the argued limitation is premised on a claim construction requiring a "forest" to have multiple unconnected trees. (*See* App. Br. 8.)[1] Because we have adopted a construction that includes a single tree, Appellants have not persuaded us of

[1] Because we adopt the claim construction discussed *supra*, we do not address the Examiner's finding Tian teaches a disjoint union in addition to a single tree. (Ans. 3 (citing Tian, Fig. 5).)

error in the Examiner's rejection. Accordingly, we sustain the Examiner's § 103 rejection of claim 1 and claim 17 argued therewith (App. Br. 4, 8).

Appellants state "claims 2–15 stand or fall together with independent claim 1." (App. Br. 8.)[2] Accordingly, we sustain the Examiner's § 103 rejection of claims 2–15 for the same reasons as claim 1.

DECISION

The Examiner's rejection of claims 1–15 and 17 is affirmed.

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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[2] Claim 17 recites "a computer usable storage medium." In the event of further prosecution, we recommend the Examiner determine whether claim 17 encompasses transitory media (*see* Spec. ¶ 71) and thus, fails to recite statutory subject matter. Transitory signals are unpatentable as non-statutory subject matter under § 101. *See In re Nuijten*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007); *see also Ex parte Mewherter*, Appeal No. 2012-007692 (PTAB May 08, 2013) (precedential-in-part).