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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BERELI M. LAZAR

Appeal 2013-009758
Application 12/586,378
Technology Center 3600

Before JENNIFER D. BAHR, GEORGE R. HOSKINS, and JAMES J. MAYBERRY, *Administrative Patent Judges*.

HOSKINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Bereli M. Lazar ("Appellant"),[1] proceeding *pro se*,[2] appeals under 35 U.S.C. § 134 from the Examiner's decision rejecting claims 1–7 in this application. The Board has jurisdiction over this appeal under 35 U.S.C. § 6(b). We AFFIRM.

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[1] Appellant indicates Appellant is the real party in interest. *See* Appeal Br. B, 1.

[2] We refer to the three Appeal Briefs filed by Appellant as "Appeal Brief A" (filed September 19, 2012), "Appeal Brief B" (filed February 15, 2013), and "Appeal Brief C" (filed April 1, 2013).

CLAIMED SUBJECT MATTER

Claim 1 is the sole independent claim on appeal:

> 1. A Plasma Jet Guard for defense against violent atmospheric cyclones, and consisting of a controlled meteorological missile equipped with a t[h]rust rocket motor, electrometers, a control block, electro-insulation, guidance, an operative turbo-electro-generator, detachable protectors with lightning rods, and a flight infrastructure, comprising at least one servo-rocket motor compounded with a magneto-gas-dynamic jet ionizer for inductive converting the running out hot exhaust gases of said servo-motor into electro-conductive plasma-jets.

Appeal Br. C, Claims App., "view-copy a."

REJECTIONS ON APPEAL[3]

Claims 1–7 are rejected under 35 U.S.C. § 112, second paragraph, as indefinite.[4] Final Action mailed Apr. 6, 2012 (hereafter "Final Act."), 4–5; Answer mailed Apr. 29, 2013 (hereafter "Ans."), 2. In particular, the Examiner determines it is unclear where the claim preamble ends and where the claim body begins, because the claim initially recites "consisting of," but then goes on to recite "comprising." Final Act. 4.

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[3] The rejection of claims 1–7 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement, has been withdrawn. *See* Final Act. 3–4; Ans. 3.

[4] The Final Action also objects to the Specification as being "replete with language that is so grammatically incorrect and/or seemingly nonsensical that it is confusing and sometimes unintelligible," and to claim 1 as reciting "trust" instead of "thrust." Final Act. 2. Review of such objections may be had via Petition to the Director, not appeal to the Board. 37 C.F.R. § 1.113(a). We therefore do not comment further on these objections.

Claims 4–7 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Final Act. 5–6; Ans. 2. In particular, the Examiner determines "claim 4 sets forth that the *apparatus* of claim 1 ('A Plasma Jet Guard') further comprises 'a *method* of Technological Defense against atmospheric violent cyclones . . . ." Final Act. 5. According to the Examiner, "such a combined apparatus and method claim is directed to neither a process nor a machine, but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only." *Id.* at 5–6.

Claims 1–7 are rejected under 35 U.S.C. § 103(a) as unpatentable over Lazar '436 (US 2007/0056436 A1, pub. Mar. 15, 2007). Final Act. 6; Ans. 2. In particular, the Examiner finds Lazar '436 discloses each and every limitation of claim 1 "except for electrometers and lightning rods," and "takes Official Notice that it is well known to use electrometers to detect electrical fields and lightning rods to protect against lightning strikes." Final Act. 6. The Examiner concludes it would have been obvious to provide the Lazar '436 device "with electrometers in order to detect electrical fields and lightning rods to protect against lightning strikes." *Id.*

ANALYSIS

In Appeal Brief A, Appellant's entire argument is:

> In many cases, the Nature "operates" its own but almost identical course of de-energizing the power of cyclones with lightning bolts which appear like natural dischargers. This proposal suggests several technological steps mostly based on: a) Research report "The Electrical Nature of Storms" by D.R. Mac Gorman and W.D. Rust of National Severe Storms Lab, Norman, Oklahoma; it's indicated in Application, [0005],

> page 2; b) personal observations and simplified tests with mini-twisters s. c. "smerches"; c) tech-design wherein ionizers can provide high level of electro-conductivity for the plasma dischargers formed from seeded rocket fuels; controlled meteorological missiles (include meteo-rockets, guidance, meters, and protection) provide proper distant maneuvers in safe conditions. The power; embodiments and the number of rocket motors depend on specific tasks and local applications.

Appeal Br. A, 1–2. This argument does not address any one of the Examiner's rejections, which are summarized above. We are therefore not persuaded of Examiner error by the argument presented in Appeal Brief A.

In Appeal Brief B, Appellant's entire argument is:

> The arguments of appellant to each ground of rejection, as a set of reasons aimed to demonstrate that the claimed solutions are based and grounded, were presented many times in Amendments B, C, D. So, this requirement of 37 CFR 41.37(c) is fulfilled earlier.
>
> . . .
>
> To the said above arguments of the applicant - appellant: Of course, on the first natural* tests with the natural* sky twisters, some drive - zones of the atmospheric electricity will be discharged better and some - worse. But the experience and knowledge, including voltage of ionizers, lengths of intervals, particularities of maneuvers, and others will be accumulated and learned. As always.
>
> . . .
>
> * because the lab trials and PC-programmed models were and are definitely half-baked, not more.

Appeal Br. B, 1–2. This argument does not address any one of the Examiner's rejections, which are summarized above. We are therefore not persuaded of Examiner error by the argument presented in Appeal Brief B.

However, Appeal Brief B does refer back to prior arguments made in Amendments B (March 23, 2012), C (May 7, 2012), and D (June 20, 2012).

As to Amendment B, it contains a section in direct response to "Claim rejections – 35 USC. 112; 101," but the actual arguments presented in that section mostly relate to the § 112 enablement rejection that has been withdrawn by the Examiner on appeal, not the § 112 indefiniteness rejection or the § 101 rejection summarized above. *See* Amendment B, 1–2. Appellant does state: "5. The method and its means are completely interconnected. They correspond each other technologically, i.e. in any operational step." *Id.* at 2. This statement may have been in response to the § 101 rejection, but even if so, it does not address the basis for the rejection as summarized above.

Amendment B also contains a section in direct response to "Claim rejections 35 U.S.C. 103(a)." *Id.* at 2. Appellant asserts he is "the author" of both the present application on appeal and Lazar '436, and the present Specification at page 1 indicates Lazar '436 is "related" to the application. *Id.* Appellant asks how the present application can be unpatentable over his own, prior, application. *Id.* The Examiner, however, correctly concluded Lazar '436 is prior art to the present application under 35 U.S.C. § 102(b), because Lazar '436 was published on March 15, 2007, more than one year before the present application was filed on September 22, 2009. *See* Ans. 3–4. While the present application refers to the prior application published as Lazar '436 as being "related" (Spec. 1), the prior application was abandoned before the present application was filed, so the co-pendency requirement for filing date priority of 35 U.S.C. § 120 is not met. *See* 35 U.S.C. § 120 (later application must be "filed before the patenting or

abandonment of or termination of proceedings on" prior application); Application No. 11/416,600, Notice of Abandonment, mailed July 23, 2009.

As to Amendments C and D, the arguments presented therein appear to relate to the enablement rejection, which has been withdrawn by the Examiner on appeal. *See* Amendment C, 1–2; Amendment D, 1. These arguments do not address the Examiner's rejections on appeal, which are summarized above. We are therefore not persuaded of Examiner error by the arguments presented in Amendments C and D.

In Appeal Brief C, Appellant does not present any argument. *See* Appeal Br. C.

For the foregoing reasons, we are not persuaded that the Examiner errs in rejecting claims 1–7.

DECISION

The Examiner's decision rejecting claims 1–7 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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