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EXAMINER	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANTONIO DI COCCO and FILIPPO CALA

Appeal 2014-000782
Application 12/097,415
Technology Center 2100

Before DANIEL J. GALLIGAN, CHRISTA P. ZADO, and JOSEPH P. LENTIVECH, *Administrative Patent Judges*.

ZADO, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] file this appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1–11 and 13, all claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify International Business Machines Corporation as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE[2]

Claim 1 is exemplary:

> 1. A method for formulating data input in conjunction with a user interface permitting the serial entry of data symbols, comprising the steps of:
>
> receiving a serial entry of data symbols;
>
> waiting for a dynamically determined period after each data symbol entry, and receiving a further data symbol entry prior to expiry of said dynamically determined period,
>
> attempting to complete said data input by comparison of received symbols with a collection of possible data inputs, and
>
> discarding all previously received symbols for the purposes of future comparisons if no further data symbol is received prior to expiry of said dynamically determined period;
>
> wherein said dynamically determined period is calculated as a function of a time interval between previous data symbol entries.

THE REJECTIONS

Claim 11 stands rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Ans. 2–5.

Claims 1–11 and 13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. Publ. 2004/0163032 A1 (published Aug. 19, 2004) ("Guo") and U.S. Patent 6,744,422 B1 (issued June 1, 2004) ("Schillings"). Ans. 7–20.

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[2] Rather than repeat the arguments here, we refer to the Appeal Brief and Reply Brief for the positions of Appellants and the Final Office Action and Answer for the positions of the Examiner. Only those arguments actually made by Appellants have been considered in this decision. Arguments that Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

1. *Rejection under § 101*

Claim 11 recites "[a] computer readable storage medium having encoded thereon a computer program comprising instructions for carrying out the steps of," and then recites various steps. The Examiner finds that the Specification is silent as to the term "computer readable storage medium" and does not limit the term. Final Act. 3–4. The Examiner finds, therefore, that "computer readable storage medium" encompasses transitory propagating signals, and therefore, is directed to non-statutory subject matter. *Id.* We agree. *See* Ex parte Mewherter, 107 USPQ2d 1857, 1862 (PTAB 2013) (precedential-in-part) (the broadest reasonable interpretation of the term computer readable medium encompasses signals *per se*); *In re Nuitjen*, 500 F.3d 1346, 1356–57 (Fed. Cir. 2007) (transitory embodiments are not directed to statutory subject matter). Appellants' arguments made in reliance on non-precedential Board decisions do not persuade us otherwise.

We, therefore, sustain the Examiner's rejection of claim 11 under § 101.

2. *Rejection under § 103*

Appellants argue independent claims 1, 11, and 13 together (App. Br. 7–11), and do not provide separate argument for claims 2–10, which depend from claim 1 (*id.* at 12).

With respect to claim 1, Appellants argue that the combination of Guo and Schillings does not teach or suggest "discarding all previously received symbols for purposes of future comparisons if no further data symbol is received prior to expiry of said dynamically determined period," as recited in the claim. *Id.* at 7–11.

In particular, the Examiner finds that Guo, which relates to predictive text entry of serial characters or symbols, discloses discarding all previously received characters or symbols for purposes of future comparisons if no further characters or symbols are received prior to time out, e.g., expiry of a "particular" period of time. Ans. 9. The Examiner acknowledges that Guo fails to expressly disclose that the determined time period is "dynamically" determined as recited in the claims. *Id.* The Examiner finds, however, that Schillings describes dynamically determining a variable interval of time between key strokes during data entry (i.e., a user's cadence), thereby dynamically determining a period of time. *Id.* at 9–10. The Examiner finds it would have been obvious to modify the time period of Guo to be dynamically adjusted as taught by Schillings to compensate for or adjust to a user's cadence. *Id.* at 10.

Appellants' arguments do not address the Examiner's finding that a "dynamically predetermined period of time" would have been obvious in view of the combination of Guo and Schillings, but instead focus on whether Guo's "particular" time period is dynamically adjusted. App. Br. 8–10. Accordingly, we are not persuaded by Appellants' arguments.

Appellants also assert that the Examiner did not "provide proper analysis as to how" the combined references satisfy the limitations "discarding all previously received symbols for the purposes of future comparisons" and "prior to expiry of a predetermined period of time," as recited in claim 1, arguing that the Examiner's "only analysis" comprises the statement "enter the selected word – user is done typing." App. Br. 11. Appellants do not otherwise support their assertion. We are not persuaded by Appellants' arguments. The Examiner's findings include reference to

Guo ¶¶ 19–30, which the Examiner notes are described earlier in the rejection. Final Act. 9, 21. The Examiner finds that Guo teaches that when a user has completed entry of a word and does not enter another character prior to the expiration of a timeout condition, a completion signal is detected that causes all previously entered characters to be discarded. Ans. 12 (citing Guo ¶¶ 19–30). In the Reply Brief, Appellants quote the Examiner's Answer, and conclude that the Examiner has failed to demonstrate the claimed recitations, but Appellants do not explain sufficiently why the Examiner has erred. Reply Br. 3–5.

We, therefore, sustain the Examiner's rejection of claim 1, and claims 2–11 and 13, which are not argued separately.

DECISION

The Examiner's decision rejecting claim 11 under 35 U.S.C. § 101 is affirmed.

The Examiner's decision rejecting claims 1–11 and 13 under 35 U.S.C. § 103 is affirmed.[3]

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

[3] Should there be further prosecution of this application (including any review for allowance), the Examiner may wish to determine if claim 13 is structured as a single means claim and, therefore, not compliant with 35 U.S.C. § 112 ¶ 1. *See In re Hyatt*, 708 F.2d 712, 714 (Fed. Cir. 1983).