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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EDWARD K.Y. JUNG, ROYCE A. LEVIEN,
ROBERT W. LORD, MARK A. MALAMUD, JOHN D. RINALDO JR.,
CLARENCE T. TEGREENE, and LOWELL L. WOOD JR.

Appeal 2014-004665¹
Application 11/824,529²
Technology Center 3600

Before MICHAEL C. ASTORINO, NINA L. MEDLOCK, and
CYNTHIA L. MURPHY, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 169–196. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants' Appeal Brief ("Br.," filed July 16, 2012) and the Examiner's Answer ("Ans.," mailed July 31, 2013) and Final Office Action ("Final Act.," mailed March 14, 2012).

² Appellants identify the real party in interest as Searete, LLC. Br. 4.

CLAIMED INVENTION

Appellants' claimed invention "relates to computational systems and methods related to nutraceuticals" (Spec. 6).

Claims 169, 194, 195, and 196 are the independent claims on appeal. Claim 169, reproduced below, is illustrative:

169. A system comprising:

 circuitry configured for receiving data associated with nutraceutical usage by one or more individuals and for receiving data associated with one or more parameters related to the one or more individuals; and

 circuitry configured for processing the data associated with the nutraceutical usage by the one or more individuals and the data associated with the one or more parameters related to the one or more individuals by determining at least one relationship between the nutraceutical usage by the one or more individuals and the one or more parameters related to the one or more individuals and determining, based at least in part on the at least one relationship between the nutraceutical usage by the one or more individuals and the one or more parameters related to the one or more individuals, one or more nutraceutical dosages or modification of one or more nutraceutical dosages.

REJECTIONS

Claims 169–173, 175, 176, 178, 179, and 181–196 are rejected under 35 U.S.C. § 103(a) as unpatentable over Delaney (US 2006/0240150 A1, pub. Oct.26, 2006) and Surina (US 2006/0090765 A1, pub. May 4, 2006).

Claims 174, 177, and 180 are rejected under 35 U.S.C. § 103(a) as unpatentable over Delaney, Surina, and Trieu (US 2008/0299013 A1, pub. Dec. 4, 2008).

ANALYSIS

Independent claim 169 and dependent claims 170, 172, 173, 175, 176, 178, 179, 181, 186–188, and 191–193

Quoting the language of independent claim 169 and of the cited portions of Delaney, Appellants argue that the rejection of claim 169 should be reversed because Appellants have shown “by direct quotations” that claim 169 and the cited portions of Delaney are “very different on their faces,” and that claim 169 is “*prima facie* patentable over the pinpoint-cited portions of Delaney” (Br. 15–16). Appellants present a substantially similar argument with respect to Surina (*id.* at 16–17).

Appellants’ arguments are not persuasive at least because Appellants argue Delaney and Surina, individually. The argument that a single reference alone does not disclose all the recited claim limitations is not persuasive where, as here, claim 169 is rejected under 35 U.S.C. § 103 as obvious over the combination of Delaney and Surina, and not over either one of them alone. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (“Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references.”).

Moreover, and contrary to Appellants’ suggestion that identity of terminology is required, the Examiner does not contend, nor is the Examiner required to demonstrate, that the identical text of rejected claim 169 appears in the cited references. The test of whether a reference teaches a claim limitation is not whether the exact language is present. Instead, the relevant inquiry is whether the limitation is taught or suggested by the prior art when the claim is given its broadest reasonable interpretation in light of the Specification. *Cf. In re Bond*, 910 F.2d 831, 832–33 (Fed. Cir. 1990)

(interpretation of references “is not an ‘*ipsissimis verbis*’ test” (citing *Akzo N.V. v. U.S. Int’l Trade Comm’n*, 808 F.2d 1471, 1479 & n.11 (Fed. Cir. 1986)); *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 953 F.2d 1360, 1369 (Fed. Cir. 1991) (“[A] . . . reference . . . need not duplicate word for word what is in the claims.”)).

In view of the foregoing, we sustain the Examiner’s rejection of claim 169 under 35 U.S.C. § 103(a). We also sustain the rejection of dependent claims 170, 172, 173, 175, 176, 178, 179, 181, 186–188, and 191–193, which are not argued separately except based on their dependence from claim 169 (Br. 18).

Dependent claims 171, 182–185, 189, and 190

Each of claims 171, 182–185, 189, and 190 depends from independent claim 169. Appellants argue that each of these dependent claims is “independently patentable” (Br. 18–40). Yet aside from seeking the identical text of rejected claims 171, 182–185, 189, and 190 in the cited references (which is not required), Appellants offer no substantive arguments to rebut the underlying factual findings on which the Examiner’s obviousness determinations are based. Therefore, we sustain the Examiner’s rejection of claims 171, 182–185, 189, and 190 under 35 U.S.C. § 103(a).

Independent claims 194–196

Appellants argue that independent claims 194–196 are allowable with reference to Appellants’ arguments with respect to independent claim 169 (Br. 41–43). We found Appellants’ arguments unpersuasive of Examiner error with respect to claim 169. And we find them equally unpersuasive as applied to claims 194–196. Therefore, we sustain the Examiner’s rejection of claims 194–196 under 35 U.S.C. § 103(a).

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Dependent claims 174, 177, and 180

Appellants do not present any arguments in support of the patentability of dependent claims 174, 177, and 180 except to argue that the claims are allowable based on their dependence from claim 169 (Br. 18).

We are not persuaded, for the reasons set forth above, that the Examiner erred in rejecting claim 169 under 35 U.S.C. § 103(a). Therefore, we sustain the Examiner's rejection of claims 174, 177, and 180.

DECISION

The Examiner's rejections of claims 169–196 under 35 U.S.C. § 103(a) are 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