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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EUN YOUNG HWANG, RODERICK A. HYDE,
MURIEL Y. ISHIKAWA, JORDIN T. KARE, DENNIS J. RIVET,
ELIZABETH A. SWEENEY, CLARENCE T. TEGREENE,
VICTORIA Y. H. WOOD, and LOWELL L. WOOD, JR.

Appeal 2014-005927
Application 13/066,441¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, BRUCE T. WIEDER and
SHEILA F. McSHANE, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner’s final decision to reject claims 1, 26, 29, 50, 75, 78, 79, 93, 96, 102, 103, 108, 110, 123–126, 131, 139, 142, 150, 156, and 199–206. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is Elwha LLC. Appeal Brief filed November 12, 2013, hereafter “App. Br.,” 5.

BACKGROUND

The invention relates to obtaining an indication of an incentive based on an indication of a therapeutic component available to the individual and other determinants. Specification, hereafter “Spec.,” Abstract, ¶¶ 6, 11, 16.

Representative claims 1, 50, 93, and 150 are reproduced from pages 107, 108, 109, and 113, respectively, of the Claims Appendix of the Appeal Brief (Claims App’x) as follows, with emphasis added to relevant claim limitations:

1. A resource apportionment method comprising:
 - invoking circuitry for obtaining an indication of an artificial incentive partly based on an *indication of a health status apparently resulting from a bioactive material administered to an individual* and partly based on a profile of the individual, a component of the artificial incentive being an artificial incentive to the individual; and
 - transmitting the indication of the artificial incentive partly based on an indication of a health status apparently resulting from a bioactive material administered to the individual and partly based on a profile of the individual.

50. A resource apportionment system comprising:
 - means for obtaining an indication of an artificial incentive* partly based on an indication of a health status apparently resulting from a bioactive material administered to an individual and partly based on a profile of the individual, a component of the artificial incentive being an artificial incentive to the individual; and
 - means for transmitting the indication of the artificial incentive* partly based on an indication of a health status apparently resulting from a bioactive material administered to the individual and partly based on a profile of the individual.

93. A resource apportionment system comprising:
 - circuitry for obtaining an indication of an artificial incentive* partly based on an indication of a health status

apparently resulting from a bioactive material administered to an individual and partly based on a profile of the individual, a component of the artificial incentive being an artificial incentive to the individual; and

circuity for transmitting the indication of the artificial incentive partly based on an indication of a health status apparently resulting from a bioactive material administered to the individual and partly based on a profile of the individual.

150. An article of manufacture, comprising:

one or more *physical media configured to bear a device-detectable implementation of a method* including at least

obtaining an indication of an artificial incentive partly based on an indication of a health status apparently resulting from a bioactive material administered to an individual and partly based on a profile of the individual, a component of the artificial incentive being an artificial incentive to the individual; and

transmitting the indication of the artificial incentive partly based on an indication of a health status apparently resulting from a bioactive material administered to the individual and partly based on a profile of the individual.

The Examiner rejected claims 50, 75, 78, 79, 93, 96, 102, 103, 108, 110, 123–126, 131, 139, 142, and 199–206 under 35 U.S.C. § 112, second paragraph.² Claims 1, 26, 29, 150, and 156 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 1, 26, 50, 75, 79, 93, 96, 102, 108, 110, 123–126, 139, 142, 150, 156, 200–203, and 205 are rejected under 35 U.S.C. § 102(b) as anticipated by Walker.³ Claims 29 and

² The current application was filed on April 14, 2011, prior to the effective date of the AIA (America Invents Act), and therefore the pre-AIA statute is applicable.

³ US Publication 2006/0218011 A1, published September 28, 2006.

78 are rejected under 35 U.S.C. § 103(a) as unpatentable over Walker and an Official Notice. Claims 103, 131, 199, 204, and 206 are rejected under 35 U.S.C. § 103(a) as unpatentable over Walker and Zapol.⁴ Claims 50 and 93 are also rejected based on pending statutory-type double patenting under 35 U.S.C. § 101. Final Action mailed June 4, 2013, hereafter “Final Act.,” 2–35; Examiner’s Answer mailed February 13, 2014, hereinafter “Ans.,” 2.

DISCUSSION

We will address the issues presented in the Appeal in turn based upon the nature of the rejection.

*Rejections Under 35 U.S.C. § 112, second paragraph
and Statutory-Type Double Patenting.*

The Appellants argue the indefiniteness rejections in two groupings: 1) independent claim 50, and the claims that depend from it, and 2) claim 93, and its dependent claims. App. Br. 16–34. There is also a pending rejection of claim 204 as indefinite, because its recitation “partly based on the profile of the individual to another individual” is unclear. Final Act. 3. The Appellants fail to argue the rejection of claim 204. We will address the claims with similar groupings, with the dependent claims standing or falling with the respective independent claims.

Claim 50

The Examiner finds that claim 50’s limitations of “means for obtaining an indication of an artificial incentive partly based on an indication of a health status apparently resulting from a bioactive material administered to an individual and partly based on a profile of the individual” and “means for transmitting the indication of the artificial incentive partly based on an

⁴ US Patent 5,485,827, issued January 23, 1996.

indication of a health status apparently resulting from a bioactive material administered to the individual and partly based on a profile of the individual” invoke 35 U.S.C. § 112, sixth paragraph. Final Act. 3–4. The Examiner also finds that the written description in the Specification “fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function,” thus rendering the claim indefinite. *Id.* at 2–3.

The Appellants allege that they are traversing the Examiner’s rejection by identifying the corresponding structure, material, or acts, by the excerption and underlining of portions of the Specification, including some of its Figures, in the Appeal Brief. *See* App. Br. 17–28 (citing Spec. ¶¶ 91–98, 252–257, 298, 299, Figs. 1, 3, 7, 13, 27; incorporation of US Patent 7,041,468 and its Fig. 11). The underlined portions of excerpts include references to several other patents. *See id.* at 20–21, 23. The Appellants also state that the excerpts identified do not exhaust the full range of structures that may be included in the Specification. *Id.* at 18 n.1.

The Examiner finds that although the examples of structures are disclosed, these structures are not clearly linked and one of ordinary skill in the art could not identify what structure, material, or acts disclosed in the specification perform the claimed function. Ans. 4.

Upon consideration of the evidence on this record in light of the arguments advanced by the Appellants, we find that the Appellants have not identified reversible error in the Examiner’s determination that representative claim 50 is indefinite.

In the context of a means-plus-function limitation, if one skilled in the art would be able to identify the structure, material, or acts for performing the claimed function, the requirements of 35 U.S.C. § 112, second paragraph are satisfied. *See Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1381 (Fed. Cir. 1999). If there is insufficient disclosure of the structure, material, or acts for performing the claimed function, however, a rejection under 35 U.S.C. § 112, second paragraph is appropriate. *Biomedino LLC v. Waters Techs. Corp.*, 490 F.3d 946, 952 (Fed. Cir. 2007). Here, we agree with the Examiner that the Appellants fail to provide identification of the structure of the claimed function with any clarity such that one of ordinary skill could discern it. Structure disclosed in the specification is corresponding structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the *quid pro quo* for the convenience of employing 112, paragraph 6. *Medical Instrumentation and Diagnostic Corp. v. Elekta AB*, 344 F.3d 1205, 1218, 68 USPQ2d 1263, 1268 (Fed. Cir. 2003). We fail to see such linking here. Thus, we sustain the § 112, second paragraph rejection of representative claim 50.

Claim 93

The Examiner finds that claim 93 does not facially invoke § 112, sixth paragraph because the term “means” is not used in it, however, the Specification does not describe the “circuitry” for “obtaining” or for “transmitting.” Final Act. 4. The Examiner indicates that “applicant appears to state that the ‘circuitry’ is a general purpose computer capable of running computer code.” *Id.* The Examiner finds that § 112, sixth paragraph is invoked, and because the written description fails to disclose

the associated structure for “circuitry” in the view of one of ordinary skill, the Examiner finds that the claim terms of claim 93 are indefinite under § 112, second paragraph. *Id.* at 7.

There is a presumption that § 112, sixth paragraph does not apply to claim 93 because the term “means” is not recited, but this presumption can nonetheless be rebutted if the claim term fails to recite sufficiently definite structure, or else recites function without reciting sufficient structure for performing that function. *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348–1349 (Fed. Cir. 2015) (en banc);⁵ *see also Personalized Media Commc’ns, LLC v. Int’l Trade Comm’n*, 161 F. 3d 696, 704 (Fed. Cir. 1998). “The standard is whether the words of the claim are understood by persons of ordinary skill in the art to have a sufficiently definite meaning as the name for structure.” *Id.* at 1349.

Here, therefore, the issues are whether the Appellants identify reversible error in the Examiner’s determination that § 112, sixth paragraph is invoked and the Specification fails to recite sufficient structure for the term “circuitry” as used in claim 93’s limitations of “circuitry for obtaining” or “circuitry for transmitting.”

The Examiner finds that “the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed function such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function,” and that the Specification may indicate “that general purpose computers and circuitry are able to

⁵ The Appellants states that there is a strong presumption that § 112, sixth paragraph does not apply. App. Br. 33. That strong presumption, however, has been overruled by the en banc *Williamson* decision. *See Williamson*, 792 F.3d at 1349. Accordingly, we refer to that decision in this Appeal.

accomplish these functions, but a specific structure and algorithm for obtaining an indication and transmitting the indication are not found.” Final Act. 7. The Appellants allege that, even if the Examiner were correct in finding that § 112, sixth paragraph, applies to the terms, its alleged failure to describe the circuitry claimed is not accurate because several identified excerpts describe the circuitry. App. Br. 32, *see also id.* at 29–32. The Appellants also allege that the Examiner mischaracterizes the Specification when stating that the “circuitry” appears to be a general purpose computer. *Id.* at 31 n.8.⁶ The Appellants do not identify what the structures performing the function actually are, beyond their characterization as “circuitry.” *Id.* at 31–33. The Appellants instead argue that they are being “penalized” by providing for more than one disclosure in support of the claim terms. *Id.* at 34.

⁶ The Appellants refer to the portion of the Specification in support of its contention that “electrical circuitry” “includes, but is not limited to, electrical circuitry having at least one discrete electrical circuit, electrical circuitry having at least one integrated circuit, electrical circuitry having at least one application specific integrated circuit, electrical circuitry forming a general purpose computing device configured by a computer program (e.g., a general purpose computer configured by a computer program which at least partially carries out processes and/or devices described herein, or a microprocessor configured by a computer program which at least partially carries out processes and/or devices described herein), electrical circuitry forming a memory device (e.g., forms of memory (e.g., random access, flash, read only, etc.)), and/or electrical circuitry forming a communications device (e.g., a modem, communications switch, optical-electrical equipment, etc.). Those having skill in the art will recognize that the subject matter described herein may be implemented in an analog or digital fashion or some combination thereof.” App. Br. 31 n.8 (emphasis omitted) (quoting Spec. ¶ 63).

We see no reversible error with the Examiner’s finding that § 112, sixth paragraph is invoked. The broad scope of all “circuitry” alleged to be the structure is not tied to or identified as performing the claimed functions. Thus, we further find no reversible error with the Examiner’s finding that there is no identification provided for the specific structure and algorithm for obtaining an indication and transmitting the indication. *See Aristocrat Techs. Austl. Pty Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1333 (Fed. Cir. 2008); *Finisar Corp. v. The DirectTV Grp.*, 523 F.3d 1323, 1340–41 (Fed. Cir. 2008) (Simply disclosing software “without providing some detail about the means to accomplish the function[,] is not enough.”). We therefore sustain the § 112, second paragraph rejection of representative claim 93.

Because we agree with the Examiner that § 112, sixth paragraph is invoked in claim 93, claims 50 and 93 could be viewed to have identical subject matter. However, we reverse the pending statutory-type double patenting rejection of claims 50 and 93 under 35 U.S.C. § 101 because the claims are pending in the same application.

Claim 204

The Examiner also rejects claim 204 as indefinite, because its recitation “partly based on the profile of the individual to another individual” is unclear and appears to be missing words. Final Act. 3. The Appellants fail to argue the rejection of claim 204. The Appellants waive any argument as to that rejection under 37 C.F.R. § 41.37(c)(1)(iv). We therefore summarily affirm this rejection.

* * *

In light of the affirmance of the rejections of representative claims 50 and 93 under § 112, second paragraph, by virtue of their dependency, the

rejections of claims 75, 78, 79, 96, 102, 103, 108, 110, 123–126, 131, 139, 142, and 199–206 are also affirmed. In light of the affirmance of the indefiniteness rejections of these claims, we do not reach the merits of the rejections of them under 35 U.S.C. §§ 102 and 103. Before a proper review of the rejections under §§ 102 and 103 can be conducted, the subject matter encompassed by the claims on appeal must be reasonably understood without resort to speculation. Because the claims fail to satisfy the requirements of 35 U.S.C. § 112, second paragraph, we reverse, *pro forma*, the Examiner’s rejection of these claims, to the extent applicable. *See In re Steele*, 305 F.2d 859, 862 (CCPA 1962) (A prior art rejection cannot be sustained if the hypothetical person of ordinary skill in the art would have to *make speculative assumptions concerning the meaning of claim language.*); *see also In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970) (“If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious—the claim becomes indefinite.”). Our decision is based solely on indefiniteness, and does not reflect on the merits of the underlying rejections.

Rejections Under 35 U.S.C. § 101.

The Examiner rejects claims 1, 26, and 29 as directed to non-statutory subject matter, finding that the claims are directed to an abstract idea with insufficient recitation of a machine or transformation. Final Act. 8 (citing *Bilski v. Kappos*, 95 USPQ2d 1001 (U.S. 2010)). The Examiner finds that the Appellants give “circuitry” a special meaning in the Specification, and “it is not clear what ‘circuitry’ entails and the ordinary and customary meaning cannot be given.” *Id.* at 38 (citing Spec. ¶¶ 61, 87, 88). The Examiner also

finds that the claims lack a transformation step, as they claim “merely ‘conditioning’ of an ‘artificial incentive.’” *Id.*

The Examiner also rejects claims 150 and 156 under § 101 because the claims are directed to “an article of manufacture comprising one or more physical media” where “[t]he broadest reasonable interpretation of a ‘physical media’ includes forms of non-transitory tangible media and transitory propagating signals per se.” *Id.* at 8 (citing Spec. ¶ 325).

The Appellants argue that the Examiner provided no objectively verifiable evidence that the “circuitry” portion of claim 1 fails to meet the “machine” prong as an insufficient recitation of a machine. App. Br. 35. Additionally, the Appellants allege that the Examiner has not provided sufficient support that “*invoking* circuitry” would not result in a transformation, and moreover, even if the machine or transformation test was not met, the claimed method is not an abstract idea. *Id.* at 35–36. Additionally, as to the rejections of claims 150 and 156, the Appellants argue that the claims are to an “article of manufacture,” and there is an absence of authority or analysis in the rejection. *Id.* at 38.

We find no reversible error with these Examiner’s findings relating to the machine or transformation test for claims 1, 26, and 29. While the Examiner relies on the machine or transformation test to gain this result, this test, however, “is not the sole test for deciding whether an invention is a patent-eligible ‘process.’” *Bilski v. Kappos*, 130 S. Ct. 3218, 3227 (2010). In *Alice Corporation Pty, Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014), the Supreme Court further clarified the law regarding patentable subject matter. In doing so, the Supreme Court reiterated the two-step framework previously set forth in *Mayo Collaborative Services v.*

Prometheus Labs., Inc., 132 S. Ct. 1289, 1300 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts.” *Alice*, 134 S. Ct. at 2355. Under *Alice*, the first step of such analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* (citation omitted). If determined that the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether the additional elements “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (citing *Mayo*, 132 S. Ct. at 1297–1298). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

The Examiner finds here that the claims are directed to the abstract idea of “invoking” could be the “abstract step of a person calculating and then pressing a button.” Ans. 5. Additionally, the Examiner finds that the “transmission” step could be a letter mailed through a post office in light of the disclosure of the pass-through functionality of a modem disclosed as transmission machinery. *Id.* (citing Spec. ¶ 63). Although we agree with the Examiner that “circuitry” is broadly disclosed in the Specification, we do not find that “invoking circuitry for obtaining an indication of an artificial incentive partly based on an indication of a health status” is directed to an abstract idea. We therefore reverse the § 101 rejections of claims 1, 26, and 29.

As to claim 150, the Specification describes “physical media” to include

[i]n some embodiments, the one or more ‘physical media’ may include one or more instances of conduits, layers, networks, static storage compositions, or other homogenous or polymorphic structures or compositions suitable for bearing signals. In some embodiments, such a ‘communication channel’ in physical media may include a signal path between two transceivers or the like. A ‘remainder’ of the media may include other signal paths intersecting the communication channel or other media as described herein. In some variants, another exemplary system comprises one or more physical media 2890 constructed and arranged to receive a special-purpose sequence 2882 of two or more device-detectable instructions 2884 for implementing a flow as described herein or to receive an output of executing such instructions. Physical media 2890 may (optionally) be configured by writer 2801, transmitter 2772, or the like.

Spec. ¶ 325.

In view of this broad disclosure of “physical media,” its scope would extend to transitory propagating signals, as the Examiner found. We are not persuaded of reversible error by the Appellants’ argument that claim 150 is directed to an “article of manufacture.” Regardless of what statutory category (“process, machine, manufacture, or composition of matter,” (35 U.S.C. § 101)) a claim’s language is crafted to literally invoke, we look to the underlying invention for patent-eligibility purposes. In *CyberSource*, the Federal Circuit determined that the invention underlying both a method claim and a manufacture claim was a method for detecting credit card fraud and, despite the different formatting of the two claims, treated both claims as process claims “for patent-eligibility purposes.” *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1374–75 (Fed. Cir. 2011). In reaching that determination, the Federal Circuit referred to *In re Abele*, 684

F.2d 902 (CCPA 1982), where a court refused to treat a claim that recited “an ‘[a]pparatus for displaying data’” as an apparatus claim because to do so would “exalt form over substance since the claim [was] really to the method or series of functions itself.” *Id.* at 1374 (quoting *Abele*, 684 F.2d at 909). Therefore, we view claim 150 as directed to the performance of the method steps. Because those steps can include the use of transitory propagating signals, we find no reversible error in the rejection of claim 150, and its dependent claim 156, as directed to non-statutory subject matter. *See Ex parte Mewherter*, 107 USPQ2d 1857, 1859 (PTAB 2013) (precedential).

Rejections Under 35 U.S.C. §§ 102/103.

The Appellants argue the anticipation rejections in the groupings of:
i) independent claim 1, and claims 26 and 29⁷, that depend from it; and
ii) independent claim 150, and claim 156 that depends from it. App. Br. 38–47, 96–104. We will address the claims with similar groupings selecting independent claims 1 and 150, respectively, as representative.

The Declaration of Wayne Kindsvogel, Ph.D. (“Kindsvogel Dec.”) under 37 C.F.R. § 1.132 only addresses anticipation and/or obviousness rejections of claims 93, 124, 199, and 200, which are not at issue⁸ in light of

⁷ Claim 29 was rejected under § 103 as obvious under Walker and Official Notice. Final Act. 27–28. The Appellants argue dependent claim 29’s patentability based only on the issues argued as to independent claim 1. *See* App. Br. 47. Therefore, we will address claim 29 in the grouping with independent claim 1 relating only to the anticipation arguments offered.

⁸ Concerning claims 93, 124, 199, and 200, and even concerning claims 1, 26, 29, 150, and 156 if the Kindsvogel Declaration were intended to address these claims as well, we find no reversible error with the Examiner’s findings that the Kindsvogel Declaration is insufficient to overcome the rejections. Final Act. 42. We agree with the Examiner that the Declaration does not state why the Examiner is incorrect or provide supporting evidence

their rejections under § 112, second paragraph, affirmed above. *See* Kindsvogel Dec. 2, 5, 6. The Kindsvogel Declaration does not identify or address the claims remaining in dispute based upon anticipation and therefore will not be considered here.

Claim 1

The Appellants argue that the Examiner fails to explain how Walker’s disclosures are applied to the limitation of “an indication of a health status apparently resulting from a bioactive material administered” or “transmitting” the indication. App. Br. 40–44. The Appellants argue that Walker’s disclosures instead only describe “that the medicated patch has been applied to the patient’s skin.” *Id.* at 46 (quoting Walker ¶ 44).

The Examiner finds that there is no “controlling definition of ‘health status’” identified in the Specification or identified by the Appellants. Final Act. 36. The Examiner finds “[t]herefore any health information about the patient is considered to be health status information. The medicated patch of Walker detects signals through the body of the patient. Detecting a signal through a patient’s body is considered to be an indication of a health status.” *Id.*

Upon consideration of the evidence on this record in light of the arguments advanced by the Appellants, we find that the Appellants have not

or argument. *Id.* At best, the Kindsvogel Declaration provides conclusory opinions on patentability only. Opinion on the ultimate legal conclusion at issue is not entitled to any weight, although the underlying basis for the opinion may be given some weight. *See In re Chilowsky*, 306 F.2d 908, (CCPA 1962); *see also, Pereira v. Sec’y of Dep’t of Health & Human Servs.*, 33 F.3d 1375, 1377 n.6 (Fed. Cir. 1994) (“An expert opinion is no better than the soundness of the reasons supporting it.”).

identified reversible error in the Examiner's determination that representative claim 1 is anticipated by Walker.

Walker states that

According to some embodiments, the actual usage, ingestion, and/or other application of the substance may be determined. In the case of a patch-administered medication, for example, signals may be sent and/or received (e.g., via the patient's body) to determine that the medicated patch has been applied to the patient's skin.

Walker ¶ 44.

We agree with the Examiner's finding that signals sent or received via a patient's body to determine that a medicated patch has been applied are an indication of health status. Although such signals, albeit, may equate to an indication that the medicated patch has been applied as the Appellants argue, because the signals are via a patient's body, and they reflect the usage of the applied medication per Walker's disclosure, the disclosure are indicative of health status as well.

We therefore sustain the rejection of representative claim 1, and claims 26 and 29 that depend from it.

Claim 150

The Appellants present the same arguments relating to the rejection of claim 150 as those presented for claim 1. *See App. Br. 96–104.* We sustain the rejection of representative claim 150, and claim 156 that depends from it, for similar reasons to those discussed for claim 1.

SUMMARY

The rejection of claims 50, 75, 78, 79, 93, 96, 102, 103, 108, 110, 123–126, 131, 139, 142, and 199–206 under 35 U.S.C. § 112, second paragraph is affirmed.

The rejection of claims 1, 26, and 29 under 35 U.S.C. § 101 is reversed.

The rejection of claims 150 and 156 under 35 U.S.C. § 101 is affirmed.

The rejection of claims 50 and 93 based on pending statutory-type double patenting under 35 U.S.C. § 101 is reversed.

The rejection of claims 1, 26, 150, and 156 under 35 U.S.C. § 102(b) is affirmed.

The rejection of claims 50, 75, 79, 93, 96, 102, 108, 110, 123–126, 139, 142, 200–203, and 205 under U.S.C. § 102(b) is reversed.

The rejection of claim 29 under 35 U.S.C. § 103(a) is affirmed.

The rejection of claims 78, 103, 131, 199, 204, and 206 under 35 U.S.C. § 103(a) is reversed.

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