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13/217,397	08/25/2011	Susan Hart Chapman	P-219X	5939

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THE PROCTER & GAMBLE COMPANY  
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CINCINNATI, OH 45202

EXAMINER
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WILLIAMS, TERESA S

ART UNIT	PAPER NUMBER
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3686

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SUSAN HART CHAPMAN

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Appeal 2014-007861  
Application 13/217,397  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, BIBHU R. MOHANTY, and  
NINA L. MEDLOCK, *Administrative Patent Judges*.

CRAWFORD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1–3 and 7–14. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We REVERSE.

Claim 1 is illustrative:

1. A method of assessing the health of a companion animal, comprising:  
providing a first group of companion animals, the first group comprising a first plurality of companion animals;  
subjecting each of the first plurality of companion animals to a performance assessment using an apparatus selected from stairs and rails;  
evaluating a performance of each companion animal based on a plurality of attributes, wherein the attributes are associated with the health of the companion animal, wherein the evaluating comprises:
  - providing a performance profile;
  - accounting for the attributes exhibited by each companion animal during the performance;
  - assigning a performance index based on the performance profile given the attributes accounted for.

Appellant appeals the following rejections:

1. Claims 1–3 and 7–14 under 35 U.S.C. § 101 as directed to non-statutory subject matter.
2. Claims 1–3 and 7–14 under 35 U.S.C. § 101 and section 33(a) of the America Invents Act (AIA) as being directed to or encompassing a human organism.
3. Claims 1–3 and 7–14 under 35 U.S.C. § 103(a) as unpatentable over Males (US 2008/0234108 A1, pub. Sept. 25, 2008) and Dodds (US 6,537, 213 B2, iss. Mar. 25, 2003).

#### ISSUE

Did the Examiner err in rejecting claims 1–3 and 7–14 under 35 U.S.C. § 101 because the claims do not involve transformation of a particular article to a different state or thing and encompass a human being?

Did the Examiner err in rejecting claims 1–3 and 7–14 because the Examiner has not established a reason to combine the teachings of Males and Dodds?

## ANALYSIS

### Rejection under 35 U.S.C. § 101

We will not sustain this rejection.

In support of this rejection, the Examiner first found that the claims were directed to a human organism (Final Act. 3). We agree with the Appellant that the claims do not encompass a human organism as no human organism is recited (Appeal Br. 3).

The Examiner also found that the claims facilitate conversion of medication claims to active medications but are not tied to and do not recite a device or machine used to carrying out the claimed method (Final Act. 2–3). However, the claims are not directed to conversion of medication.

In the Response to Argument section of the Answer, the Examiner then asserts that the claims are directed to a general concept (Ans. 2–3).

The Supreme Court has established that in order to determine whether a claim is eligible for patenting, it must first be determined whether the claim is directed to a patent-ineligible concept (such as an abstract idea) and, if so, it must be determined whether there is something else in the claim which ensures that the claim is directed to “significantly more” than a patent-ineligible concept. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014).

However, the Examiner has not stated what general concept the invention is directed to, nor has the Examiner made a determination of whether the claims contain significantly more than that general concept. Therefore, the Examiner has not established that the claims are directed to non-statutory subject matter.

Rejection under 35 U.S.C. § 103

Appellant argues that there is no reason to combine the teachings of Males and Dodds (Appeal Br. 3–4). We agree.

Males is directed to improvements in the construction of athletic hurdles and barriers that can reduce the injuries to a participant (Males paras 1, 36). Dodds is directed to testing, diagnosis and prediction of diseases and disorders of animal companions that takes into consideration health assessment information (Dodds 1:12–24).

The Examiner reasons that one of ordinary skill in the art would have found it obvious to have modified the method of Males so as to include performance profile features as taught by Dodds to provide a more comprehensive way of measuring animal activities to improve overall efficiency (Final Act. 5). However, Males is not concerned with the measurement of animal activities but is rather concerned with improving the construction of athletic hurdles and barriers. As such, the Examiner has not provided a reason to combine the Males hurdle/barrier improvement method with the Dodds performance profile features.

Therefore, we will not sustain the Examiner’s rejection under 35 U.S.C. § 103.

Appeal 2014-007861  
Application 13/217,397

DECISION

The decision of the Examiner is reversed.

ORDER

REVERSED