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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex Parte* KEVIN GEORGE GARRAHAN, SHANNA LEE COLLIE,  
SHANNON SAGE GARCIA, and THOMAS LOCKE RUST

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Appeal 2014-007908<sup>1</sup>  
Application 12/085,865<sup>2</sup>  
Technology Center 3600

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Before ANTON W. FETTING, NINA L. MEDLOCK, and  
AMEE A. SHAH, *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 1–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references Appellants' Appeal Brief ("Br.," filed June 10, 2013) and the Examiner's Answer ("Ans.," mailed May 6, 2014) and Final Office Action ("Final Act.," mailed December 11, 2012).

<sup>2</sup> Appellants identify ECAT, LLC. as the real party in interest. Br. 4.

### CLAIMED INVENTION

Appellants' claimed invention relates to an emergency consequence assessment tool (Title).

Claim 1, reproduced below, is the sole independent claim and representative of the claimed subject matter:

1. A computerized emergency consequence assessment method for providing a solution of an identified crisis event, utilizing a computer with a processor and a memory embedded with a computer program to implement a plurality of steps of:

a. prompting via the processor for an un-registered user to become a registered user by requesting and establishing a login account with the assessment method;

b. prompting a registered user to log-in to the assessment method to begin a session of using the assessment method;

c. prompting the registered user to designate whether the session is for a live incident emergency event and store in the memory an input designation of the registered user;

c1. prompting the registered user to designate whether the session is for a training exercise of a mock emergency event and store in the memory an input designation of the registered user; and

d. prompting the registered user to report general information of a threat agent found in an ambient environment.

### REJECTION

Claims 1–21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hnatio (US 2005/0004823 A1, pub. Jan. 6, 2005), Binning (US 2005/0143048 A1, pub. June 30, 2005), Genovese (US 2006/0085367 A1, pub. Apr. 20, 2006), and Saalsaa (US 2003/0212575 A1, pub. Nov. 13, 2003).

## ANALYSIS

### *Independent Claim 1*

We are not persuaded by Appellants' argument that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because the combination of Hnatio and Binning, on which the Examiner relies, does not disclose or suggest "prompting . . . an un-registered user to become a registered user by requesting and establishing a login account with the assessment method" and "prompting a registered user to log-in to the assessment method to begin a session of using the assessment method," i.e., steps (a) and (b), as recited in claim 1 (Br. 13–17). Instead, we agree with, and adopt the Examiner's findings and rationale as set forth at page 12 of the Answer.

Hnatio is directed to a method and system for assisting in the prediction, detection, deterrence, prevention, and mitigation of potential terrorist attacks (Final Act. 3 (citing Hnatio, Abstract)), and discloses that in one embodiment, knowledge domain experts are asked to complete a survey questionnaire that asks each expert to validate the degree of "acceptance" or "rejection" of several conceptual frames of reference as they relate to certain epistemologies and scientific theories (Hnatio ¶ 52). Hnatio discloses that "a special password protected web site" is established to facilitate the completion of the survey questionnaire (*id.* at ¶ 53), and further discloses that five knowledge domain experts are requested, by way of introductory letters and follow-up telephone calls, to access the website to complete the questionnaire, obtain background information, and access the results of the survey instrument (*id.* at ¶ 58).

Binning is directed to systems, methods, and apparatuses that operate to access, activate, deactivate, monitor, and/or otherwise control an

emergency remote control system located at an emergency site, e.g., a residential address (Binning ¶ 10). Binning discloses that a user subscribes to a network-enabled Emergency Alert Control Service that activates the emergency remote control system in the event of an emergency (*id.* at ¶ 28).

In rejecting claim 1 under 35 U.S.C. § 103(a), the Examiner asserts that Figure 9 (item 91) and Figure 12 of Hnatio disclose that “the system is implemented in a user to network platform which suggests prompting a user” (Final Act. 3), and that the Hnatio system “provides for a secure password protected website which suggests that a user must be registered in order to log-in” (*id.* (citing Hnatio ¶ 58)). The Examiner cites Binning as disclosing a subscription based system, “which suggests that an unsubscribed user must first become a subscribed user by establishing an account” (*id.* at 4 (citing Binning ¶¶ 10, 28, 35, 37)). And the Examiner concludes that would have been obvious to a person of ordinary skill in the art at the time of Appellants’ invention to modify the Hnatio system to include a subscription based emergency system. as taught by Binning, that “allows users to communicate with the emergency system to report and/or obtain critical information relating to an emergency event . . . in order to effectively transmit and intercommunicate user notifications in case of a real life crisis” (*id.*).

Appellants argue that Examiner’s assertion that an unsubscribed user in Binning must first become a subscribed user by establishing an account is “merely an Office conjecture” (Br. 16) and that even if the “Office conjecture” is true, Hnatio and Binning cannot be properly combined because Binning teaches away from Hnatio’s disclosure of pre-establishing an account and assigned password and then communicating the password to

a domain expert via an introductory letter followed up with a telephone call (*id.*). That argument is not persuasive at least because Appellants do not point to any passage in Hnatio that criticizes, discredits, or otherwise discourages providing functionality for a user to establish his/her own account and password — which is required to establish a “teaching away.” See *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994) (A teaching away occurs when a reference discourages one skilled in the art from following the claimed path, or when the reference would lead one skilled in the art in a direction divergent from the path that was taken by the applicant); see also *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004) (The prior art’s mere disclosure of more than one alternative does not constitute a teaching away from any of the alternatives when the disclosure does not criticize, discredit, or otherwise discourage the solution claimed).

We also are not persuaded of error on the part of the Examiner by Appellants’ argument that the proposed modification would change Hnatio’s principle of operation. Hnatio discloses that knowledge domain experts are asked to access a password protected web site to complete a survey questionnaire, obtain background information, and access the results of the survey instrument. The principle of operation involved in accessing the web site, as disclosed in Hnatio, is the same whether the expert accesses the web site using an account and password that he/she created himself/herself or accesses the web site using an account and password that someone else created and provided to him/her.

Appellants’ argument that Hnatio does not disclose or suggest “prompting the registered user to designate whether the session is for a live incident emergency event” or “for a training exercise of a mock emergency

event,” i.e., steps (c) and (c1), as recited in claim 1 (Br. 17–20), fares no better. The Examiner acknowledges that Hnatio does not expressly disclose or suggest steps (c) and (c1), and cites Genovese to cure this deficiency (Final Act. 4–5).

We also are not persuaded by Appellants’ argument that Hnatio cannot be relied on here as a reference (Br. 20–27). The record shows that a Final Office Action was issued on March 21, 2007 in Hnatio application Serial No. 10/694,024 in which the Examiner rejected the then pending claims under § 101 as directed to an abstract idea. The pending claims also were rejected under § 101 for lack of utility and, therefore, under § 112, second paragraph, as failing to comply with the enablement requirement. *See In re Fouche*, 439 F.2d 1237, 1243 (CCPA 1971) (“[I]f such compositions are in fact useless, appellant’s specification cannot have taught how to use them.”).

Appellants argue that because the claims of the Hnatio application were finally rejected under §§ 101 and 112, second paragraph, Hnatio cannot be relied on here as a teaching reference (Br. 20–27). But we are aware of no precedent, nor do Appellants identify any precedent, to support that position.

For the foregoing reasons, we are not persuaded that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a). Therefore, we sustain the Examiner’s rejection.

#### *Dependent Claim 2*

Appellants argue that the Examiner erred in rejecting claim 2 under 35 U.S.C. § 103(a) because neither paragraph 76 nor Figure 6 of Genovese discloses or suggests “prompting the registered user to inform where in the

ambient environment the threat agent is found,” as recited in claim 2 (Br. 27).

Responding to Appellants’ argument in the Answer, the Examiner cites paragraph 50 of Genovese as disclosing the argued limitation (Ans. 14–15). Appellants do not address paragraph 50 of Genovese in their Appeal Brief, and Appellants did not file a Reply Brief.

We are not persuaded, based on the present record, that the Examiner erred in rejecting claim 2 under 35 U.S.C. § 103(a). Therefore, we sustain the Examiner’s rejection.

*Dependent Claim 3*

Appellants argue that the Examiner erred in rejecting claim 3 under 35 U.S.C. § 103(a) because neither paragraph 14 nor paragraph 47 of Hnatio discloses or suggests “determining whether the identity of the threat agent is known or unknown,” as recited in claim 3 (Br. 28).

In responding to Appellants’ argument, the Examiner cites Figure 14 of Genovese as disclosing the argued limitation (Ans. 15). Appellants do not address Figure 14 of Genovese in their Appeal Brief, and Appellants did not file a Reply Brief.

We are not persuaded, based on the present record, that the Examiner erred in rejecting claim 3 under 35 U.S.C. § 103(a). Therefore, we sustain the Examiner’s rejection.

*Dependent Claims 4–21*

In addressing each of claims 4–21, Appellants identify the portion of the reference cited by the Examiner and summarily assert that the cited paragraph or paragraphs do not disclose or suggest the claimed subject matter (Br. 28–34). Appellants’ assertions are not persuasive of Examiner

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error at least because they do not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that the Board reasonably interpreted 37 C.F.R. § 41.37(c)(1)(vii) as requiring “more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”).

Therefore, we sustain the Examiner’s rejection of claims 4–21 under 35 U.S.C. § 103(a).

#### DECISION

The Examiner’s rejection of claims 1–21 under 35 U.S.C. § 103(a) 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