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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* THOMAS REUTER

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Appeal 2015-004152  
Application 12/702,896  
Technology Center 2100

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Before ST. JOHN COURTENAY III, THU A. DANG, and  
LARRY J. HUME, *Administrative Patent Judges*.

DANG, *Administrative Patent Judge*.

DECISION ON APPEAL

## 1. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6 and 8–14. Claim 7 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### A. INVENTION

According to Appellant, the invention relates to “a method for operating an automation system, a corresponding computer program for implementing the method and a system or device that operates according to the method, in particular by executing the computer program.” Spec. ¶ 1.

### B. ILLUSTRATIVE CLAIM

1. A computer implemented method for operating an industrial automation system having an automation solution for a manufacturing process that requires at least one of controlling and monitoring, wherein the automation solution of the industrial automation system comprises a plurality of software modules and a plurality of subprograms, the method comprising:

invoking, by a processor of a computer, said plural software modules by said plural subprograms in accordance with a predefined call sequence during an execution of the automation solution for the manufacturing process of the industrial automation system;

storing, in a storage medium of said computer, the predefined call sequence permanently configured for said plural software modules in a call specification dataset; and

providing the call specification dataset for at least one of said plural subprograms such that said plural software modules are

invokeable in accordance with the call specification dataset during execution of at least one of said plural subprograms.

### C. REJECTIONS

The Examiner relies upon the following prior art as evidence in rejecting the claims on appeal:

Zuraw	US 2002/0072809 A1	June 13, 2002
Karmiy et al. ("Karmiy")	US 2003/0069650 A1	Apr. 10, 2003
Bruecklmayr et al. ("Bruecklmayr")	US 2006/0123403 A1	June 8, 2006
Fax et al. ("Fax")	US 2008/0004723 A1	Jan. 3, 2008
Weatherhead et al. ("Weatherhead")	US 2008/0097630 A1	Apr. 24, 2008

Claim 10 is rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

Claims are 1–3 and 8–14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over the teachings of Bruecklmayr and Weatherhead.

Claims 4–6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Bruecklmayr, Weatherhead, and Zuraw.

Claims 4–6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Bruecklmayr, Weatherhead, and Karmiy.

Claims 4–6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the teachings of Bruecklmayr, Weatherhead, and Fax.

## II. ISSUES

The principal issue before us is whether the Examiner erred in finding that the *combination* of Bruecklmayr and Weatherhead teaches or would

have suggested “A computer implemented method for operating *an industrial automation system having an automation solution for a manufacturing process . . .*,” and the step of “invoking, by a processor of a computer, said plural software modules by said plural subprograms in accordance with a predefined call sequence during an execution of the automation solution *for the manufacturing process of the industrial automation system*” (claim 1).

### III. ANALYSIS

Appellant contends “[T]his combination fails because *Bruecklmayr* and *Weatherhead* have little to do with each other, and there is no substantial reason for the skilled person to modify *Bruecklmayr* based on the teachings of *Weatherhead*. (App. Br. 5).

Appellant concedes “*Bruecklmayr* is directed to processing program code in a manner that secures intellectual property contain within that code” and “The object of *Bruecklmayr* is clearly to prevent the reengineering of program code so that a subsequent user cannot produce the software, etc.” (*Id.*). However, Appellant argues “*Bruecklmayr* has nothing to do with industrial automation systems having an automation solution for a manufacturing process.” (*Id.*).

Appellant also concedes *Weatherhead* teaches “an industrial automation system” and further admits “a vast number of patents also teach industrial automation systems.” (*Id.*). However, Appellant contends “there is no reason to combine the teachings of *Bruecklmayr* with the teachings of *Weatherhead* and, in fact, the skilled person is provided with no substantial reason to incorporate the teachings of *Weatherhead* into the teachings of *Bruecklmayr*.” (App. Br. 5–6).

We have considered all of Appellant's arguments and evidence presented. However, we disagree with Appellant's contentions regarding the Examiner's rejections of the claims. Instead, we agree with the Examiner's findings, and are unpersuaded of error with the Examiner's conclusion that the claims would have been obvious over the combined teachings.

As an initial matter of claim construction, we give the claim its broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). Although Appellant argues "Bruecklmayr has nothing to do with industrial automation systems having an automation solution for a manufacturing process" (App. Br. 5), we agree with the Examiner that claim 1 doesn't define a "manufacturing process" or "industrial system," or recite any *specific kind* thereof (Ans. 17). We note Appellant also does not point to any definition in the Specification. We further agree with the Examiner that the argued claim terms "industrial automation system" and "manufacturing process" are very broad terms. (*Id.*).

Nevertheless, we find no error in the Examiner's finding that the *combination* of Bruecklmayr and Weatherhead teaches or would have suggested the disputed claim terms. In fact, Appellant *concedes* Weatherhead teaches "an industrial automation system" and further admits "a vast number of patents also teach industrial automation systems." (App. Br. 5).

Furthermore, we disagree with Appellant's argument that "there is no substantial reason for the skilled person to modify *Bruecklmayr* based on the teachings of *Weatherhead*" (App. Br. 5) because we find the Examiner set forth sufficient "articulated reasoning with some rational underpinning to

support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). *See also* 35 U.S.C. § 132. We are not convinced of error with the Examiner’s finding that one of ordinary skill in the art would have been motivated to implement the software execution and program code as taught by Bruecklmayr in the automation system of Weatherhead to provide a secured program execution system in the industrial automation system. (Ans. 18).

We are guided by the Supreme Court’s viewing the prior art as a combination of teachings from different sources and the use of those teachings by a practitioner in the art *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007):

To determine whether there was an apparent reason to combine the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art.

(*Id.*)

The Supreme Court further guides: an improved product in the art is obvious if that “product [is] not [one] of innovation but of ordinary skill and common sense.” *KSR*, 550 U.S. at 421. We find this reasoning is applicable here. Thus, we find the Examiner’s proffered combination of Bruecklmayr and Weatherhead would have merely been a “predictable use of prior art elements according to their established functions.” *KSR*, 550 U.S. at 417.

Moreover, Appellant has not provided any evidence that combining the familiar elements and/or practices described in the Examiner’s proffered combination of Bruecklmayr and Weatherhead would have been “uniquely challenging or difficult for one of ordinary skill in the art” (*Leapfrog*

*Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007)), or would have yielded unexpected results.

Therefore, on this record, and by the preponderance of evidence, we are not persuaded of error regarding the Examiner's underlying factual findings and ultimate legal conclusion of obviousness. Accordingly, we sustain the Examiner's § 103(a) rejection of representative independent claim 1 and claims 2, 3, 8–14, not separately argued and rejected on the same basis as claim 1.

Appellant advances no substantive, separate arguments regarding the Examiner's three separate rejections of claims 4–6. Arguments not made are considered waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Appellant also does not respond, in the Briefs, to the Examiner's rejection of claim 10 under § 101. Accordingly, we also affirm the three rejections of claims 4–6 under § 103(a) and the additional rejection of claim 10 under § 101.

#### IV. CONCLUSION AND DECISION

We affirm the Examiner's rejections of claims 1–6 and 8–14 under § 103(a). We also affirm the Examiner's rejection of claim 10 under § 101.

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