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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOYLEE KOHLER, ROBERT C. STEINER,
and ANDREW D. FLOCKHART

Appeal 2016-000974¹
Application 13/408,793²
Technology Center 3600

Before NINA L. MEDLOCK, KENNETH G. SCHOPFER, and
BRADLEY B. BAYAT, *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, 3–10, and 12–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants' Appeal Brief ("App. Br.," filed March 2, 2015) and Reply Brief ("Reply Br.," filed October 9, 2015), and the Examiner's Answer ("Ans.," mailed August 20, 2015) and Final Office Action ("Final Act.," mailed December 1, 2014).

² Appellants identify Avaya, Inc. as the real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellants' claimed invention "is generally directed toward communications and more specifically toward contact centers" (Spec. ¶ 1).

Claims 1, 10, and 18 are the independent claims on appeal. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method of operating a contact center, comprising:

generating, by a processor of an electronic communications system, a break-type work item, the break-type work item indicating an obligatory break off from work for a predetermined amount of time and prohibiting the recipient of the break-type work item from performing non-break-type work items for at least the predetermined amount of time, having one or more attributes that enable a routing decision to be made with respect to routing the break-type work item among a plurality of resources in a contact center, and wherein the break-type work item is generated prior to the recipient of the break-type work item becoming known;

including the break-type work item in a work pool that includes work items associated with customers;

comparing the one or more attributes of the break-type work item with attributes of the plurality of resources;

selecting, based on the comparing step, a first resource from the plurality of resources to receive the break-type work item;

routing, by the electronic communication system, the break-type work item to the first resource, thereby forcing the first resource to take a break for the predetermined amount of time; and

wherein the one or more attributes define a duration of the predetermined amount of time.

REJECTIONS

Claims 1, 3–10, and 12–21 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1, 3, 5–10, and 12–21 are rejected under 35 U.S.C. § 103(a) as unpatentable over Paul et al. (US 2010/0049574 A1, pub. Feb. 25, 2010) (hereinafter “Paul”), Xie et al. (US 2010/0111287 A1, pub. May 6, 2010) (hereinafter “Xie”), Large (US 2007/0017531 A1, pub. Jan. 25, 2007), and McIlwaine et al. (US 2007/0127689 A1, pub. June 7, 2007) (hereinafter “McIlwaine”).

Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Paul, Xie, Large, McIlwaine, and Dorenbosch et al. (US 2003/0186716 A1, pub. Oct. 2, 2003) (hereinafter “Dorenbosch”).

ANALYSIS

Non-Statutory Subject Matter

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, 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 those concepts.” *Alice Corp.*, 134 S. Ct. at 2355. The first step in that analysis is to “determine whether

the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1297).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 132 S. Ct. at 1293. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

We are not persuaded, as an initial matter, by Appellants’ argument that the Examiner erred in rejecting the pending claims under 35 U.S.C. § 101 because no attempt is made to “tie up” all breaks of a contact center agent or any other judicial exception (App. Br. 7–8). There is no dispute that the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice Corp.*, 134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the

§ 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). Yet, although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellants variously quote portions of the USPTO’s June 25, 2014 “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*” and the supplemental “2014 Interim Guidance on Patent Subject Matter Eligibility,” 79 Fed. Reg. 74618 (Dec. 16, 2014) (App. Br. 7–9), and summarily assert that “[t]he claims of the instant application do not recite a judicial exception” (*id.* at 7; *see also id.* at 8). But Appellants offer no persuasive argument or technical reasoning to support that position.

Appellants also quote from the Federal Circuit’s opinion in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (App. Br. 8–9), and assert that the *DDR* court’s reasoning, as applied to the present application, “indicates a solution specifically arising in the realm of contact center computer networks and does not merely recite the performance of a business practice from the pre-Internet world with the requirement to perform it on the Internet” (*id.*). But again, Appellants present no persuasive argument or technical reasoning to support their position. Nor, for that matter, do Appellants even identify the problem “arising in the realm of contact center computer networks” that the claimed invention allegedly solves.

Turning to the second step of the *Mayo/Alice* framework, Appellants argue that although instructing an agent to take a break may be “a non-statutory subject, much more is being provided here” (App. Br. 10).

Appellants assert that the claims go beyond human behavior and that benefits are provided by implementations of the claims and illustrate the “‘significantly more’ provided therein” (*id.*). Appellants maintain that “the claims of the instant application pass, at least, the ‘meaningful limitations’ requirement” (*id.*). But, as the Examiner observes, Appellants describe the invention in general terms “without directing the reader to any specific limitations” that are sufficient to amount to “significantly more” (Ans. 9). To the contrary, Appellants expressly state “[s]uch benefits, which *may not be explicitly claimed* herein, are provided by implementations of the claims and illustrate the ‘significantly more’ provided therein” (App. Br. 10 (emphasis added)). We agree with the Examiner that “features found outside the scope of the claims cannot amount to ‘meaningful *limitations*’ because these features are not claimed in the included limitations” (Ans. 9).

Further referencing the “2014 Interim Guidance on Patent Subject Matter Eligibility,” Appellants assert that the examples (in the Guidance) of limitations not found to be enough to qualify as “significantly more” are “notably different from each of the claims of the instant application” (App. Br. 12). But the examples in the Guidance are just that – examples – intended to provide guidance to the Examining Corps in examining claims for compliance with § 101. There is nothing in the Guidance to indicate that these examples are intended to be exhaustive, as opposed to providing a broad framework within which an analysis of patent-eligibility should appropriately be conducted.

We are not persuaded for the reasons set forth above that the Examiner erred in rejecting claims 1, 3–10, and 12–21 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection.

Obviousness

Independent Claims 1, 10, and 18 and Dependent Claims 5–8, 11, 15–17, and 20

Appellants argue independent claims 1, 10, and 18 as a group (App. Br. 13–17). We select claim 1 as representative. The remaining claims stand or fall with claim 1. 37 C.F.R. §41.37(c)(1)(iv).

We are not persuaded by Appellants’ arguments that the Examiner erred in rejecting claims 1, 10, and 18 under 35 U.S.C. § 103(a). Instead, we agree with, and adopt the Examiner’s response to Appellants’ arguments as set forth at pages 14–19 of the Answer. In particular, we agree with the Examiner that Appellants’ arguments are not persuasive at least because Appellants argue the references individually when the rejection is based on a combination of references. *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.”). Appellants argue that various claim features are not disclosed or suggested in each individual reference. But Appellants offer no persuasive argument or technical reasoning to explain why it would not have been obvious to combine the cited references, as the Examiner proposes, to arrive at the claimed invention.

We agree with Appellants that when a reference is cited as disclosing a particular claim limitation, it is appropriate to present arguments aimed at rebutting the presence of the claimed feature in the cited reference (Reply Br. 4). But we cannot agree that the arguments in Appellants’ Appeal Brief are only directed to that end. For example, Appellants argue that Paul does not disclose “including the break-type work item in a work pool that includes work items associated with customers” (App. Br. 14). Yet the

Examiner clearly indicates in the Final Office Action that Xie, not Paul, is cited as teaching the work pool aspects of the claims (Final Act. 6 (“Paul does not expressly disclose work pool items in a contact center Xie discloses a work pool in a contact center. . . .”)).

Addressing the Paul reference and further explaining the bases for the obviousness rejection, the Examiner notes that Paul discloses varying assembly tasks so as not to exceed a repetitive value threshold and that Paul contemplates providing workers a break from an assigned task by assigning an alternative task to replace the assigned task (Ans. 14–15 (citing Paul ¶ 10)). The Examiner, thus, explains that the “alternate tasks of Paul have been considered as break[]-type work items because they provide the worker a break from the originally assigned task” (*id.* at 15). The Examiner further explains that although Paul does not expressly disclose tasks associated with customers, “the assembly plant environment disclosed by Paul is implicitly tied to customers” because manufacturing plants are utilized to produce goods for customers and clients (*id.*).

In response, Appellants ostensibly argue that Paul’s alternative tasks cannot constitute “break-type work items . . . associated with customers” because “[t]he application of labor to goods, which will ultimately be sold, is not associated with customers, but rather is associated with the item of manufacture” (Reply Br. 5; *see also* App. Br. 14). But we agree with the Examiner that the phrase “work items associated with customers” includes tasks involved in the manufacture of goods to be sold to customers under a broad, but reasonable, interpretation of the claim language (Ans. 15). *See In re Amer. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)

(during prosecution, claims are to be given their broadest reasonable interpretation consistent with the specification).

Appellants further argue that Paul fails to disclose “comparing the one or more attributes of the break-type work item with attributes of the plurality of resources” and “selecting, based on the comparing step, a first resource from the plurality of resources to receive the break-type work item, thereby forcing the first resource to take a break for a predetermined amount of time” (Reply Br. 5; *see also* App. Br. 14) because (1) “Paul fails to disclose a break-type work item,” i.e., Paul discloses scheduling a certain number of assembly tasks to a worker and then scheduling the worker to perform a certain number of other assembly tasks (*id.*), and (2) “what Paul is comparing is the aggregated repetitive value of a plurality of assigned tasks to the repetitive threshold limit to determine if a different assembly task should be assigned” (*id.*). Yet, as the Examiner explains in the Answer, Large, not Paul, is relied on as disclosing a break-type work item indicating a break off from work (Ans. 16). As for the “comparing” step, the Examiner notes, and we agree, there is nothing in the claim language that indicates what attributes may or may not be used in the comparison (*id.*). We fail to see why, and Appellants do not adequately explain why, Paul’s disclosed comparison of repetitive threshold value attributes and skills attributes when assigning tasks fails to meet the claimed language.

Turning to Xie, Appellants argue that Xie does not disclose “routing . . . the break-type work item to the first resource, thereby forcing the first resource to take a break for the predetermined amount of time” (Reply Br. 6; *see also* App. Br. 15). But the Examiner explains that Xie “was merely cited as teaching a contact center work pool and routing work

having a predetermined amount of time”; Large, not Xie, was cited “as disclosing a break-type work item indicating an obligatory break off from work for a predetermined amount of time” (Ans. 17). We fail to see why or in what way, and Appellants do not adequately explain why or in what way, the Examiner’s findings are unreasonable or unsupported.

Addressing Large, Appellants assert that the “anti-fatigue break” in Large is not “a break [from work] for the predetermined amount of time,” as recited in claim 1, but rather “a work task the user is required to perform or be subject to work-defined activities, for example, aromatherapy, such as to present the user with the smell of wood smoke, an image of a Yule tide log, and the sound of a fire crackling” (Reply Br. 6–7 (citing Large ¶ 36); *see also* App. Br. 15–16). However, as the Examiner correctly observes, Large explicitly characterizes these activities, which are performed during the predetermined anti-fatigue period, as “non-task related stimulus” (Ans. 18). In other words, the worker is not performing any work.

Appellants quote paragraph 34 of Large, in part,³ and argue that Large does not disclose “routing . . . the break-type work item to the first resource, thereby forcing the first resource to take a break for the predetermined amount of time” because “Large teaches an extra step [i.e., generation of a signal by clicking a mouse button] required for a user to resume disabled

³ This portion of paragraph 34 of Large reads:

This is to say the user (10) is diverted from work. Such a diversion may be underpinned by use of a Soft Disable function in which input functionality is impeded but easily and quickly reactivated by the use of a signal generated as if by a mouse (14) button. This may be according to step (116) disabling the users keyboard until the user (10) clicks their mouse (14).

computer functionality” (Reply Br. 7; *see also* App. Br. 16). Yet that argument is not persuasive at least because paragraph 34 also explicitly states that “[i]f the signal is not given then the input function is automatically re-enabled upon completion of stage one” (*see* Ans. 18).

Addressing McIlwaine, Appellants argue that McIlwaine does not disclose the claimed break-type work item because the breaks in McIlwaine are for performing training activities (Reply Br. 7; App. Br. 16–17).

However, the Examiner cites McIlwaine, not as disclosing a break-type work item indicating an obligatory break off from work for a predetermined amount of time, but rather as merely disclosing that a break-type work item is generated prior to the recipient of the work item being known, i.e.,

“wherein the break-type work item is generated prior to the recipient of the break-type work item becoming known,” as recited in claim 1 (Ans. 19).⁴

The Examiner further concludes that the training tasks of McIlwaine are “break-type work items in that they represent a break from ordinary work tasks” (*id.*). We fail to see why or in what way, and Appellants do not adequately explain why or in what way, the Examiner’s findings are unreasonable or unsupported.

Appellants further argue that the modification of Paul with Xie, Large, and McIlwaine is improper “as such a combination would, ‘render the prior

⁴ McIlwaine is directed to a method for scheduling spontaneous training breaks during periods of low workload volume in a call center (McIlwaine ¶ 14). The training system monitors the workload volume for periods of low call volume and takes advantage of low workload periods by assigning training breaks to idle agents (*id.*). Based on the agent most in need of training, the training system can select which agent should receive a spontaneous training break (*id.*; *see also id.* ¶ 46).

art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification” (App. Br. 20 (citing MPEP §2143.01 (V)). That argument is not persuasive at least because it is based on the bodily incorporation of the features of Xie, Large, and McIlwaine into the Paul system, which is not the test for obviousness. Instead, the test is what the combined teachings of these references would have suggested to a person of ordinary skill in the art. *See In re Keller*, 642 F.2d 413, 425 (CCPA 1981). *See also In re Sneed*, 710 F.2d 1544, 1550 (Fed. Cir. 1983) (“[I]t is not necessary that the inventions of the references be physically combinable to render obvious the invention under review.”); *In re Nievelt*, 482 F.2d 965, 968 (CCPA 1973) (“Combining the teachings of references does not involve an ability to combine their specific structures.”).

In the absence of persuasive arguments or technical reasoning to explain why the motivation set forth by the Examiner is insufficient or why the modification described by the Examiner is more than the predictable use of prior art elements according to their established functions, we are not persuaded of error on the part of the Examiner.

Therefore, we sustain the Examiner’s rejection under 35 U.S.C. § 103(a) of claim 1, and claims 10 and 18, which fall with claim 1. We also sustain the Examiner’s rejection of dependent claims 5–8, 11, 15–17, and 20, which are not argued separately.

Dependent Claims 3 and 12

Claim 3 depends from independent claim 1, and recites that “the first resource is forced to take a break from work items of a first media type but

not [from] work items of a second media type.” Claim 12 depends from independent claim 10, and includes substantially similar language.

In rejecting claims 3 and 12 under 35 U.S.C. § 103(a), the Examiner relies on Paul as disclosing functionality for forcing a worker to take a break from a first type of work but not from a second type of work (Final Act. 10). However, the Examiner acknowledges that Paul does not expressly disclose multiple media types, and cites Xie to cure the deficiency of Paul (*id.*). The Examiner then concludes that, because both references are directed to distributing work, a person of ordinary skill in the art would have recognized that applying different media types to Paul would have resulted in an improved system that would allow more detailed analysis and increased distribution efficiency (*id.* at 10–11).

Appellants note that Paul teaches scheduling assembly tasks so as not to exceed a repetition threshold and that Xie teaches routing calls to agents based on an attribute of the caller on hold (App. Br. 17). And Appellants summarily assert that “Paul and Xie are both silent as to causing an agent to take a break from a first media type and not a second media type.”

Appellants’ assertion does not rise to the level of a substantive argument for patentability. For example, Appellants present no persuasive argument or technical reasoning to explain why the Examiner’s findings are unreasonable or unsupported or why the references cannot be properly combined, as the Examiner proposes. *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 3 and 12 under 35 U.S.C. § 103(a).

Dependent Claims 5, 14, and 21

Appellants argues dependent claims 5, 14, and 21 as a group (App. Br. 18). We select claim 5 as representative. Claims 14 and 21 stand or fall with claim 5. 37 C.F.R. §41.37(c)(1)(iv).

Appellants argue that the Examiner erred in rejecting claim 5 under § 103(a) because Paul, on which the Examiner relies, does not disclose “determining a current rate at which break-type work items are being generated,” as recited in claim 5, because (1) Paul does not disclose break-type work items, as called for in the claim; and (2) even if Paul disclosed break-type work items, the claimed “current rate” would always be zero because Paul's teaching is limited to the development of a work schedule (App. Br. 18).

Appellants' first argument is not persuasive because although Appellants summarily assert that Paul does not disclose break-type work items, Appellants present no persuasive arguments or technical reasoning to explain why the Examiner's interpretation of Paul's alternate tasks as break-type work items is unreasonable and/or unsupported. *Cf. In re Lovin*, 652 F.3d at 1357.

Appellants' second argument fails because it is not responsive to the Examiner's rejection. In rejecting claim 5, the Examiner cites paragraphs 10 and 35 of Paul as disclosing the argued limitation (Final Act. 11). In this regard, the Examiner notes that Paul discloses a first schedule of task assignments and further discloses that a revised schedule is generated, based on the first schedule (i.e., the known repetitive rate of tasks), such that the

repetitive value threshold is not exceeded (*id.*). The Examiner, thus, relies on the development of the revised schedule as reflecting the rate at which break-type work items, i.e., alternate tasks, are being generated. Appellants do not present any persuasive arguments or technical reasoning to explain why the Examiner's position is unreasonable or unsupported.

Therefore, we will sustain the Examiner's rejection under 35 U.S.C. § 103(a) of claim 5, and claims 14 and 21, which fall with claim 5.

Dependent Claim 9

Claim 9 depends from independent claim 1, and recites that "the first resource is an agent operating a communication device and the break-type work item relieves the agent from handling at least one of real-time and near-real-time contacts for the predetermined amount of time."

Appellants argue that neither Paul nor Xie discloses break-type work items indicating a break off from work and that "[t]o read Paul as now disclosing a more narrowed break-type work item [as recited in claim 9] fails to logically follow from an absence of any break-type work item" (App. Br. 18–19). Appellants' argument is not persuasive at least because it is not responsive to the Examiner's rejection.

The Examiner relies on Paul as disclosing break-type work items, i.e., alternate tasks that represent breaks from performing an initially assigned task repetitively (*see, e.g.*, Ans. 21). And the Examiner cites Large as disclosing a break-type work item indicating a break off from work (*id.*). Appellants do not present any persuasive arguments or technical reasoning to explain why the Examiner's position is unreasonable or unsupported.

Therefore, we sustain the Examiner's rejection of claim 9 under 35 U.S.C. § 103(a).

Dependent Claim 13

Claim 13 depends from independent claim 10, and recites, *inter alia*, that “the one or more attributes include an attribute that defines a desired target for the break-type work item.”

In rejecting claim 13 under § 103(a), the Examiner cites Paul as disclosing that attributes of an agent (e.g., that the agent recently handled a profitable work or recently handled a difficult work item) define a desired target and cause a break-type work item to be routed to that agent (Final Act. 14–15 (citing Paul ¶¶ 36 and 39)).

Appellants summarily assert that claim 13 is allowable because “Paul is silent to the claimed, ‘desired target for the break-type work item,’ as well as such a target being an agent who recently handled a difficult work item” (App. Br. 19). But Appellants present no persuasive arguments or technical reasoning to support that position or to otherwise explain why the Examiner’s position is unreasonable and/or unsupported.

Therefore, we sustain the Examiner’s rejection of claim 13 under 35 U.S.C. § 103(a).

Dependent Claim 19

Claim 19 depends from independent claim 18, and recites that “the work assignment engine is configured to consider every work item and break-type work item in the work pool every time a resource in the resource pool becomes available.”

Appellants state that they disagree with “the Examiner’s assertion that ‘Paul discloses a system for assigning work items that include work break items,’” and summarily assert that claim 19 is allowable (App. Br. 19).

Appellants' assertion does not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d at 1357. Nor for that matter is it responsive to the Examiner's rejection. The Examiner cites Xie as disclosing that "the work assignment engine is configured to consider every work item and break-type work item in the work pool every time a resource in the resource pool becomes available," as recited in claim 19.

In view of the foregoing, we sustain the Examiner's rejection of claim 19 under 35 U.S.C. § 103(a).

Dependent Claim 4

Claim 4 depends from independent claim 1, and recites that

the one or more attributes include a team attribute which causes the break-type work item to be routed to at least a second resource at the same time that the break-type work item is routed to the first resource, thereby enabling the first and at least a second resource to take a coordinated break

Appellants first incorporate by reference their arguments with respect to independent claims 1, 10, and 18 — arguments that we find unpersuasive for the reasons set forth above (App. Br. 21). Then, noting that "Dorenbosch discloses a communication system whereby one message may be received by members of previously established call group (*id.* (citing Dorenbosch ¶ 27)), Appellants summarily assert that claim 4 is allowable because "[t]he required, 'thereby enabling the first and at least second resource to take a coordinated break,' is not taught nor reasonably suggested in the art of record" (*id.*). That argument is not persuasive at least because Appellants' assertion does not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d at 1357.

We also are not persuaded of Examiner error by Appellants' further argument that the combination of Paul, Xie, Large, McIlwaine and Dorenbosch is improper (App. Br. 22). Appellants assert that modifying Paul to include the teachings of Xie, Large, McIlwaine and Dorenbosch, as the Examiner proposes, would change the principle of operation of Paul that assembly tasks be scheduled for workers to perform without exceeding a repetitive threshold (*id.*). But Appellants present no persuasive argument or technical reasoning to support that position.

Appellants also do not explain how or why Xie would be rendered inoperable if combined with Dorenbosch's group call (*id.*). As the Examiner observes, Xie is relied on as disclosing work pools and routing work; "the teachings of Xie would function the same whether the agent was acting individually or as part of a group because pooling work and routing work would remain unchanged" (Ans. 26).

In view of the foregoing, we sustain the Examiner's rejection of claim 4 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1, 3–10, and 12–21 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejections of claims 1, 3–10, and 12–21 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