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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte TODD BINION, KELLY S. MINTER,
HEIDI BROWN-McCREERY, MICHAEL HARRIS,
JEREMY MYERS, BRIAN FIELDS and JOE HARR

Appeal 2017-001186
Application 14/047,279¹
Technology Center 3600

Before TERRENCE W. McMILLIN, KARA L. SZPONDOWSKI, and
SCOTT B. HOWARD, *Administrative Patent Judges*.

SZPONDOWSKI, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C § 134(a) of the Examiner's Final Rejection of claims 1–9, 11–17, 19, and 20, constituting all claims currently pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ According to Appellants, the real party in interest is State Farm Mutual Automobile Insurance Co. App. Br. 4.

STATEMENT OF THE CASE

Appellants' invention is directed to "a method for gathering and analyzing condition related data." Spec. ¶ 1. Claim 1, reproduced below with the disputed limitations in *italics*, is representative of the claimed subject matter:

1. A computer-implemented method for reporting residential or commercial real estate property ownership information comprising:

receiving, at a computing device via a computer network, an enrollment from a customer, wherein the enrollment includes information identifying a residential or commercial real property owned by the customer;

retrieving existing condition data corresponding to the residential or commercial real property from a condition database, wherein the existing condition data is descriptive of a prior operation of components of the residential or commercial real property, the prior operation of the components occurring at times prior to receiving the enrollment;

determining, by one or more processors, a first condition of the residential or commercial real property, wherein determining the first condition includes determining the first condition based on the prior operation of the components of the residential or commercial real property, wherein the prior operation of the components is described in the existing condition data, wherein the first condition of the residential or commercial real property relates to one of a market value or replacement cost value of the residential or commercial real property and a quality level of the residential or commercial real property;

after receiving the enrollment, gathering, via the computer network, additional condition data corresponding to the residential or commercial real property,

wherein the additional condition data indicates a subsequent operation of the components of the residential

or commercial real property, the subsequent operation of the components occurring after receiving the enrollment, and

wherein at least some of the additional condition data is generated, over a time period greater than a day, by a device inside the residential or commercial real property monitoring the subsequent operation of the components of the residential or commercial real property;

determining, by the one or more processors, a second condition of the residential or commercial real property based on the subsequent operation of the components of the residential or commercial real property, wherein the subsequent operation of the components is indicated in the additional condition data, wherein the second condition relates to the one of the market value or the replacement cost value of the residential or commercial real property and the quality level of the residential or commercial real property, and wherein the second condition indicates that at least one of the components of the residential or commercial real property needs to be repaired or replaced;

generating, by the one or more processors, a property ownership report, wherein the property ownership report includes visual descriptors indicative of the first condition and the second condition; and

communicating, via the computer network, the property ownership report to a remote computing device for presentation to the customer.

REJECTIONS

Claims 1–9, 11–17, 19, and 20 stand provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 1–20 in copending application 14/047,268. Ans. 2.

Claims 1–9, 11–17, 19, and 20 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter.
Ans. 2.

Claims 1–9, 11, 17, 19, and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kim et al. (US 2005/0154657 A1; published July 14, 2005) (“Kim”), Niccolini et al. (US 2010/0318451 A1; published Dec. 16, 2010) (“Niccolini”), Holcombe (US 2004/0024483 A1; published Feb. 5, 2004), Osborn (US 2006/0253293 A1; published Nov. 9, 2006), Golden et al. (US 2007/0203860 A1; published Aug. 30, 2007) (“Golden”), and Budike, Jr. (US 2007/0143046 A1; published June 21, 2007) (“Budike”).
Ans. 2.

Claims 12–16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kim, Niccolini, Holcombe, and Budike.

ANALYSIS

Double Patenting Rejection

Appellants do not address the nonstatutory double patenting rejection. Accordingly, we summarily sustain the Examiner’s rejection of claims 1–9, 11–17, 19, and 20 for nonstatutory double patenting. *See* MPEP § 1205.02 (2017) (“If a ground of rejection stated by the examiner is not addressed in the appellant’s brief, appellant has waived any challenge to that ground of rejection and the Board may summarily sustain it.”); *see also Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential) (“If an appellant fails to present arguments on a particular issue – or more broadly, on a particular rejection – the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.”).

35 U.S.C. § 101 Rejection

Alice Corp. Pty. Ltd. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent eligibility under 35 U.S.C. § 101. In the first step, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept.” *Alice*, 134 S. Ct. at 2355.

The Examiner determines the claims are directed to “gathering customer enrollment data and existing condition data (i.e., stored information), and additional/subsequent condition data (i.e., new information), and then comparing the existing and additional condition data to generate a trend (i.e., comparing data to identify options) and communicating the trend,” which is similar to the abstract idea of comparing new and stored information and using rules to perform the fundamental economic practice of property appraisal. Final Act. 16–17, 58; *see* Ans. 3–4. The Examiner further determines the claims are similar to those found to be abstract in *SmartGene, Inc. v. Advanced Biological Laboratories, SA*, 555 Fed. App’x 950 (Fed. Cir. 2014). Final Act. 16.

Appellants do not rebut the Examiner’s determinations. *See* App. Br. 14. We agree with the Examiner’s determination that the claims are directed to the fundamental economic practice of property appraisal, and in particular, to gathering data, comparing the data to generate a trend, and communicating the trend. *See* Final Act. 16–17, 58; Ans. 3–4.

In the second step of *Alice*, we “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo Collaborative*

Services v. Prometheus Laboratories, Inc., 566 U.S. 66, 78–79 (2012)). 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.* (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

The Examiner determines the additional elements in the claims amount to “no more than mere instructions to implement the idea on a computer and recitation of generic computer structure that performs generic functions that are well-understood, routine, and conventional activities previously known in the pertinent industry.” Final Act. 17–18. The Examiner further determines the claims “do not recite an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or provide meaningful limitations beyond generally linking an abstract idea to a particular technological environment.” Final Act. 18.

Appellants argue the claims “amount to ‘significantly more’ than the alleged abstract idea, because the claims provide an improvement to the field of appliance diagnostics” by “monitoring components (e.g., kitchen appliances, furnaces, washes, water pipes, gas lines, etc.) inside a real property and identifying the components which need repair or replacement, thereby improving the capabilities of a smart home.” App. Br. 14 (citing Spec. ¶ 28). Specifically, Appellants contend the claimed invention “improves upon conventional appliance diagnostics processes where maintenance personnel performs inspections of an appliance at irregular intervals.” App. Br. 14–15 (citing Spec. ¶¶ 32–33). Appellants further

argue the claimed invention identifies which components inside a real property need to be repaired or replaced “with increased accuracy by ‘analyzing granular data gathered from the property over time.’” Reply Br. 2 (citing Spec. ¶ 33). According to Appellants, the claimed invention “provides improvements over the manual process of inspecting an appliance.” Reply Br. 3 (citing Spec. ¶¶ 28, 35); *see* App. Br. 16.

We are not persuaded by Appellants’ arguments. For the reasons set forth by the Examiner, we agree the invention is not directed to the technical field of “appliance diagnostics,” and even if they were, that the claims do not improve that technical field. *See* Ans. 5–7. We further agree with the Examiner’s findings that the problems being solved are not shown to be technical in nature and could have been “addressed merely by increasing the regularity, frequency, or both, or manual inspections to collect information about the subsequent operation and condition of components on the property.” Ans. 6. Appellants’ Specification describes “the techniques of the present disclosure are able to provide an accurate assessment of property condition by analyzing granular data gathered from the property over time.” Spec. ¶ 33. The claimed invention, in light of the Specification, provides techniques to improve speed and efficiency, including accuracy, of appliance inspections. Rather than being necessarily rooted in the technology, the claimed invention merely uses the technology “to achieve improvements to speed and efficiency, which are known advantages when automating manual tasks using generic computing equipment.” Ans. 6–7.

Appellants further argue the claims are similar to those in *Diamond v. Diehr*, 101 S. Ct. 1048 (1981), in that the “totality of the steps which act in concert to improve appliance diagnostics are unconventional in the field.”

App. Br. 16. According to Appellants, “using a device inside the real property to monitor the operation of a component of the real property and analyzing the data provided the device to identify that the component needs to be repaired or replaced is *unconventional*” because “traditionally maintenance personal record[ed] measurements using equipment when visiting the real property.” App. Br. 17.

We are not persuaded by Appellants’ arguments. We agree with the Examiner that any improvement is “tied up in either the data gathering step . . . where gathering data over a network such as the Internet is well-understood, routine, and conventional . . . or in the abstract idea.” Ans. 10. *See also* Ans. 8–9. In *Diehr*, the Court held the claims to be patent eligible despite the fact that several steps of the process use a mathematical equipment, not because of it. *See Diehr*, 101 S. Ct. at 1055 (“claims involve the transformation of an article, in this case raw, uncured synthetic rubber, into a different state or thing,” and “describe in detail a step-by-step method for accomplishing such, beginning with the loading of a mold with raw, uncured rubber and ending with the eventual opening of the press at the conclusion of the cure,” which is an industrial process of “the types which have historically been eligible to receive the protection of our patent laws”). As set forth by the Examiner, while the “rubber curing equipment is central to the invention” in *Diehr*, Appellants’ claimed invention “recites little if anything about the component monitoring devices.” Ans. 9.

We further agree with the Examiner that this case is similar to *Electric Power*, in which our reviewing court found the claims patent-ineligible because “[t]he claims at issue do not require any nonconventional computer, network, or display components, or even a ‘non-conventional and non-

generic arrangement of known, conventional pieces,’ but merely calls for performance of the claimed information collection, analysis, and display functions ‘on a set of generic computer components’ and display devices.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016) (citing *BASCOM Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1349–52 (Fed. Cir. 2016)); *see also* Ans. 8–9. Similarly, the claims in this case merely recite the use of generic computer components to gather data (computing device), analyze the data and generate a report (one or more processors), and communicate the report for presentation (remote computing device). *See* Ans. 8 (the claimed invention “involves monitoring information of a property, analyzing the data, and displaying the results”); Ans. 8–9 (the claimed invention is “all about data gathering and data analysis, which occurs the same regardless of what devices or components are used to generate, transmit, or receive the data.”).

Appellants further argue that the claims amount to significantly more than the alleged abstract idea “because the claims recite a particular machine.” App. Br. 17. Specifically, Appellants contend the claimed device used to generate additional condition data amounts to significantly more than the alleged abstract idea “because a device which monitors the subsequent operation of components of the residential or commercial property is not found in a general purpose computer and is not merely generic computer structure to perform generic computer functions.” App. Br. 17–18 (citing Spec. ¶ 27). Appellants argue the claims are more analogous to those in *Diamond v. Diehr* than *Content Extraction & Transmission LLC v. Wells Fargo Bank, National Ass’n*, 776 F.3d 1343 (Fed. Cir. 2014). App. Br. 18–19. According to Appellants, unlike in

Gottschalk v. Benson, 409 U.S. 63 (1972), the claimed invention cannot be performed using mental steps by a human using pen and paper because the claimed invention requires at least analog monitoring equipment, which is a particular machine. App. Br. 19.

We are not persuaded by Appellants' arguments. Appellants' Specification describes "condition data, corresponding to the property identified in the property enrollment, is retrieved from a property condition database," and that "condition data may include data gathered from a variety of sources, such as a data sources gathering data from the utilities 116 and the appliances 118 and/or data from the property market database." Spec. ¶ 27. Examples of these data sources include "Wi-Fi enabled thermostats, home automation system components (e.g., temperature sensors, humidity sensors, motion sensors, remote control electrical sockets, etc.), Wi-Fi enabled home security systems, cameras, smart utility meters, etc." *Id.*

In light of Appellants' Specification describing data sources, we agree with the Examiner that the claimed devices are "prior art smart home devices used to gather data in the manner in which they were designed." Ans. 12. Moreover, as discussed above, we do not find the claims to be similar to those in *Diehr*. Rather, we agree with the Examiner the claims are similar to those in *Content Extraction & Transmission (CET)*, in that though the claimed devices are not equivalent to a generic computer, they are technologies used "for their routine and expected function," which "was considered to be a well-understood and conventional use that lacked an inventive concept." Ans. 11 (citing *CET*); see Ans. 12. As set forth by the Examiner, using known smart home devices for their intended purposes, "in an expected combination with other devices such as a computer to organize,

store, and analyze the data output by the smart home devices, is not inventive because it is an expected and conventional combination of elements according to their intended purposes.” *Id.*

Moreover, with regard to Appellants’ argument that claimed invention requires a particular machine to monitor equipment (e.g., a device inside the real property that monitors for condition data), the Federal Circuit has held that mental processes or activities capable of being performed by a person (e.g., collecting data about a property to determine property conditions from the data and generating a condition report of the property) remain unpatentable even when automated through the use of the computer (e.g., devices monitoring for condition data, and processors to determine conditions and generate a condition report). *See CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”).

Appellants argue the claimed invention automates a manual process but does so in a patent eligible way because “the process required by the claims is *different* than the manual process.” Reply Br. 3 (citing *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)). According to Appellants, the claimed computer is “employed to perform a distinct process to automate a task previously performed by humans” but is different from the manual process because “maintenance personnel’s analysis is ‘driven by subjective determinations rather than specific, limited mathematical rules.’” Reply Br. 3.

We are not persuaded by Appellants’ argument. In *McRO*, the claimed improvement was “allowing computers to produce ‘accurate and

realistic lip synchronization and facial expressions in animated characters’ that previously could only be produced by human animators . . . through ‘the use of rules, rather than artists, to set the morph weights and transitions between phonemes.’” *McRO*, 837 F.3d at 1313. Further, in *McRO*, the claims were defined in a specific way to solve the problem automating tasks that previously were not automated because they were driven by subjective determinations, rather than specific mathematical rules. *Id.* at 1314. The existing technological process was improved by the incorporation of the claimed rules to allow automation of further tasks. *Id.* Here, by contrast, Appellants’ claimed invention is not defined in a specific way to solve the problem; rather, the claims combine (or concurrently perform) steps (devices monitoring for condition data, and the computer gathering condition data to determine condition and generate a condition report) that were previously performed in conventional methods (gathering condition data, analyzing the data to determine property condition and generate a condition report). *See* Spec. ¶¶ 32–33.

In an example scenario, the claimed invention retrieves “water consumption data, thermostat data, energy consumption data, and furnace intake data from the condition database” and analyzes all of the intake data “to provide an accurate assessment of property condition.” Spec. ¶¶ 32–33. The claimed invention, in light of the Specification, merely provides accuracy of property condition assessment by making it easier to analyze all of the intake data at once (e.g., using computers), improving the speed and efficiency from a human (e.g., owner or maintenance personnel) who analyzes the intake data (e.g., conventional methods employed by humans). *See* Spec. ¶ 33. Furthermore, despite Appellants’ contention that the claims

are directed to improve the manual process of inspecting appliances because the manual process is based on irregular testing while the computerized process is based on regular testing, the claims do not require any regular scheduling of testing. Instead, the claimed invention only requires the condition data is generated “over a time period greater than a day.” Furthermore, even if the claims required regularity and frequency of testing, “neither the frequency nor regularity of the data collection is necessarily rooted in a particular technology, and could be performed as manual activity.” Ans. 8–9.

The claims, when viewed as a whole, perform conventional processing functions (receiving, analyzing, and displaying data) that courts have routinely found insignificant to transform an abstract idea into a patent-eligible invention. As such, the claims amount to nothing significantly more than an instruction to implement the abstract idea on a generic computer — which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 101 rejection of claims 1–9, 11–17, 19, and 20.

35 U.S.C. § 103 Rejections

Issue 1: Did the Examiner err in finding that the combination of Kim, Niccolini, Holcombe, Osborn, Golden, and Budike teaches or suggests “wherein the second condition indicates that at least one of the components of the residential or commercial real property needs to be repaired or replaced,” as recited in independent claim 1 and commensurately recited in independent claims 12 and 17?

Appellants contend Budike’s determination that “the system’s operation is outside of acceptable limits” does not teach “that a *component* of the real property needs to be repaired or replaced.” App. Br. 23; *see* Reply Br. 4.

The Examiner finds the claimed component of the real property “includes a furnace, which is part of HVAC, and thus the HVAC system is reasonably construed as a ‘component’ of the real property.” Ans. 14 (citing Spec. ¶ 3). As a result, the Examiner finds Budike teaches an indication that at least one of the components of the real property needs to be repaired or replaced. Final Act. 33 (citing Budike Fig. 28 and ¶ 78).

We are not persuaded of Examiner error by Appellants’ arguments. As cited by the Examiner (Ans. 14), Appellants’ Specification describes “components of the property will need to be replaced (e.g., furnace, water heater, refrigerator, garage door opener, etc.).” Spec. ¶ 3. As further cited by the Examiner (Final Act. 33), Budike teaches “using suitable HVAC equipment performance and operating sensor . . . provide a warning or alarm if the systems operation should go out of acceptable limits” and “[r]epair activity would [be] activated.” Budike ¶ 78. Budike further describes the benefits of “low-priced proactive repair rather than costly reactive service” and “cost-effective dispatch identifying component malfunction.” Budike Fig. 28. In other words, Budike teaches providing warning or alarm if an HVAC system goes outside of acceptable operations limits and providing dispatch to identify HVAC component malfunctions.

Appellants have not provided persuasive evidence or argument that the claimed indication that a component of the residential or commercial real property needs to be repaired or replaced, encompassing indications that a

furnace or HVAC of the real property needs to be repaired or replaced, precludes Budike's warning or alarm and subsequent dispatch when an HVAC system is outside acceptable limits and is malfunctioning.

Issue 2: Did the Examiner err in combining Kim and Holcombe?

The Examiner finds Kim teaches retrieving information about a property from other sources, and it is reasonable to modify Kim to also retrieve information about the condition of a property to identify trends in the condition of the property. Ans. 17 (citing Kim ¶ 33).

Appellants contend combining Kim and Holcombe would “change the basic principle under which Kim was designed to operate (to provide an estimated property valuation after receiving user input at a series of guided interfaces).” App. Br. 24. Specifically, Appellants argue combining Kim with Holcombe would transform “the guided interface process in Kim to include at least a one day waiting period for generating additional condition data.” App. Br. 24. Appellants contend transforming the guided intervals of Kim to include at least a one day waiting period is impractical and “would defeat the purpose of navigating through a series of guided interfaces to reach” the result of “estimated property valuation.” Reply Br. 5.

We are not persuaded by Appellants' arguments. As cited by the Examiner (Final Act. 21), Kim describes “the comparable property data is also available from the remote databases and is periodically (e.g., nightly) downloaded, ‘cleaned,’ and stored in the appraisal system database 112.” Kim ¶ 33. In other words, in addition to teaching the data is responsive to user requests, Kim teaches the property information can be downloaded and stored in the database periodically. Adding a one day waiting period by

modifying Kim with Holcombe would not change the principle of Kim's operation because Kim can already operate on a periodic schedule that is not in immediate response to user input.

Issue 3: Did the Examiner err in finding that the combination of Kim, Niccolini, Holcombe, Osborn, Golden, and Budike teaches or suggests “determining . . . a second condition of the residential or commercial real property based on the subsequent operation of the components of the residential or commercial real property . . . wherein the *second condition relates to the one of the market value or the replacement cost value of the residential or commercial real property and the quality level of the residential or commercial real property,*” as recited in independent claim 1 and commensurately recited in independent claims 12 and 17?

Appellants contend Niccolini determines a value of a property as a whole, but that Niccolini's “value is not determined based on the *operation* of the components of the property,” and one of ordinary skill in the art “would not combine a reference for determining a condition of a real property based on the subsequent operation of its components (Golden) with a reference directed to valuing a property *as a whole* based on the property's ranking within a market (Niccolini) to arrive at the claimed element.” App. Br. 27.

Appellants' argument against Niccolini separately from Golden does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co., Inc.*,

800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

We agree with the Examiner’s finding that Golden teaches conditions based on the operations of components (Final Act. 32 (citing Golden ¶ 23)), and Niccolini teaches conditions relating to market value or replacement cost value and quality of the real property (Final Act. 25 (citing Niccolini ¶¶ 31, 32, 34, 35)). The Examiner finds it would be obvious to combine Niccolini with the cited prior art references to incorporate data into valuation. Ans. 19; *see* Final Act. 26 (“The system therefore seems sufficiently capable of incorporating information from any source data that can be quantified to the extent necessary to be incorporated into the valuation and trend models.”). As cited by the Examiner (Final Act. 25), Niccolini describes “the present invention may incorporate *multiple data sources*” that “may include broker price options, actual appraisals, and populations of individual property valuations and estimates” including “market estimates and other tracking indexes.” Niccolini ¶ 34 (emphasis added).

Appellants have not provided persuasive evidence or argument that the claimed condition of the real property based on the subsequent operation of the components of the real property relating to market value and quality level of the real property precludes Niccolini’s conditions relating to value of property based on data from *multiple* sources (i.e., operations) relating to market value combined with Golden’s condition data relating to component operations.

For the above reasons we sustain the Examiner's § 103 rejection of independent claim 1, as well as the rejections of independent claims 12 and 17 and dependent claims 2–9, 11, 13–16, 19, and 20, not argued separately. *See App. Br. 27–28.*

DECISION

The Examiner's nonstatutory double patenting rejection of claims 1–9, 11–17, 19, and 20 is affirmed.

The Examiner's 35 U.S.C. § 101 rejection of claims 1–9, 11–17, 19, and 20 is affirmed.

The Examiner's 35 U.S.C. § 103 rejections of claims 1–9, 11–17, 19, and 20 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