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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 YUVAL CARMEL, OMER BARKOL, RUTH BERGMAN,
ODED ZILINSKY, IDO ISH-HURWITZ, SHAHAR GOLAN, and
RON BANNER

_____

Appeal 2017-003003
Application 14/118,235
Technology Center 2400

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Before THU A. DANG, JAMES R. HUGHES, and
TERRENCE W. McMILLIN, *Administrative Patent Judges.*

HUGHES, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the
Examiner's non-final decision rejecting claims 1–19, which constitute all the
claims pending in this application. Final Act. 2.[1] We have jurisdiction
under 35 U.S.C. § 6(b).

We affirm.

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[1] We refer to Appellants' Specification ("Spec.") filed Nov. 17, 2013
(claiming benefit of PCT/US2011/037313, filed May 20, 2011) and Appeal
Brief ("Br.") filed May 5, 2016. We also refer to the Examiner's Answer
("Ans.") mailed July 18, 2016, and Final Office Action (Final Rejection)
("Final Act.") mailed Dec. 14, 2015.

Appellant's Invention

The invention relates to computer readable media, systems, and methods for extracting an organization configuration policy. The method calculates distances in a configuration space between composite configuration items, clusters the composite configuration items based on the calculated distances, identifies configuration patterns in the clusters, and extracts at least one configuration policy based on the identified configuration patterns. Spec. ¶¶ 1, 2, 11, 13; Abstract.

Representative Claim

Independent claim 1, reproduced below, further illustrates the invention:

> 1.   A method for configuration policy extraction for an organization having a plurality of composite configuration items, the method comprising:
>
> in a processor-based machine, calculating distances in a configuration space between the composite configuration items;
>
> in the processor-based machine, clustering the composite configuration items into one or more clusters based on the calculated distances;
>
> in the processor-based machine, identifying configuration patterns in one or more of said one or more clusters; and
>
> in the processor-based machine, extracting at least one configuration policy based on the identified configuration patterns.

Rejections on Appeal

1.   The Examiner rejects claims 1–19 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter.[2]

2.   The Examiner rejects claims 1–3, 8–10, 15, 16, 18, and 19 under 35 U.S.C. § 103(a) as being unpatentable over Ayachitula et al. (US 2008/0005186 A1, published Jan. 3, 2008) ("Ayachitula") and Bishop et al. (US 2011/0145657 A1, published June 16, 2011 (filed Oct. 6, 2010)) ("Bishop").

3.   The Examiner rejects claims 4–6 and 11–13 under 35 U.S.C. § 103(a) as being unpatentable over Ayachitula, Bishop, and Luzon et al. (US 2010/0042726 A1, published Feb. 18, 2010) ("Luzon").

4.   The Examiner rejects claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Ayachitula, Bishop, and Cannon et al. (US 6,167,408, issued Dec. 26, 2000) ("Cannon").

5.   The Examiner rejects claim 17 under 35 U.S.C. § 103(a) as being unpatentable over Ayachitula, Bishop, and Offenhartz et al. (US 2008/0120557 A1, published May 22, 2008) ("Offenhartz").

ISSUES

Based upon our review of the record, Appellants' contentions, and the

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[2] The Examiner's statement of the rejection lists only the independent claims (claims 1, 8, 15) (*see* Final Act. 2), but the Examiner explains that "claims 1–15 are directed to non-statutory subject matter" (Final Act. 6). Appellants address all the claims (claims 1–19) and contend all the claims are direct to patentable subject matter under § 101. *See* Br. 9. Accordingly we correct the Examiner's harmless typographical errors such that the § 101 rejection includes all claims 1–19 for clarity and consistency of the record.

Examiner's findings and conclusions, the issues before us follow:

1.   Did the Examiner err in rejecting claims 1–19 under 35 U.S.C. § 101 as being directed to patent ineligible subject matter?

2.   Did the Examiner err in finding that Ayachitula and Bishop collectively would have taught or suggested:

> in a processor-based machine, calculating distances in a configuration space between the composite configuration items;
>
> in the processor-based machine, clustering the composite configuration items into one or more clusters based on the calculated distances;
>
> in the processor-based machine, identifying configuration patterns in one or more of said one or more clusters; and
>
> in the processor-based machine, extracting at least one configuration policy based on the identified configuration patterns

within the meaning of Appellants' claim 1 and the commensurate limitations of Appellants' claims 8 and 15?

3.   Did the Examiner err in finding that Ayachitula and Bishop and Luzon, Cannon, or Offenhartz collectively would have taught or suggested the additional features recited in Appellants' claims 3–7, 10–14, and 17?

ANALYSIS

The 35 U.S.C. § 101 Rejection

Appellants argues claims 1–19 together as a group with respect to the § 101 rejection. *See* Br. 9. We select independent claim 1 as representative of Appellants' arguments with respect to claims 1–19. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects the claims as being directed to patent ineligible subject matter in that the claims are directed to "an abstract idea, and the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception." Final Act. 2. The Examiner explains:

> The claims are essentially directed to extraction of configuration policies in an organization having a plurality of configuration items, by using mathematical calculations of the distance between configuration items to identify clusters of items and patterns in the clusters. The end result is that a configuration policy, which is defined as a configuration standard suggested to the organization (paragraph 14), can be discerned and "extracted" based on the patterns identified in the clusters

Final Act. 3. The Examiner further explains that "[t]he particular abstract idea which is applicable to the present claims is 'using categories to organize, store and transmit information'" (Final Act. 4 (quoting *Cyberfone Sys., LLC v. CNN Interactive Group, Inc.*, 588 Fed. Appx. 988 (Fed. Cir. 2014)). The Examiner additionally explains that "the invention [also] uses mathematical calculations of distance between configuration items to determine configuration patterns, a concept which appears to qualify as an abstract idea under current USPTO guidance" (Final Act. 4) and "determining policy based on configuration patterns[, which] appears to be . . . a mental process . . . that can be performed by a human mind, or by a human using pen and paper" (Final Act. 5 (internal quotations omitted)). The Examiner goes on to explain:

> Neither a processor nor a computer readable medium is sufficient to ensure that the claims amount to "significantly more" than an abstract idea, because they merely provide the needed computing structure for implementing the abstract idea. In addition, the claims do not recite an improvement to another technology or

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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. 5. The Examiner continues "[t]he instant claims require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry." Final Act. 5–6.

Appellants contend, with respect to the Examiner's *Alice* analysis (first step), that "the Final Office Action fails to set forth an analysis to show why any of the claims is <u>directed to</u> the stated judicial exception, as opposed to merely being <u>related to</u> the judicial exception," and "[t]he Final Office Action incorrectly categorizes the claims as being as directed to using categories to organize, store and transmit information." Br. 11. "The Final Office Action also states . . . that each of the claims is directed to the judicial exception of 'an idea of itself,' but "[a] method performed using a processor-based machine cannot be an idea of itself" and "it is entirely unclear how clustering may merely be performed . . . in the human mind." Br. 11. Further, "the Final Office Action makes no distinction between the claimed invention being merely related to mathematical calculations, as opposed to the claimed invention being directed to mathematical calculations." Br. 11. Appellants also contend with respect to the Examiner's *Alice* analysis (second step), that "[e]ven assuming, *arguendo*, that a particular portion of independent claim 1 . . . may be labeled an 'abstract idea,' 'a claim may be eligible if it includes additional inventive features such that the claim scope does not solely capture the abstract idea.'" Br. 12 (quoting *Digitech Image Technologies, LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344, 1350

(Fed. Cir. 2014)). Appellants further contend the Examiner merely makes conclusory statements concerning the routineness of recited computer functions and does not provide evidence or a proper explanation why the combination of elements do not amount as a whole to significantly more than the judicial exception. *See* Br. 12–13.

Under 35 U.S.C. § 101, a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "'long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.'" *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 133 S. Ct. 2107, 2116 (2013)).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 77–80 (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*, 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.*), e.g., to an abstract idea. If the claims are not directed to 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 the additional elements 'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78, 79).

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*, 566 U.S. at 71. 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).

Turning to the first step of the eligibility analysis, the Examiner finds that claim 1 is directed to the abstract idea of using mathematical calculations to produce data values, identifying patterns and determining (extracting) a configuration policy based on the patterns (which can be accomplished in the human mind), and "using categories to organize, store and transmit information" (Final Act. 4). *See* Final Act. 4–5. Collecting and processing information (see *Dealertrack v. Huber*, 674 F.3d 1315 (Fed. Cir. 2012)) and organizing information (*see Cyberfone*, 588 Fed. Appx. 988; *Content Extraction and Transmission LLC v. Wells Fargo Bank, Nat'l Ass 'n*, 776 F.3d 1343, 1346–47 (Fed. Cir. 2014); *Digitech*, 758 F.3d at 1350) have been found to be abstract. The Examiner explains how the concept, recited in Appellants' claim, is similar to the data processing that occurs in the claims found patent-ineligible in *Dealertrack*. We agree with the Examiner that calculating values (distances in a configuration space between the composite configuration items), organizing data (clustering) based on such values (the calculated distances), identifying (configuration) patterns in the organized data (the clusters), and determining (extracting) a configuration policy (based on the identified configuration patterns) is an abstract concept.

The Federal Circuit has ruled that claims covering the receipt, analysis, and display of data were directed to abstract ideas. *See, e.g., Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044, 1047, 1054–56 & n.6 (Fed. Cir. 2017); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351–54 (Fed. Cir. 2016); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1351–55 (Fed. Cir. 2014); *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 951–52, 954–55 (Fed. Cir. 2014). Additionally, as explained by the Examiner, the limitations of claim 1 may be performed strictly in the human mind. Final Act. 5. "In a similar vein, we have treated *analyzing information* by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category." *Elec. Power*, 830 F.3d at 1354 (emphasis added); *see also In re TLI Comm'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016).

Appellants' claim 1 is directed to a method for processing and organizing data. The method calculates the similarity of various data (composite configuration items), associates (correlates) and organizes the data (clusters the items based on the distances), identifies patterns, and determines (extracts) a policy (configuration policy) based on the patterns.

The instant claims are akin to the claims for analyzing information found to be abstract in *Elec. Power Grp.*, 830 F.3d at 1353, or the claims directed to image data processing discussed in *Digitech*, 758 F.3d at 1351 (finding "a process that employs mathematical algorithms to manipulate [data or information] to generate additional information is [abstract and] not patent eligible"). *See Elec. Power Grp.*, 830 F.3d at 1353–54 (citing *Digitech*, 758 F.3d at 1351).

Having found Appellants' claims are directed to an abstract concept under *Alice's* step 1 analysis, we next address whether the claims add significantly more to the alleged abstract idea. *See* Final Act. 5–6. As directed by our reviewing Court, we search for an "'inventive concept' sufficient to 'transform the nature of the claim into a patent-eligible application.'" *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Alice*, 134 S. Ct. at 2355).

As pointed out by Appellants a claim directed to an abstract idea "'may be eligible if it includes additional inventive features such that the claim scope does not solely capture the abstract idea.'" Br. 12 (quoting *Digitech*, 758 F.3d 1344 at 1350). Appellants, however, do not explain how the instant claim(s) encompass such inventive features. Instead Appellants' merely argue the Examiner has not put forth a proper rejection (*see* Br. 9–12) and provide the conclusory assertion that "[t]he claimed invention is clearly an improvement to the field of Information Technology" and "integrates the building blocks of human ingenuity into something more by applying the abstract idea in a meaningful way" (Br. 13).

To the extent Appellants assert the instant claims are similar to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014), in that the claims improve a technical field (Br. 13), Appellants misconstrue *DDR Holdings*. In *DDR*, the court held that a claim may amount to more than any abstract idea recited in the claims when it addresses and solves problems *only* encountered with computer technology and online transactions, e.g., by providing (serving) a composite web page rather than adhering to the routine, conventional functioning of Internet hyperlink protocol. *See DDR Holdings*, 773 F.3d at 1257–59.

In contrast, claim 1 performs a process manipulates and organizes configuration information (e.g., data in a database) utilizing a conventional computer. *See* Final Act. 5–6 (citing Spec. ¶ 31); *cf.* Br. 12–13. Data analysis, association, organization, and manipulation (in a database) are not technical problems as discussed in *DDR*, they are organization and/or efficiency problems. *See* Final Act. 4; Spec. ¶¶ 2, 11; Abstract. Data analysis, association, organization, and manipulation to determine (extract) a configuration policy is a commercial solution to the organizational problem, not a technical solution. This commercial solution may be assisted using a general purpose computer to perform the data analysis, association, organization, and manipulation processes, but does not arise specifically in the realm of computer networking. As explained *supra*, Appellants' recited subject matter is more akin to the claims for analyzing information found to be abstract in *Electric Power Group*.

Additionally, Appellants do not address any of the Examiner's additional findings and explanation in the Examiner's Answer (*see* Ans. 19–24). Appellants did not file a reply brief addressing the Examiner's additional findings and clarified explanation or otherwise rebutting the findings and responsive arguments made by the Examiner in the Answer. Also, the claims do not recite how the computer (utilizing the recited method or software) performs the recited processes (functionality). Therefore, we are unpersuaded that Appellants' claims recite the requisite "inventive concept" necessary to transform the claims from an abstract concept.

For at least the reasons above, we are not persuaded of Examiner error in the rejection of claim 1 under 35 U.S.C. § 101. Thus, we sustain the Examiner's rejection under § 101 of independent claims 1, 8, and 15, and

also dependent claims 2–7, 9–14, and 16–19, which fall with claims 1, 8, and 15, respectively.

The 35 U.S.C. § 103(a) Rejection of Claims 1, 2, 8, 9, 15, 16, 18, and 19

Appellants argue independent claims 1, 8, and 15 and dependent claims 2, 9, 16, 18 and 19 together as a group with respect to the § 103 rejection. *See* Br. 17–18. We select independent claim 1 as representative of Appellants' arguments with respect to claims 1, 2, 8, 9, 15, 16, 18, and 19. 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner rejects independent claim 1 as being obvious in view of Ayachitula and Bishop. *See* Final Act. 6–9. Appellants contend Ayachitula and Bishop do not teach the disputed features of claim 1. Br. 14–17. Specifically, Appellants contend that Ayachitula and Bishop do not teach (1) calculating distances (in a configuration space) between the composite configuration items and clustering composite configuration items based on the calculated distances (*see* Br. 14–16); and (2) identifying configuration patterns in the clusters and extracting a configuration policy based on the identified configuration patterns (*see* Br. 16–17).

We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken (Final Act. 6–9) and (2) the reasons set forth by the Examiner in the Examiner's Answer (Ans. 24–28) in response to Appellants' Appeal Brief. We concur with the findings and conclusions reached by the Examiner, and we provide the following for emphasis.

With respect to the first allegation of error, Appellants contend Ayachitula does not teach "clustering composite configuration items into one or more clusters based on calculated distances between the composite

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configuration items" (Br. 14) and Bishop does not teach these elements because it merely describes determining distances between quality profiles. *See* Br. 14–16. Appellants, however, do not specifically address the Examiner's findings and improperly attack the references individually. Appellants do not persuade us of error in the Examiner's obviousness rejection with respect to clustering configuration items based on calculated distances (between configuration items).

Ayachitula describes composite configuration items (CIs) (¶¶ 2, 28) and aggregating (i.e., clustering) the CIs based on some characteristic or relationship (¶ 31). *See* Final Act. 7. Bishop describes qualities, which are categorizations (categorical metrics) of various data (qualities of experience. patterns, and/or capabilities) that may be "described mathematically as measures within a dimensional metric space" (¶ 321). Bishop further describes calculating the distance between qualities and quality profiles (i.e., categorized data — "The[ ]average fit between any two quality profiles can be calculated using a multiplicity of techniques." Bishop ¶ 324. *See* Final Act. 7–8. Composite configuration items are data structures (data) just as Bishop's qualities are data. Accordingly, we agree with the Examiner and find a preponderance of the evidence demonstrates that the combination of Ayachitula and Bishop together describes or at least suggests a clustering data (configuration items) based on calculated distances between the data (configuration items).

With respect to the second allegation of error, Appellants contend "Bishop fails to disclose or render obvious identifying configuration patterns or identifying configuration patterns in a cluster" (Br. 16) and "neither reference discloses or renders obvious extracting a configuration policy

based on an identified configuration pattern" (Br. 17). Appellants, again however, do not specifically address the Examiner's findings.

As explained by the Examiner, "Bishop teaches that information pattern can include a policy set of operational rules (configuration policy) which may be derived directly (extracted) from demand patterns of usage (configuration patterns)." Final Act. 8 (citing Bishop ¶ 164 (it appears the Examiner meant to cite ¶ 168, *see infra*)). Bishop explicitly describes deriving (extracting) a policy (policy set) from usage patterns by which infrastructure is configured —

> A second of these sub-families pertains to policy set patterns, which define policies for accessing data securely and reliably . . . . [T]his policy set is manifested in operational rules that run against the data. These rules might be derived directly from predictable demand patterns as understood by typical patterns of usage. This preferably shapes how the infrastructure is configured

Bishop ¶ 168. Appellants do not explain how "configuration patterns" (claim 1), which is a label for data, are distinguishable from "patterns of usage" (usage patterns) (Bishop), a different label for data. Further, Bishop explains that the policy is used to configure infrastructure — that is the policy is a configuration policy. It follows that data patterns utilized to derive the configuration policy are "configuration patterns." Also, as discussed *supra*, Ayachitula describes clustering data (configuration items). Accordingly, we agree with the Examiner and find a preponderance of the evidence demonstrates that the combination of Ayachitula and Bishop together describes or at least suggests identifying configuration patterns (in clusters) and extracting a configuration policy based on the identified configuration patterns.

To the extent Appellants argue that the Examiner has improperly combined Ayachitula and Bishop using hindsight reasoning (*see* Br. 16), we note that Appellant does not persuasively rebut the Examiner's findings with respect to the combination of references and improperly attacks the references individually instead of addressing the combination as a whole. The cited references must be read, not in isolation, but for what each fairly teaches in combination with the prior art as a whole. *See In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (one cannot show non-obviousness by attacking references individually where the rejections are based on combinations of references). Appellant's arguments do not take into account what the combination of Ayachitula and Bishop would have suggested to one of ordinary skill in the art —

> The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; . . . Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

In re Keller, 642 F.2d 413, 425 (CCPA 1981) (citations omitted).

We agree with the Examiner and find that it would have been well within the skill of one skilled in the art to combine such known techniques of aggregating (clustering) composite configuration items as taught by Ayachitula, calculating the distance between categorized data as taught by Bishop, and deriving a configuration policy based on an identified pattern as taught by Bishop. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 417 (2007) ("[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill"). We are not persuaded that

combining the respective familiar elements of the cited references in the manner proffered by the Examiner would have been "uniquely challenging or difficult for one of ordinary skill in the art" at the time of Appellants' invention. *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 418).

Additionally, Appellants do not address any of the Examiner's additional findings and explanation in the Examiner's Answer with respect to the obviousness rejections. *See* Ans. 24–28. Appellants did not file a reply brief addressing the Examiner's additional findings and clarified explanation or otherwise rebutting the findings and responsive arguments made by the Examiner in the Answer. Therefore, Appellants do not persuade us of error in the Examiner's obviousness rejection of representative claim 1. Accordingly, we affirm the Examiner's obviousness rejection of independent claim 1, independent claims 8 and 15, and dependent claims 2, 9, 16, 18 and 19, not separately argued with particularity (*supra*). *See* 37 C.F.R. § 41.37(c)(1)(iv).

The 35 U.S.C. § 103(a) Rejection of Claim 17

The Examiner rejects dependent claim 17 as being obvious in view of Ayachitula, Bishop, and Offenhartz. *See* Final Act. 16–17. Appellants do not separately address the Examiner's rejection or argue claim 17 with particularity. *See* Br. 22. Therefore, Appellants do not persuade us of error in the Examiner's obviousness rejection of claim 17 and we affirm the Examiner's obviousness rejection of claim 17, which is not separately argued with particularity. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The 35 U.S.C. § 103(a) Rejection of Claims 3–7 and 10–14

The Examiner rejects dependent claims 3 and 10 as being obvious in view of Ayachitula and Bishop. *See* Final Act. 6, 9–10. The Examiner rejects dependent 4–6 and 11–13 in view of Ayachitula, Bishop, and Luzon. *See* Final Act. 11–15. The Examiner rejects claims 7 and 14 in view of Ayachitula, Bishop, and Cannon. *See* Final Act. 15–16.

With respect to claims 3 and 10, Appellants contend Ayachitula and Bishop do not teach the disputed features of claim 3 (and claim 10) — "calculating the distances between the composite configuration items comprises determining similarity between trees, using a tree edit distance algorithm" (claim 3). Specifically, Appellants contend that Bishop does not teach "determining a similarity between trees" (Br. 18). Br. 17–18. We agree with Appellants and disagree with the Examiner. Although Ayachitula describes that tree structures are known in configuration management databases (Final Act. 9; Ayachitula ¶ 3) and Bishop teaches distance between categorized data (*supra*), the Examiner does not provide a sufficient explanation how one of ordinary skill in the relevant art would have combined Ayachitula and Bishop to meet the disputed features of claims 3 and 10.

Consequently, we are constrained by the record before us to find that the Examiner erred in finding that the combination of Ayachitula and Bishop teaches the disputed limitations of Appellants' claims 3 and 10. Dependent claims 4–7 and 11–14 depend on claims 3 and 10, respectively. Accordingly, we do not sustain the Examiner's obviousness rejections of claims 3–7 and 10–14.

CONCLUSIONS

Appellants have not shown that the Examiner erred in rejecting claims 1–19 U.S.C. § 101.

Appellants have not shown that the Examiner erred in rejecting claims 1, 2, 8, 9, and 15–19 under 35 U.S.C. § 103(a).

Appellants have shown that the Examiner erred in rejecting claims 3–7 and 10–14 under 35 U.S.C. § 103(a).

DECISION

Because we affirm at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision to reject all of pending claims 1–19.

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