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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* ERIK ALLEN, KYLE JENSEN, GILMAN CALLSEN,  
JOSHUA BROWNE, KEVIN SCHAFF,  
PAUL HARRAKA, and JOEL MOXLEY

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Appeal 2017-006636<sup>1</sup>  
Application 14/192,839<sup>2</sup>  
Technology Center 2400

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Before JAMES R. HUGHES, JOHN D. HAMANN, and  
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

HAMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants file this appeal under 35 U.S.C. § 134(a) from the Examiner’s Final Rejection of claims 1–60. We have jurisdiction under 35 U.S.C. § 6(b). We reverse.

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<sup>1</sup> Our Decision relies upon Appellants’ Appeal Brief (“App. Br.,” filed Sept. 8, 2016), Reply Brief (“Reply Br.,” filed Mar. 17, 2017), and Specification (“Spec.,” filed Feb. 27, 2014), as well as the Examiner’s Answer (“Ans.,” mailed Jan. 18, 2017) and the Final Office Action (“Final Act.,” mailed Dec. 11, 2015).

<sup>2</sup> According to Appellants, the real party in interest is Pit Rho Corporation. App. Br. 1.

## THE CLAIMED INVENTION

Appellants' claimed invention relates to "providing . . . derived data for use in multivariable component systems and activities." Spec. ¶ 2.

Claims 1, 2, and 56 are illustrative of the subject matter of the appeal and are reproduced below.

1. A determinative system for obtaining, evaluating and displaying in a predictive manner, information and data regarding the activities of units in a multivariable component system, the determinative system comprising:

- a. a source of raw data regarding activities of a first plurality of units of a multivariable component system;
- b. a source of derived data regarding activities of a second plurality of units of the multivariable component system;
- c. wherein, at least one unit of the first plurality of units is the same as a unit of the second plurality of units, and wherein at least one of the first plurality of units is different from a unit of the second plurality of units;
- d. a processor in communication with the source of derived data and the source of raw data, the processor capable of performing a weighted multi-approach system;
- e. the processor capable of performing a first predictive computation to determine a change of state event in the multivariable component system from the raw data and the derived data; and,
- f. whereby the processor determines predictive information comprising a probability for the change of state event, and wherein the processor communicates the predictive information to a display.

2. The system of claim 1, wherein the multivariable component system comprises a NASCAR sanctioned event; and wherein the system comprises a means for reducing a latency period.

56. A method of combining information about a race for later viewing, the method comprising: storing data containing a video image of the race; associating in a time synchronized manner with the video image actual, predictive and derived data; storing the associated video and data; and making the associated video and data available for viewing; and wherein the actual data is obtained from the group consisting of transponders, speed transponders, location transponders, direction transponders, optical switches, magnetic sensors, motor temperature, unit speed, unit motor rpm, unit fuel, unit fuel flow rate, unit oil pressure, unit brake pressure, unit chassis performance, and driver biometrics; wherein the derived data is obtained from a derived data source selected from the group consisting of support vector machines, normalized lap time, adjusted lap time, unit position relative to lap time, unit position relative to a caution sequence, and unit position relative to different unit tire change sequence; and wherein the predictive data is obtained from a weighted multi-approach.

#### REJECTIONS ON APPEAL

(1) The Examiner rejected claims 1–55 and 58–60 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written-description requirement. Final Act. 4.

(2) The Examiner rejected claim 2 under 35 U.S.C. § 112, second paragraph,<sup>3</sup> as being indefinite because claim 2 uses a trademark or tradename (i.e., “NASCAR”). Final Act. 8.

(3) The Examiner rejected claims 1, 2, 7–9, 14–16, and 26–28 under 35 U.S.C. § 102(b) as being anticipated by Walker et al. (US

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<sup>3</sup> The Examiner withdrew the 35 U.S.C. § 112 rejection of claim 2 as being indefinite with respect to “a means for reducing a latency period.” *See* Ans. 2; Final Act. 8.

2009/0262137 A1; published Oct. 22, 2009) (hereinafter “Walker”). Final Act. 9–14.

(4) The Examiner rejected claims 3, 5, 12, and 25 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker and Pendleton et al. (US 2008/0186330 A1; published Aug. 7, 2008) (hereinafter “Pendleton”). Final Act. 15–16.

(5) The Examiner rejected claims 4, 11, 20–22, 24, 29, 31, 32, 34, 35, and 37 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker and Glansk et al. (WO 2007/061346 A1; published May 31, 2007) (hereinafter “Glansk”). Final Act. 17–22.

(6) The Examiner rejected claims 6, 10, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker and Bove et al. (US 2012/0249424 A1; published Oct. 4, 2012) (hereinafter “Bove”). Final Act. 22–23.

(7) The Examiner rejected claims 38, 39, and 41–45 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker and Herbrich et al. (US 2004/0266506 A1; published Dec. 30, 2004) (hereinafter “Herbrich”). Final Act. 23–24.

(8) The Examiner rejected claim 40 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker, Herbrich, and Pendleton. Final Act. 24–25.

(9) The Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker, Glansk, and Pendleton. Final Act. 25–26.

(10) The Examiner rejected claims 19 and 23 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker, Glansk, and Bove. Final Act. 26–27.

(11) The Examiner rejected claims 30, 33, and 36 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker, Glansk, and Hardacker (US 2002/0115454 A1; published Aug. 22, 2002) (hereinafter “Hardacker”). Final Act. 27–28.

(12) The Examiner rejected claims 56 and 57 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker, Logan et al. (US 2012/0087637 A1; published Apr. 12, 2012) (hereinafter “Logan”), and Koehler et al. (US 2001/0042105 A1; published Nov. 15, 2001) (hereinafter “Koehler”). Final Act. 29–35.

(13) The Examiner rejected claims 58–60 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Walker and Koehler. Final Act. 35–39.

## ISSUES

The dispositive issues for this appeal are:

(1) Whether the Specification provides sufficient support to comply with § 112’s written-description requirement with respect to “wherein, at least one unit of the first plurality of units is the same as a unit of the second plurality of units, and wherein at leas[t] one of the first plurality of units is different from a unit of the second plurality of units”;

(2) Whether claim 2 is indefinite with respect to the term “NASCAR sanctioned event”;

(3) Whether Walker discloses a source of raw data regarding activities of a *plurality* of units; and

(4) Whether Walker or Logan teach or suggest associating in a time synchronized manner with a video image actual, predictive, and derived data.

#### ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions that the Examiner errs. We find Appellants' arguments discussed herein<sup>4</sup> persuasive.

(1) § 112, first paragraph, rejection

Appellants argue the Examiner errs in rejecting claims 1–55 and 58–60 under the written-description requirement of § 112 because the Specification supports the disputed limitation (i.e., claim 1's "wherein, at least one unit of the first plurality of units is the same as a unit of the second plurality of units, and wherein at leas[t] one of the first plurality of units is different from a unit of the second plurality of units"). *See* App. Br. 9–10; Reply Br. 3–5. Specifically, Appellants argue that the Specification is replete with examples supporting the disputed limitation, which merely describes two groups having only some of their members overlapping (e.g., "individual cars in a partial overlapping relation to other cars and other groups"). App. Br. 9–10 (citing Spec. ¶¶ 5, 8–10, 18, 20, 26, 52, 54, 58, 62, 64, 70–72, 82, 92–94, 99, 114, 118, Figs. 1, 6, 7, 10A–10C). Appellants argue that the Examiner "improperly confla[es] the units and the data, to create [a] . . . negative claim limitation that 'there is not data for some of the units.'" Reply Br. 4 (quoting Ans. 5).

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<sup>4</sup> Because we agree with at least one of the dispositive arguments advanced by Appellants as to each rejection, we need not reach the merits of Appellants' other arguments.

The Examiner finds that the Specification fails to provide sufficient support to satisfy the written-description requirement for the disputed limitation. Ans. 2–8; Final Act. 4–7. The Examiner concludes that when “[r]eading th[e] claim in context, it requires that at least one unit has both derived and raw data, and at least unit has either raw or derived data but not both, and the weighted calculation is based on this data.” Ans. 2. “[I]t is not enough for limitation to be as Appellant states ‘ . . . a simple and straightforward way to describe two groups with some overlapping members,’” the Examiner finds. *Id.* (citation omitted). “The [S]pecification would have to [support] that the groups only partially overlap and that the data available for these units only partially overlap. In essence, it would have to . . . state that there is not data for some of the units in the first and second plurality.” *Id.* at 5.

We agree with Appellants that the Examiner incorrectly conflates the units and the data. The claims, and the disputed limitation in particular, only require two groups of units having only some of their members overlapping. *E.g.*, App. Br. 63 (reciting claim 1). The claims do not require that the source of the raw data and the source of the derived data be limited to only certain units, as the Examiner finds. *Id.*

The proper interpretation of the claim language is supported by the Specification’s disclosure of “at least one unit of the first plurality of units is the same as a unit of the second plurality of units,” which sufficiently conveys that at least some of the units of the first plurality of units are not the same as units of the second plurality. *E.g.*, Spec. ¶ 18. We find one of ordinary skill in the art would reasonably conclude that Appellants had possession of this aspect of the claimed invention at the time the

Specification was filed. *See In re Gosteli*, 872 F.2d 1008, 1012 (Fed. Cir. 1989); Spec. ¶¶ 18, 20.

Our reasoning applies to each of the independent claims subject to this rejection (i.e., claims 1, 38, 46, and 58), as well as their dependent claims. Accordingly, we do not sustain the Examiner’s § 112, first paragraph, rejection.

(2) § 112, second paragraph, rejection

Appellants argue that claim 2 is not indefinite with respect to the term “NASCAR sanctioned event.” App. Br. 11–12; Reply Br. 5. More specifically, Appellants argue that “[t]here is no lack of clarity or ambiguity about the term NASCAR. It is a well know[n], and well established entity, which anyone of skill in the art would understand and recognize (arguably, even the majority of those not of skill in the art would know of this entity).” App. Br. 12 (emphasis omitted).

The Examiner finds that the term “NASCAR sanctioned event” is indefinite because NASCAR is a trademark or trade name which “is used to identify a source of goods, and not the goods themselves.” Final Act. 8 (citing *Ex parte Simpson*, 218 USPQ 1020 (BPAI 1982)). The Examiner concludes, thus, “[t]he claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product.” *Id.*

The test for definiteness is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986) (citations omitted); *see also Ex parte Miyazaki*, 89 USPQ2d 1207, 1210–13 (BPAI 2008) (precedential) (applying the

*Orthokinetics* standard). We agree with Appellants that one of ordinary skill in the art would understand the meaning of the claim in the context of the invention. *See Ex parte O’Farrell*, Appeal 2011-011075, 2014 WL 2112325, at \*4 (PTAB May 19, 2014) (non-precedential) (finding “Java code” definite because “‘Java’ is a well-known and widely-used term identifying a particular programming language”). NASCAR is a well-known and widely used descriptor in the context of racing and the scope of the claims. *See, e.g.*, Spec. ¶¶ 3–4.

Accordingly, we do not sustain this rejection.

(3) § 102(b) rejection

Appellants argue that Walker fails to disclose “a source of raw data regarding activities of a first plurality of units of a multivariable component system,” as recited in independent claim 1. More specifically, Appellants argue that the Examiner-cited portions of Walker “only relate to obtaining raw data from **a single unit**, a base player, a race car,” and that “Walker is limited to obtaining, processing information regarding a single unit.” App. Br. 13–14 (citing Walker ¶¶ 71, 85, 93–94). According to Appellants, Walker does not disclose “obtaining raw data ‘regarding activities of a plurality of units of a multivariable component system.’” *Id.* (emphasis and citation omitted); *see also* Reply Br. 7 (citing Ans. 12) (arguing Walker fails to disclose using telemetric data in the manner described by the Examiner).

The Examiner finds that Walker discloses the disputed limitation. Ans. 12; Final Act. 10. The Examiner finds that in Walker “telemetry data is used to measure the position of a player during a sports [contest].” Final Act. 10 (citing Walker ¶¶ 71, 85). More specifically, the Examiner finds that in Walker the “telemetric data comes from multiple sources. In the

baseball example, it is the ball as thrown by the pitcher, and the bat as swung at by the batter that determines the prediction as to whether the batter has a high probability of hitting the ball.” Ans. 12 (citing Walker ¶ 17). The Examiner finds “[t]hese are a plurality of units of raw data.” *Id.*

Based on the evidence of record, we are constrained to agree with Appellants that the Examiner errs in finding that the cited portions of Walker disclose the disputed limitation. We agree with Appellants that these portions of Walker do not disclose a source of raw data regarding activities of a plurality of units. *See* Walker ¶¶ 17, 71, 85. Rather, the cited portions of Walker disclose examples of multiple sources of raw data with respect to a single unit (e.g., a wireless accelerometer fitted on a player’s bat, a radar gun for pitch speed, a range finder for distance of a player). Simply put, the portions of Walker the Examiner relies upon do not support the Examiner’s findings. *Id.*

Accordingly, we do not sustain the Examiner’s § 102(b) rejection of independent claim 1, nor claims 2, 7–9, 14–16, and 26–28, which depend therefrom.

(4) § 103(a) rejections

(i) *Claims depending from independent claim 1*

The Examiner rejects under § 103(a) (i) claims 3, 5, 12, and 25; (ii) claims 4, 11, 20–22, 24, 29, 31, 32, 34, 35, and 37; (iii) claims 6, 10, 13, and 17; (iv) claim 18; (v) claims 19 and 23; and (vi) claims 30, 33, and 36. Each of these claims depends, directly or indirectly, from independent claim 1. In making these rejections, the Examiner relies on the above discussed findings from Walker regarding a source of raw data regarding a

*plurality* of units. Accordingly, for the reasons discussed above (paragraph 3), we do not sustain the Examiner’s § 103(a) rejections of these claims.

(ii) *Independent claim 38*

The Examiner rejects under § 103(a) (i) claims 38, 39, and 41–45 and (ii) claim 40. Claim 38 is an independent claim and claims 39–45 depend therefrom. In making these rejections, the Examiner relies on the above discussed findings from Walker regarding a source of raw data regarding a *plurality* of units. Accordingly, for the reasons discussed above (paragraph 3), we do not sustain the Examiner’s § 103(a) rejections of these claims.

(iii) *Independent claims 56 and 57*

Appellants argue that the combination of Walker, Logan, and Kohler fails to teach or suggest “associating in a time synchronized manner with the video image actual, predictive and derived data,” as recited in independent claim 56 and similarly recited in independent claim 57. App. Br. 21–23; Reply Br. 13–14. In particular, Appellants argue that Walker teaches slightly delaying a broadcast to load a graphic, but fails to teach synchronizing “actual, predictive **and** derived data.” App. Br. 22; Reply Br. 13–14. As to Logan, Appellants argue that it is “void of any reference to or discussion of, derived data and predictive data.” App. Br. 23 (citing Logan ¶ 47). Appellants also argue that “Logan’s ‘chalk talk’ upon which the Examiner relies is a mere guess of an individual, or a subjective illustration. It is not derived data, and is not predictive data.” *Id.*

The Examiner finds that the combination teaches the disputed limitation. *See* Ans. 23; Final Act. 29–30. The Examiner finds that “Walker teaches that [a] . . . prediction is presented to the audience as the play is happening, it is also updated in a time synchronized matter with the

presented video.” Ans. 23 (citing Walker ¶ 17). As to Logan, the Examiner finds that Logan teaches that an information panel “may be used to present a variety of different kinds of information about [a] . . . game, including a ‘chalk talk’ description of the play.” Final Act. 29–30.

Based on the evidence of record, we are constrained to agree with Appellants that the Examiner errs in finding that the combination, including the cited portions of Walker and Logan, disclose the disputed limitation. We agree with Appellants that these portions of Walker and Logan do not teach synchronizing with the video image all three types of data (i.e., actual, predictive, and derived data). *See* Walker ¶ 17; Logan ¶ 47. Rather, the cited portions of Walker, at best, teach using updated actual data to determine new predictive data. Walker ¶ 17. The Examiner does not clearly identify where in this passage derived data is taught, nor where synchronizing actual, predictive *and* derived data occurs. Similarly, the Examiner does not clearly identify how Logan’s chalk talk constitutes a relevant type of data, nor synchronization with the video image.

Accordingly, we do not sustain the Examiner’s § 103(a) rejection of claims 56 and 57.

*(iv) Independent claim 58*

The Examiner rejects under § 103(a) claims 58–60. Claim 58 is an independent claim and claims 59 and 60 depend therefrom. The Examiner relies on the above discussed findings and reasoning from Walker regarding a source of raw data regarding a *plurality* of units. Accordingly, for the reasons discussed above (paragraph 3), we do not sustain the Examiner’s § 103(a) rejection of these claims.

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DECISION

We reverse the Examiner's decision rejecting claims 1–60.

REVERSED