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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HIROSHI USUDA, EIJI MIYAZAKI,
and SHINJI YAMACHIKA¹

Appeal 2017-009494
Application 13/567,647
Technology Center 3900

Before BRADLEY W. BAUMEISTER, SHARON FENICK, and
RUSSELL E. CASS, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 25–27 and 29–35, which are all claims pending. Appeal Br. 2.² We have jurisdiction under 35 U.S.C. § 6(b)(1). An oral

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant lists Sony Corporation as the real party in interest. Appeal Brief filed March 7, 2017 (“Appeal Br.”) 1.

² Rather than repeat the Examiner's positions and Appellant's arguments in their entirety, we refer to the above-mentioned Appeal Brief, as well as the following documents: the Final Action mailed August 24, 2016 (“Final Action”); the Examiner's Answer mailed May 5, 2017 (“Ans.”); and the Reply Brief filed June 29, 2017 (“Reply Br.”).

hearing was conducted on June 24, 2019. A transcript of the oral hearing has been made of record (“Tr.”). We AFFIRM.

Introduction

The instant application is a continuation reissue application of Application 12/455,319 (issued as US RE43,657 on Sept. 11, 2012), which is a reissue application of Application 10/493,403 (“the ’403 Application”) (issued as US 7,225,101 B2 on May 29, 2007 (“the ’101 patent”). Final Action 2. Applicant furnished the ’101 patent as the Specification (“Spec.”) for this application. *See* 37 C.F.R. § 1.173(a)(1).

According to Appellant, the claimed subject matter relates to signal compensation in an electronic device. Spec. 1:8–12. Specifically, Appellant discloses:

[I]n a primary aspect of the present invention, an electronic device includes an angular velocity sensor that outputs a first signal in accordance with a rotational angular velocity, means for storing in advance data of a second signal normally output by the angular velocity sensor that is in a stationary state, means for detecting a stationary state, means for extracting the difference between the first signal and the second signal when the stationary state is detected, means for compensating for the first signal based on the extracted difference signal, and a display unit that scrolls and displays an image based on the compensated signal.

Id. 1:49–60.

Claims 25 and 34 are independent. Independent claim 25, reproduced below, illustrates the claimed invention:

25. An electronic device comprising:

an angular velocity sensor that outputs a first signal in accordance with a rotational angular velocity;

a memory for storing in advance data of a second signal output by the angular velocity sensor which is in a stationary state;

an acceleration sensor that is used to detect a stationary state of the device in space; and

a processor operable to:

determine data for adjusting the first signal using the data of the second signal stored in advance in the memory when the stationary state is detected based on a difference between the first signal and the second signal; and

adjust the first signal based on the determined data for adjusting.

Appeal Br. 15 (Claims Appendix).

Rejections

Claims 25–27 and 29–35 stand rejected under 35 U.S.C. § 251 as an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the reissue is based. Final Action 4–9.

Claims 25–27 and 29–35 stand rejected under 35 U.S.C. § 101 as directed to nonstatutory subject matter. Final Action 9–13.

Claims 27 and 35 stand rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Final Action 14–15.

I. Rejection Under 35 U.S.C. § 251

Appellant argues that the Examiner has erred in rejecting claims 25–27 and 29–35 as improperly recapturing subject matter surrendered in the application for patent upon which the present reissue application is based. Final Action 4–9.

Our reviewing court instructs that:

Under the recapture rule, a patentee is precluded “from regaining the subject matter that [the patentee] surrendered in an effort to

obtain allowance of the original claims.” When that has occurred, the patent is invalid. We apply the recapture rule as a three-step process: (1) first, we determine whether, and in what respect, the reissue claims are broader in scope than the original patent claims; (2) next, we determine whether the broader aspects of the reissue claims relate to subject matter surrendered in the original prosecution; and (3) finally, we determine whether the reissue claims were materially narrowed in other respects, so that the claims may not have been enlarged, and hence avoid the recapture rule.

North American Container, Inc. v. Plastipak Packaging, Inc., 415 F.3d 1335, 1349 (Fed. Cir. 2005) (citations omitted).

A. *First step of three-step recapture rule process — determination of “whether, and in what respect, the reissue claims are broader in scope than the original patent claims”*

The claims that issued in the ’101 patent comprise “means for extracting as a difference signal the difference between the first signal and the second signal” and “means for adjusting the first signal based on the extracted difference signal.” US Patent 7,225,101 B2, 12:12–15.

The Examiner finds that “determined data that is based on the difference between the two signals” (as the Examiner characterizes the corresponding limitations in the current application) “is most certainly broader and not the same than determined data that is explicitly the difference between the two signals.” Final Action 5–6. The Examiner further notes that the declaration filed by the applicant in the instant application specifies that the reissue claims filed are of broader scope than the previously issued claims, because the term “difference signal” has been removed. *Id.* at 6 (citing the Declaration under 37 C.F.R. § 1.175, filed Dec. 18, 2014). Appellant’s counsel additionally conceded at the oral hearing, while arguing that the claims are materially narrowed in some

respects, that “we agree that it is still a quote/unquote broadening reissue because . . . there’s no longer the specific claim language of extract[ing] a differen[ce] signal.” Tr. 16:1–3; *see also* Tr. 18:14–22.

With respect to the first step of the recapture rule process, we find that the claims sought in this reissue are broader, in that they do not require “extracting as a difference signal” the difference between the first signal and the second signal, but rather only require the calculation of determined data that is based on that difference.

B. Second step of three-step recapture rule process – determination of “whether the broader aspects of the reissue claims relate to subject matter surrendered in the original prosecution”

With respect to the second step of the recapture rule process, we look to the entire prosecution history of the ’101 patent. *See MBO Laboratories, Inc. v. Becton, Dickinson & Co.*, 602 F.3d 1306, 1318 (Fed. Cir. 2010). While recapture cases often involve situations in which claim amendments were made to overcome prior art, “[a]rguments made to overcome prior art can equally evidence an admission sufficient to give rise to a finding of surrender.” *Hester Indus., Inc. v. Stein, Inc.*, 142 F.3d 1472, 1481 (Fed. Cir. 1998). Any argument that the applicant of the ’101 patent relied upon to overcome an art rejection binds the applicant for the reissue patent, regardless of whether the Office adopted the argument in allowing the claims. *Greenliant Systems, Inc. v. Xicor LLC*, 692 F.3d 1261, 1271 (Fed. Cir. 2012).

The Examiner contends that, during the prosecution of the application that issued as the ’101 patent, “Applicant explicitly argued . . . that the limitations regarding adjusting the first signal based on the extracted difference signal was the reason the claims should overcome the applied

prior art references.” Final Action 6–8 (citing ’403 Application, Arguments filed Jan. 3, 2007, p. 3). In the ’403 Application, Applicant argued, with respect to a rejection based in part on Takashi et al. (JP 2000-65576 A, published March 3, 2000), that “the Takashi reference does not teach ‘adjusting the first signal based on the extracted difference signal.’ Instead, Takashi uses separate ‘earth magnetism sensors’ to compensate for the drift that can occur in the device’s angular velocity sensor.” ’403 Application, Arguments filed Jan. 3, 2007, p. 3. Thus, the Examiner concludes that the Applicant’s surrender encompasses any claims that do not include the specific limitation used to overcome the art of record, that of “adjusting the first signal based on the extracted difference signal.” Final Action 6–8; Ans. 9.

Appellant argues that the surrender that occurred through this argument was narrower. Appellant argues that “[i]n contrast to [the ’403 Application’s] claim 1, Takashi compensated for drift in an angular velocity sensor using output of [] separate ‘earth magnetism sensors,’ meaning that it did not adjust based on a difference between a first signal and second signal of the same angular velocity sensor.” Appeal Br. 11. Appellant appears to argue that, in drawing a distinction over Takashi’s use of separate earth magnetism sensors, applicant surrendered claim scope relating to use of separate earth magnetism sensors to adjust the first signal, rather than any claim scope that does not include the argued limitation. Appeal Br.10–11; Reply Br. 7–8.

Appellant’s arguments do not track the distinction made in the file history of the ’403 Application. The applicant there did not only argue that the claims were distinguished from Takashi because they did not use earth

magnetism sensors, but also because they did use “the extracted difference signal.” ’403 Application, Arguments filed Jan. 3, 2007, p. 3.

In *Hester*, a patent issued for a cooker for cooking large quantities of food. *Hester*, 142 F.3d at 1474. During prosecution, the applicant repeatedly distinguished the claims, which specified “cooking solely with steam,” from a prior art cooker that cooked through a combination of steam and another cooking method. *Id.* at 1475–76. Applicant also distinguished based on a limitation that specified cooking with “two sources of steam.” *Id.* The Federal Circuit, in the second step of the three-step recapture-rule process, found that the repeated arguments based on these two claim limitations to distinguish from the prior art constituted an admission that the limitations were “necessary to overcome the prior art.” *Id.* at 1482. Because of this, the *Hester* applicant, “through [an] admission effected by way of his repeated prosecution arguments, surrendered claim scope that does not include these limitations.” *Id.* The Federal Circuit described the surrendered subject matter as “cooking other than solely with steam and with at least two sources of steam” — basing this description on the claim limitations relied upon, rather than the prior art being distinguished. *Id.*

Similarly, we agree with the Examiner that, while Applicant’s arguments in the ’403 Application discussed Takashi’s use of earth magnetism sensors, Applicant did not focus solely on the lack of earth magnetism sensors in the claims. Instead, the ’403 Application Applicant argued also that the distinction was based on the limitation of “adjusting the first signal based on the extracted difference signal.”

Following *Hester*, we find that the surrendered subject matter is an electronic device other than one with a processor operable to adjust the first

signal based on an extracted difference signal. Additionally, we find that the reissue claim relates to the surrendered subject matter because it eliminates the claim language in the original claim relating to the surrendered subject matter which was relied on by the '403 Application Applicant.

C. Third step of three-step recapture rule process – determination of “whether the reissue claims were materially narrowed in other respects, so that the claims may not have been enlarged, and hence avoid the recapture rule”

With respect to the third step, the Examiner finds that

[s]imply stated, new claims 25–27 and 29–36 omit the language of the limitations in question requiring “adjusting the first signal based on the extracted difference signal” . . . in an attempt to broaden said limitations and thus would amount to impermissible recapture due to the omission of surrender-generating limitations.

Final Action 9.

In *In re Youman*, our reviewing court noted that a broadening modification relating to surrendered subject matter area should be “evaluated to determine if it materially narrows . . . such that surrendered subject matter is not entirely or substantially recaptured.” *In re Youman*, 679 F.3d 1335, 1345 (Fed. Cir. 2012) (citation omitted). Thus, in a case where a limitation is added during prosecution to overcome prior art, the elimination of the added limitation in its entirety would be a recapture of surrendered subject matter. *Id.* at 1345. However, “if the patentee modifies the added limitation such that it is broader than the patented claim[,] yet still materially narrows relative to the original claim [without the added limitation], the recapture rule does not bar reissue.” *Id.* at 1347.

We agree with Appellant that the appealed claims present a similar situation. Appeal Br. 11; Reply Br. 8–9. To determine whether a modified

limitation is materially narrowing, we use as a ceiling “any recapture of surrendered subject matter that was in the prior art of the original prosecution.” *In re Youman*, 679 F.3d at 1347 (citing *In re Mostafazadeh*, 643 F.3d 1353, 1356–57 (Fed Cir. 2011)). Thus, “[w]here the modified limitation was contained in the prior art relied on by the examiner in the original prosecution . . . the limitation is not materially narrowing.” *Id.* Here, the Examiner does not compare the surrendered claim scope to the scope of the claims in this reissue application to determine whether a material narrowing occurred, or make a determination that the modified limitation in the reissue claims was contained in the prior art relied on by the Examiner during the original prosecution.

We agree with the Appellant that the prior art relied on by the examiner in the original prosecution did not include the modified limitation in the reissue claim requiring a “determin[ation] of data for adjusting the first signal . . . based on a difference between the first signal and the second signal” or the “adjust[ing of] the first signal based on the determined data for adjusting.” *See* Appeal Br. 10–11 (discussing the prior art distinguished over in the prosecution of the ’403 Application). The Examiner has not established that the modified limitation, even if broader than the original claim language, fails to materially narrow the surrendered claim scope.

Therefore, we determine that claim 25 avoids the recapture rule, and reverse the Examiner’s rejection under 35 U.S.C. § 251 as improper recapture of broadened claimed subject matter. Independent claim 34, and dependent claims 26, 27, 29–33, and 35 are rejected by the Examiner and argued by Appellant on the same basis, and for the same reasons, we reverse the rejection under 35 U.S.C. § 251 of these claims as well.

II. *Rejection Under 35 U.S.C. § 101*

A. *Principles of Law*

SECTION 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.

However, the U.S. Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Court’s two-step framework, described in *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012), and *Alice*. *Alice*, 573 U.S. at 217–18 (citing *Mayo*, 566 U.S. at 75–77). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, i.e., the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191

(1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Court held that “a claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an application of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (citation omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77).

“[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

USPTO SECTION 101 GUIDANCE

In January 2019, the United States Patent and Trademark Office (“USPTO”) published revised guidance on the application of 35 U.S.C. § 101. USPTO, 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Guidance”). Under the 2019 Guidance, we first look to whether the claim recites the following:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

2019 Guidance, 84 Fed. Reg. 52–55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

2019 Guidance, 84 Fed. Reg. 56.

B. Analysis

Applying the Revised Guidance to the facts on this record, we find that Appellant’s claims 25–27 and 29–35 are directed to patent-ineligible subject matter.

Step 2A, Prong 1

Under step 2A, prong 1, of the 2019 Guidance, we first look to whether the claim recites any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activities such as a fundamental economic practice, or mental processes). 84 Fed. Reg. 52–55.

The Examiner finds that the claims recite the concept of “determining how to adjust and adjusting a signal based on the analysis of collected information,” a concept the Examiner identifies as related to organizing information through mathematical correlations (as in *Digitech Image Techs., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014)), and also to comparing new and stored information and using rules to identify options (as in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App’x 950 (Fed. Cir. 2014)). Final Action 10. We agree and find that the Examiner’s identified concepts reasonably can be characterized as mental processes, even if they invoke a computer and its basic functionality. See *SmartGene*, 555 F. App’x 950 at 954–955.

Appellant argues that the Federal Circuit in *Digitech* “specifically noted” that the claims did not require input from a physical device and were not tied to a specific structure or machine. We address this argument under our prong 2 determination. Appeal Br. 4.

Additionally, Appellant contends that “the [Federal Circuit’s] limited ruling in *SmartGene* does not apply to Applicants’ current claims, which recite features that do not constitute routine operations a person performs without a computer.” *Id.* at 5. With respect to this argument, we note that whether a computer would be necessary to perform such steps is not dispositive, as we treat “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.” *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (emphasis added).

“[M]erely presenting the results of abstract processes of collecting and analyzing information, without more . . . is abstract as an ancillary part of such collection and analysis.” *SAP Am. Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (quoting *Electric Power*, 830 F.3d at 1354).

Claim 25 recites limitations including the following: “storing in advance data of a second signal output by the angular velocity sensor which is in a stationary state,” “determine data for adjusting the first signal using the data of the second signal stored in advance in the memory when the stationary state is detected based on a difference between the first signal and the second signal,” and the “adjust the first signal based on the determined data for adjusting.” These limitations, under their broadest reasonable interpretation, recite mental processes.

For example, “storing in advance data of a second signal output by the angular velocity sensor which is in a stationary state” can be performed by a mental observation. “[D]etermining] data for . . . based on a difference between the first signal and the second signal” reasonably can be characterized as the creation of new data based on two existing pieces of

data, and “adjust[ing] the first signal based on the determined data for adjusting” reasonably can be characterized as changing one data value based on another, which can be done by mental calculation or evaluation.

Accordingly, we conclude the claims reasonably can be characterized as reciting observing and evaluating information in steps, which are essentially mental processes, and, thus, an abstract idea.

Thus, we concur with the Examiner that the claim recites one or more patent-ineligible abstract ideas, and we are not convinced of error by Appellant’s arguments.

Step 2A, Prong 2

Under step 2A, prong 2, of the 2019 Guidance, we next analyze whether claim 1 recites additional elements that integrate the judicial exception into a practical application. 84 Fed. Reg. 52–55.

Appellant argues, regarding *Digitech*, that the claims require input from a physical device because “independent claims 25 and 34 are each tied to the operation and use of a particular set of sensors.” Appeal Br. 4. Additionally, Appellant argues that “the subject matter of the claims has been practically applied to improve the operation of specific devices.” *Id.* at 6–7. “Put another way,” Appellant argues, “the methods and configurations recited in Applicant’s claims improve the functioning of devices that use angular velocity sensors.” *Id.* at 8.

We acknowledge that claim 25 recites additional limitations that contain elements that arguably are beyond the above-noted mental processes. More specifically, claim 25 recites a memory and processor performing the discussed patent-ineligible ideas. These elements are readily

available computing elements using their already available basic functions as tools. *See SAP Am., Inc. v. InvestPic LLC*, 898 F. 3d 1161 (Fed. Cir. 2018).

Additionally, claim 25 recites “an angular velocity sensor that outputs a first signal in accordance with a rotational angular velocity.” However, the recitation of this sensor does not meaningfully integrate the abstract ideas into a practical application because the limitation reasonably can be characterized as merely constituting insignificant pre-solution activity:

An example of pre-solution activity is a step of gathering data for use in a claimed process, e.g., a step of obtaining information about credit card transactions, which is recited as part of a claimed process of analyzing and manipulating the gathered information by a series of steps in order to detect whether the transactions were fraudulent.

MPEP § 2106.05(g); *see* Ans. 7.

While Appellant argues that the claim “improves the operation of specific devices,” the claim itself merely describes reading data, storing data, and adjusting data, and Appellant does not meaningfully show how, in the claim, this adjustment is practically applied to improve the operation of specific devices.

More generally, then, Appellant does not persuade us that claim 25 is directed to an improvement in the functioning of a computer or to any other technology or technical field. MPEP § 2106.05(a). Nor has Appellant persuasively demonstrated that claim 25 is directed to a particular machine or transformation. MPEP § 2106.05(b), (c). Nor has Appellant persuasively demonstrated that claim 1 adds any other meaningful limitations. MPEP § 2106.05(e). Accordingly, Appellant has not persuaded us that claim 25 integrates the recited abstract ideas into a practical application within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55.

Step 2B

Under step 2B of the 2019 Guidance, we next analyze whether claim 2 adds any specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field. 84 Fed. Reg. 56; MPEP § 2106.05(d).

Appellant argues

[Appellant] submit[s] that the independent claims include claim limitations that comprise “significantly more” than a mere abstract idea and are not merely generic computing structures to implement the abstract idea. For example, claim 25 recites a specific configuration of sensors within a device, which is non-abstract. The compensation of a sensor output, so as to prevent failure due to sensor drift, is necessarily rooted in data processing technology, however the claims go beyond simply claiming steps of data processing, as the claims set forth an improved electronic device. The same can be said for independent claim 35.

Appeal Br. 8–9.

The Examiner disagrees, finding that “[o]nce the inputs are received from the sensors in the conventional manner . . . the sensors are no longer used and perform no additional steps” and “the structure presented in the claims of conventional well-known sensors connected to a processor and a memory appears to be nothing more than a general purpose computer.”

Ans. 7. We agree. We additionally note that the specification discloses that “the present invention is applicable to any device using an angular velocity sensor.” Spec. 11:54–56.

For these reasons, we determine that claim 25 does not recite additional elements that amount to significantly more than the judicial exception within the meaning of the 2019 Guidance. 84 Fed. Reg. 52–55; MPEP § 2106.05(d).

Accordingly, we sustain the Examiner's rejection of claim 25 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. We, likewise, sustain the section 101 rejection of claims 26, 27 and 29–35, not argued separately by Appellant. Appeal Br. 9.

III. Rejection Under 35 U.S.C. § 112

The Examiner rejects claims 27 and 35 under 35 U.S.C. § 112 as failing to comply with the written description requirement. Final Action 14–15. Claim 27 depends from claim 26, which, in turn, depends from claim 25. Claims 26 and 27 are reproduced here, with the disputed limitation emphasized:

26. The electronic device according to Claim 25, wherein when the stationary state has been detected, the processor determines the data for adjusting the first signal using the data of the first signal output from the angular velocity sensor and the second signal stored in advance in the memory.

27. The electronic device according to Claim 26, wherein when the stationary state has been detected, *the processor determines as the data for adjusting based on a displacement of an output voltage per unit time of the acceleration sensor.*

Appeal Br. 15 (Claims Appendix) (emphasis added).

The Examiner finds that

[t]he specification . . . appears to only specifically disclose an embodiment wherein the first signal is adjusted or compensated by the difference signal that is obtained by extracting the difference between the first and second signals representing outputs of the angular velocity sensor, not the acceleration sensor (see column 9, line 14-column 10, line 34 of [the] '101 [patent]).

Final Action 14.

Appellant contends that

claims 27 and 35 do not require that the acceleration sensor output itself be used to adjust or compensate the first signal. Instead, the acceleration sensor output, as recited in claims 27 and 35, is being used to determine the “second signal,” and it is the “second signal” that will then be used to adjust the first signal.

Appeal Br. 13; *see also* Reply Br. 10–11.

Appellant argues that the written description support is found in the Specification’s indication that “the disclosed electronic device may determine if it is in a stationary state based on the output of an acceleration sensor.” Appeal Br. 13 (citing Spec. 8:34–46, 9:24–50). Appellant provides the same reasoning for claim 35.

However, claim 27 describes that the processor “determines as the data for adjusting based on . . . the acceleration sensor” and that this occurs “when the stationary state has been detected.” Thus, the Appellant’s discussion of the use of the acceleration sensor to detect a stationary state does not support the further use of data from the acceleration sensor, including “determin[ing] as the data for adjusting” based on acceleration sensor data. Claim 35 contains similar limitations.

For these reasons, we are not persuaded of error in the Examiner’s § 112 rejection of claims 27 and 35.

CONCLUSION

We reverse the rejection of claims 25–27 and 29–35 under 35 U.S.C. § 251.

We affirm the rejection of claims 25–27 and 29–35 under 35 U.S.C. § 101.

We affirm the rejection of claims 27 and 35 under 35 U.S.C. § 112.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
25–27, 29–35	251			25–27, 29–35
25–27, 29–35	101		25–27, 29–35	
27, 35	112		27, 35	
Overall Outcome			25–27, 29–35	

TIME PERIOD FOR RESPONSE

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED