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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte HUPING HU and MAOXIN WU

Appeal 2018-003401
Application 13/492,830
Technology Center 3700

Before: CHARLES N. GREENHUT, JEFFREY A. STEPHENS, and ALYSSA A. FINAMORE, *Administrative Patent Judges*.

GREENHUT, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from a rejection of claims 5, 7–9, 11 and 12.[2] We have jurisdiction under 35 U.S.C. § 6(b). Because it concerns a matter of examination practice that does not sufficiently relate to a specific rejection of the claims before us, we lack jurisdiction over the

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[1] Related appeals are: 2018-003398 in application 13/449,739; 2018-003120 in application 11/670,996; and 2018-007211 in application 11/944,631.
[2] The copy of the claims in the Claims Appendix attached to the Appeal Brief is incorrect. We refer herein to the finally rejected claims as presented in an amendment filed September 4, 2016.

issues of *pro se* treatment. *In re Hengehold*, 440 F.2d 1395 (CCPA 1971); 37 C.F.R. § 1.181; *see* App. Br. 28; Reply. Br 10.

We affirm.

CLAIMED SUBJECT MATTER

The claims are directed to a method and apparatus for producing and detecting non-local effects of substances. Claim 5, reproduced below, is illustrative of the claimed subject matter:

> Claim 5: A method of producing and detecting a second plurality of quantum entanglements between a third plurality of quantum entities in a first target and a fourth plurality of quantum entities in a second target, a first non-local effect of said second target on said first target through said second plurality of quantum entanglements and/or a second non-local effect of said first target on said second target through said second plurality of quantum entanglements which comprises the steps of:
>
> selecting said first target which comprises a first chemical substance, human or animal at a first location;
>
> selecting said second target which comprises a second chemical substance, human or animal at a second location;
>
> providing a first water-based medium at said first location and a second water-based medium at said second location, a first plurality of quantum entities in said first medium being in a first plurality of quantum entanglements with a second plurality of quantum entities in said second medium;
>
> providing a detecting means for detecting said second plurality of quantum entanglements, said first non-local effect and/or said second non-local effect when said detecting means operates;
>
> causing said first target to interact with said first water-based medium through a first contact or radiation from a first photon or magnetic pulse generating source;
>
> causing said second target to interact with said second water-based medium through a second contact or radiation from a second photon or magnetic pulse generating source; and

detecting said second plurality of quantum entanglements, said first non-local effect and/or said second non-local effect;

whereby said second plurality of quantum entanglements between said third plurality of quantum entities in said first target and said fourth plurality of quantum entities in said second target is generated through said interaction between said third plurality of quantum entities in said first target and said first plurality of quantum entities in said first water-based medium and said interaction between said fourth plurality of quantum entities in said second target and said second plurality of quantum entities in said second water-based medium, and detected through said detecting means; and said first non-local effect of said second target on said first target, comprising a first effect of said second target on a first physical, chemical or biological property or process of said first target, and/or said second non-local effect of said first target on said second target, comprising a second effect of said first target on a second physical, chemical or biological property or process of said second target, are generated through said second plurality of quantum entanglements between said third plurality of quantum entities in said first target and said fourth plurality of quantum entities in said second target and detected through said detecting means.

REJECTIONS[3]

Claims 5, 7–9, 11, and 12 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 5, 7–9, 11, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 5, 7–9, 11, and 12 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Claims 5, 7–9, 11, and 12 are rejected under 35 U.S.C. § 101 because the claimed invention lacks patentable utility.

[3] The Examiner withdrew the anticipation rejection. Ans. 2.

Claims 5, 7–9, 11, and 12 are provisionally rejected on the ground of nonstatutory double patenting as being unpatentable over claims 14, 18, 19, 23, and 24 of copending Application No. 11/670,996.[4]

OPINION

Enablement under § 112, first paragraph and utility under § 101

For each of these rejections, Appellants argue the claims as a group (App. Br. 12–23; 29–64), for which claim 5 is representative under 37 C.F.R. § 41.37(c)(1)(iv).[5] With regard to the questions of enablement and utility, our reviewing court has summarized:

> The questions of whether a specification provides an enabling disclosure under § 112, ¶ 1, and whether an application satisfies the utility requirement of § 101 are closely related. To satisfy the enablement requirement of § 112, ¶ 1, a patent application must adequately disclose the claimed invention so as to enable a person skilled in the art to practice the invention at the time the application was filed without undue experimentation. The utility requirement of § 101 mandates that the invention be operable to achieve useful results. Thus, if the claims in an application fail to meet the utility requirement because the invention is inoperative, they also fail to meet the enablement requirement because a person skilled in the art cannot practice the invention. The how to use prong of section 112 incorporates as a matter of law the requirement of 35 U.S.C. § 101 that the specification disclose as a matter of fact a practical utility for the invention. Lack of utility is a question of fact, and

[4] The double-patenting rejection is not contested and therefore not further addressed herein. "Once the provisional rejection has been made, there is nothing the examiner and the applicant must do until the other application issues." *In re Mott*, 539 F. 2d 1291, 1295–96 (CCPA 1976); *see also* MPEP § 804(I).

[5] Claims 7, 8, 11, and 12 are cited by Appellant to contest the Examiner's determination regarding the breadth of claim 5 under *In re Wands*, 858 F.2d 731 (Fed. Cir. 1988). App. Br. 12–13. Claims 7, 8, 11, and 12 are not considered separately argued.

> the absence of enablement is a legal conclusion based on underlying factual inquiries.

In re Swartz, 232 F. 3d 862, 863 (Fed. Cir. 2000) (quotations and internal citations omitted); *see also* MPEP § 2164.07.

The paragraphs of Appellants' Specification reproduced below summarize the invention as follows:

> [Para 6] My invention and discovery were made against such background. No process has previously been known which can produce non-local effects of substances through quantum entanglement on responsive targets such as biological or chemical systems, so that beneficial effects of the said substances can be delivered through quantum-entangling media such as photons of various sources.
>
> . . . .
>
> [Para 10] The subject invention is therefore based on my realizations that (l) quantum entanglement means genuine interconnectedness and inseparableness of once interacting quantum entities and can be directly sensed and utilized by the entangled quantum entities; (2) it can persist in biological, chemical and other systems at room and higher temperatures despite of quantum decoherence; and (3) it can influence chemical and biochemical reactions, other physical processes and micro- and macroscopic properties of all forms of matters. Therefore, it can be harnessed and developed into useful technologies to serve the mankind in many areas such as health, medicine and even recreation besides the already emerging fields of quantum computation.
>
> . . . .
>
> [Para 11] For example, using the apparatus and method developed in this invention I have discovered that applying magnetic pulses to a biological system such as the human brain when a substance such as a general anesthetic was placed in between caused the brain to feel the effect of said anesthetic for several hours after the treatment as if the test subject had actually inhaled the same.

. . . .

> [Para 12] For another example, using the apparatus and method developed in this invention I have further discovered that drinking water exposed to magnetic pulses, laser light, microwave or even flashlight when a substance such as a general anesthetic was placed in between also caused the brain to feel the effect of said anesthetic in various degrees as if the test subject had actually inhaled the same.

. . . .

> [Para13] Further, I have verified as detailed below that said biological effect was the consequence of quantum entanglement between quantum entities inside the biological system such as the human brain and those of the substance under study induced by the photons of the magnetic pulses, laser light, microwave or flashlight.

. . . .

> [Para 14] For yet another example, using the objective and quantitative detecting and measuring apparatus and method developed in this invention, we have further discovered that after consumption by a voluntary human subject of one part of water quantum entangled with a second part of water as disclosed in this invention, the subject's heart rate was increased by adding a heart stimulant to the second part of water.

. . . .

> [Para 16] Key to the objective and quantitative detection and measurement in biological systems in the present invention is a high-sensitivity and/or high-precision apparatus for detecting and measuring a physiological and/or biological parameter.

The Examiner provided a detailed analysis, citing various evidentiary sources, including, but not limited to, those submitted by Appellants, in considering the *Wands* factors as they relate to enablement, and the question of whether the claimed invention contravenes established scientific principles, as that question relates to the utility requirement. *See* Final Act. 4–6, 8–11. We agree with the Examiner's analysis, which raised reasonable

doubts as to operability of Appellants' invention and the Specification's compliance with the enablement requirement. Appellants' arguments rely mainly on extrinsic sources that seem to bear little relevance to the particular subject matter in question here and patentability determinations made in other jurisdictions. The focus of this inquiry is on Appellants' Specification. In that regard, Appellants cite, *inter alia*, paragraphs 78, 79, 84 of the Specification (App. Br. 15) which, along with Figure 7, are reproduced below to summarize an embodiment of Appellants' invention:

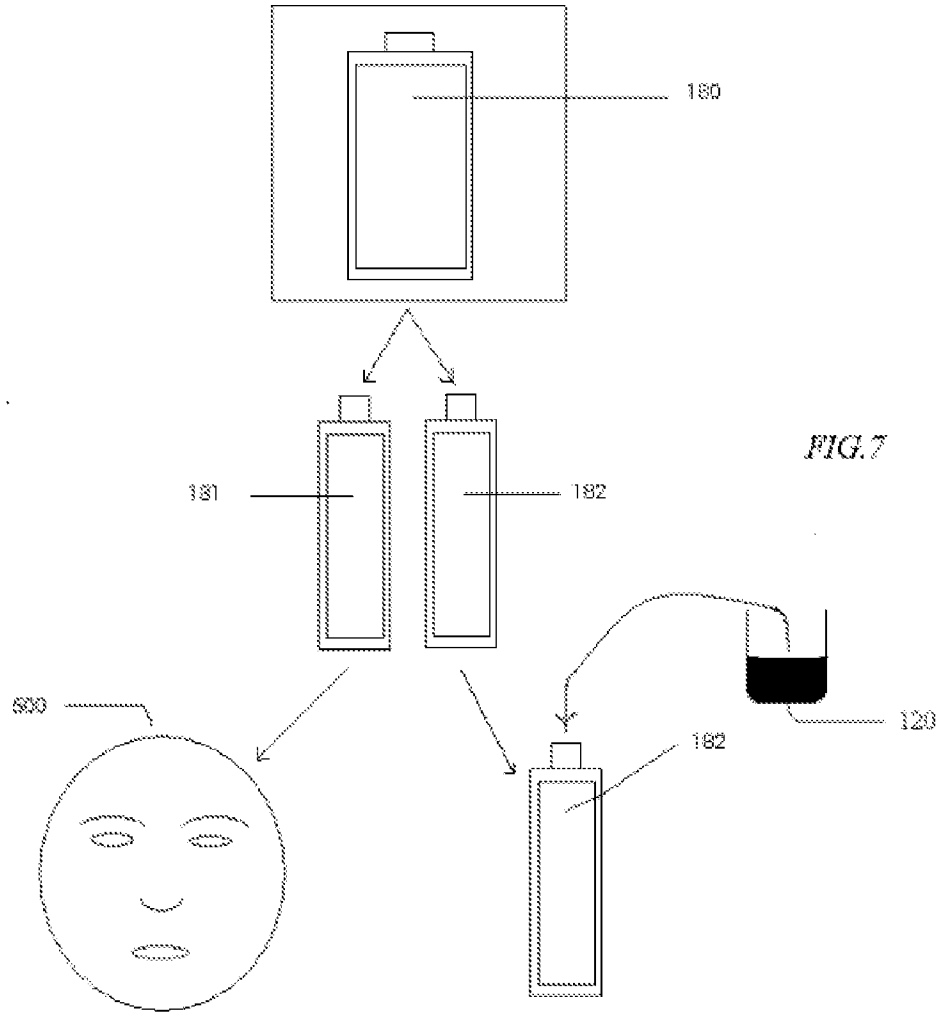

FIG.7

[Para 78] Again, in one particular embodiment 104, the said source 110 is a microwave oven enclosing the medium 180. In another particular embodiment 105, the said source 110 is made

> up of a magnetic coil 111 and an audio system 112 connected to the said magnetic coil with the said magnetic coil disposed adjacent to the medium 180. In yet another embodiment l06, the said source 110 is a laser disposed adjacent to the medium 180.
>
> . . . .
>
> [Para 79] To use each apparatus l04, l05 or l06 having the respective embodiment, one operates the quantum entanglement source 110 with a desired output power and for a desired length of time whereby the photons generated by the said source 110 first entangle with some quantum entities inside the medium 180, and second entangle with some other quantum entities inside the same medium 180 producing quantum entanglement within the medium 180. Subsequently, to use the quantum-entangled medium 180, the said medium is divided into two or more parts.
>
> . . . .
>
> [Para 84] FIG. 7 illustrates one method of beneficially using two parts 181 and l82 of a quantum-entangled medium 180 produced with apparatus l04, l 05 or 106 illustrated in FIG. 4B (or 140 and 160 produced with apparatus l01, l02 or l03 illustrated in FIG. 4A). The essential steps include providing two parts 181 and l 82of a quantum-entangled medium 180, applying one part l81 to a biological system 500 such as a human, and contacting the other part 182 with a desired substance 120 such as a particular medication or substance encoded with a message whereby non-local effect of the substance 120 on the said biological system 500 is produced for a beneficial purpose.

With regard to the specific step of "detecting said second plurality of quantum entanglements" paragraph 85 and Figure 8A respectively describe and illustrate the heart rate monitor used to detect quantum entanglements:

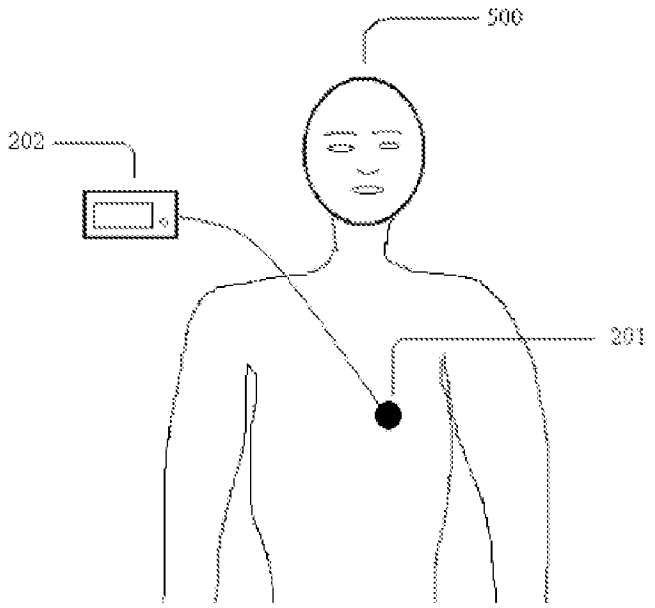

FIG. 8A

[Para 85] FIG. 8A illustrates one method of using a detecting device for objectively and quantitatively detecting and measuring a non-local effect in a biological system 500 such as a human. The essential steps include providing a detecting device (such as a heart rate monitor) comprising a probe 201 attached to the biological system 500 (such as chest area of the human) and a display mechanism 202 connected to said probe 201, or a wireless probe plus transmitter 201 attached to the biological system 500 (such as chest area of the human) and a wireless receiver plus display mechanism 202, and detecting a change of a physical, chemical or biological parameter (such as heart rate of the human) produced through quantum entanglement.

As with the inventions in the related cases mentioned above, we have no doubt that if Appellants' invention is able to use quantum entanglement to cause a therapeutic response in a subject by administering a pharmaceutical substance to water that is not actually consumed by that subject but was previously microwaved with water that is consumed by the

subject it would be groundbreaking and revolutionary. *See* App. Br. 28. However, due to the absence of any known scientific principles explaining how Appellants' invention could possibly operate in this manner, the absence of any cogent explanation in Appellants' Specification regarding the general principals or mechanisms causing this to occur,[6] and the absence of any verifiable test data reasonably attributable to the purported result, the Examiner reasonably characterized Appellants' invention as being of an incredible nature. *See, e.g.*, MPEP § 2107.01(II); *see also* MPEP §§ 2107.01(III), 2107.03 (regarding asserted therapeutic or pharmacological utilities). Despite forty-six pages of arguments and more than five-hundred pages of articles on the subject, we are not apprised of any concrete evidence or cogent technical explanations apprising us of error in the Examiner's determinations. We find no explanation as to why ordinary and conventional microwaving of water produces any meaningful quantum entanglements. Even if such entanglements did occur, there is neither sufficient evidence to

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[6] That is not to say that Appellants *must*, in all cases, explain the scientific principles governing how a device operates if they are not known. *See In re Anfhauser*, 399 F.2d 275, 283 (CCPA 1968) (explaining an applicant "is not legally required to comprehend the scientific principles on which the practical effectiveness of his invention rests"). However, Appellants make no assertion *here* that the governing principles are unknown. Rather Appellants repeatedly asserts, citing various sources of extrinsic evidence, that the principles would be readily understood by those skilled in the art (App. Br. 20, 22) even if they are misunderstood by the Examiner (App. Br. 31–32, 53, 64). If the principles governing the operation of Appellants' method were so readily amenable to understanding we see no reason to omit an explanation of them from Appellants' Specification and Appellants' extensive briefing. The cited articles do not fill in these gaps with specific relevance to the subject matter in question presently before us. Furthermore, the fundamental issue is not whether Appellant has explained how the claimed invention works. Rather, the requirements of utility and enablement consider whether Appellant's invention works as claimed.

demonstrate, nor cogent theory to explain why, those quantum entanglements would result in an unaltered portion of the water exhibiting therapeutic properties like those expected from water containing a therapeutic substance only by adding that substance to a different, non-consumed, portion of the water. There is no explanation offered as to why spin or any other quantum property of entangled particles would cause pharmacological changes in a discrete water sample only by virtue of having previously been microwaved with a water sample to which a pharmacological substance is added. We are also not apprised of any data logically evincing such a pharmacological interaction has actually occurred. We agree with the Examiner that heart rate changes (App. Br. 57; Spec. para. 85), even if present, do not amount to such evidence because heart rate changes do not necessarily demonstrate a specific pharmacological interaction. Ans. 4. The various articles cited by Appellants are either generic in nature and discuss only the possibility of quantum entanglements occurring without explaining any reason they would cause the interactions alleged in the present application, from sources regarded as having no scientific value,[7] or both.

In 1931 the predecessor to our reviewing court considered a case involving a "Method and Apparatus for Accumulating and Transforming

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[7] *See, e.g.*, IN THE NORWEGIAN REGISTER FOR SCIENTIFIC JOURNALS, SERIES AND PUBLISHERS: JOURNAL OF BIOPHYSICAL CHEMISTRY, available at https://dbh.nsd.uib.no/publiseringskanaler/KanalTidsskriftInfo.action?id=478691; NEUROQUANTOLOGY, available at https://dbh.nsd.uib.no/publiseringskanaler/KANALTIDSskriftInfo.action?id=473508; PROGRESS IN PHYSICS, available at https://dbh.nsd.uib.no/publiseringskanaler/KANALTIDSskriftInfo.action?id=473750.

Ether Electric Energy." The court's reasoning there is equally applicable here:

> It is fundamental in patent law that an alleged invention, to be patentable, must be not only new but useful, and that it must appear capable of doing the things claimed in order to be a device of practical utility.
>
> The rule of doubt may only be applied in favor of an applicant where the doubt is a reasonable one, that is, one founded in reason and engendered by testing the alleged invention by known scientific laws and principles.
>
> Neither the Patent Office tribunals nor the courts may properly grant patents upon a mere possibility that a device might do the things claimed for it, and be useful. There must be definiteness. Neither the Constitution nor the statutes contemplate the granting of patents upon theories, nor giving a monopoly upon intellectual speculations embodied in devices incapable of scientific analysis.
>
> The question of patentable invention ordinarily must be determined by applied science, as understood by those skilled in the art to which the invention relates, and, if one presents a device which cannot be tested by any known scientific principles, he must, at least, demonstrate its workability and utility and make clear the principles upon which it operates.
>
> No such demonstration here appears from appellant's application, or otherwise. Three affidavits are presented of parties who claim to have seen appellant's device in operation and who vouch for its working. These affidavits, however, are brief, general in character, and give no description of the device which affiants saw. Nor do they give any explanation which contains anything tending to clarify the terminology of the specification, or to render the device measurable by engineering principles or known natural laws.

In re Perrigo, 48 F. 2d 965, 966 (CCPA 1931) (citations omitted); *accord In re Ferens*, 417 F. 2d 1072, 1074 (CCPA 1969) ("[W]here an applicant predicates utility for the claimed invention on allegations of the sort here which are or border on the incredible in light of contemporary knowledge of

the particular art, those allegations must be substantiated by acceptable evidence."); *In re Eltgroth*, 419 F. 2d 918, 922 (CCPA 1970) ("The invention relates to the control of growth, aging and degeneration in living organisms, particularly to appellants' alleged discovery of what appears to be a key for the solution of the problems associated with these life processes. . . . Undoubtedly, the alleged utility of control of the aging process in living organisms and the significant beneficial results flowing therefrom is adequate. Yet, there is a conspicuous absence of proof thereof.").

For the foregoing reasons and those stated by the Examiner (Ans. 3, 5–6, 9–12), after consideration of the evidence and arguments of record, we are not apprised of error in the Examiner's position concerning a lack of utility under § 101 and a lack of enablement under § 112, first paragraph.

Written Description under § 112, first paragraph

The claims subject to the written-description rejection are argued as a group (App. Br. 6–11) for which claim 5 is representative under 37 C.F.R. § 41.37(c)(1)(iv).

> The purpose of the "written description" requirement is broader than to merely explain how to "make and use"; the applicant must also convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. The invention is, for purposes of the "written description" inquiry, whatever is now claimed.

Vas-Cath Inc. v. Mahurkar, 935 F.2d 1555, 1563–64 (Fed. Cir. 1991) (emphasis omitted).

Some of the Examiner's discussion (Final Act. 2–3; Ans. 3–5) regarding the written description requirement arguably relates to the operability of the device and may be more suited to the enablement/utility

analysis discussed above. Nevertheless, the Examiner raises a valid point with regard to the written description requirement:

> Although some examples are listed, the examples are widely disparate and unrelated and don't provide guidance or limits as to what could or could not be a source. Similarly, Applicant discloses that any substance and any detection device can be used (see specification paragraphs 52-54). . . . The Specification does not provide any description of a mechanism for detecting quantum entanglement, but rather only discusses detecting non-local effects such as increased heart rate. This claimed subject matter is therefore not described in a way which reasonably conveys the inventor had possession of the claimed invention, i.e. a method of detecting quantum entanglement between the two targets.

Final Act. 3.

The issue raised by the Examiner concerns the breadth of the recitations related to the source and detecting aspects of the claim.

Regarding the source, Appellants' Specification provides:

> [Para 51] The said source will be, depending on a particular use, any source, such as a magnetic coil connected to a driving device, laser, microwave oven, flashlight or even a biological system, which is capable of generating quantum-entangling members such as photons, electrons, atoms or molecules when said source operates. The selection and operating specifications of the source will vary according to the use. The person skilled in the art will be able readily to determine the appropriate source and operating specifications of said source, with only routine experimentation, for optimum performance of the specific use intended.

Regarding detection, Appellants' Specification provides:

> [Para 85] FIG. 8A illustrates one method of using a detecting device for objectively and quantitatively detecting and measuring a non-local effect in a biological system 500 such as a human. The essential steps include providing a detecting device (such as a heart rate monitor) comprising a probe 201 attached to

> the biological system 500 (such as chest area of the human) and a display mechanism 202 connected to said probe 201, or a wireless probe plus transmitter 201 attached to the biological system 500 (such as chest area of the human) and a wireless receiver plus display mechanism 202, and detecting a change of a physical, chemical or biological parameter (such as heart rate of the human) produced through quantum entanglement.

The Specification provides a few examples of suitable sources and one example of a detecting method. However, claim 5 encompasses subject matter wherein anything capable of generating photons or magnetic pulses for causing quantum entanglements, whether known or unknown, described in Appellants' Specification or not, can be the source. Similarly, claim 5 encompasses subject matter wherein any method for detecting quantum entanglements, whether known or unknown, described in Appellants' Specification or not, can perform the detecting steps. In this emerging field of technology it is relatively clear that Appellants have not demonstrated possession of a sufficient number of sources and detecting techniques to broadly claim subject matter that covers all possible photon and magnetic sources that may generate quantum entanglements and all possible techniques for detecting them. Even if we were to set aside the question of operability and assume that Appellants have demonstrated possession of a limited number of sources and at least one detecting technique, the scope of the right to exclude that would be granted by claim 5 would far exceed Appellants' contribution to the art—preempting the future before it has arrived:

> Patents are not awarded for academic theories, no matter how groundbreaking or necessary to the later patentable inventions of others. "[A] patent is not a hunting license. It is not a reward for the search, but compensation for its successful conclusion." Requiring a written description of the invention limits patent

> protection to those who actually perform the difficult work of "invention"—that is, conceive of the complete and final invention with all its claimed limitations—and disclose the fruits of that effort to the public.
>
> That research hypotheses do not qualify for patent protection possibly results in some loss of incentive . . . . But claims to research plans also impose costs on downstream research, discouraging later invention. The goal is to get the right balance, and the written description doctrine does so by giving the incentive to actual invention and not attempt[s] to preempt the future before it has arrived. As this court has repeatedly stated, the purpose of the written description requirement is to ensure that the scope of the right to exclude, as set forth in the claims, does not overreach the scope of the inventor's contribution to the field of art as described in the patent specification. It is part of the *quid pro quo* of the patent grant and ensures that the public receives a meaningful disclosure in exchange for being excluded from practicing an invention for a period of time.

Ariad Pharms., Inc. v. Eli Lilly & Co., 598 F. 3d 1336, 1353–54 (Fed. Cir. 2010) (en banc) (citations and internal quotations omitted).

Accordingly, we sustain the Examiner's rejection of claims 5, 7–9, 11, and 12 as failing to comply with the written description requirement.

Indefiniteness under 35 U.S.C. § 112, second paragraph

The Examiner included two grounds for rejecting the claims under 35 U.S.C. § 112, second paragraph. The first is that independent claim 5 is "incomplete for omitting essential steps, such omission amounting to a gap between the steps" which "renders the claim indefinite." Final Act. 6–7 (citing MPEP § 2172.01). The second is that independent claim 5 is indefinite because it "recites producing a non-local effect but does not specify an effect or disclose clearly how an effect is generated in a target by interacting with a medium." Final Act. 7. We do not sustain the rejection

under § 112, second paragraph, on either of the grounds specified by the Examiner.

Regarding the first ground, as mentioned in the portion of the MPEP cited by the Examiner (§ 2172.01) the omission of essential elements is typically a concern addressed under the enablement requirement of the first paragraph of § 112. That same section of the MPEP also notes that the omission of essential elements may create additional issues under the second paragraph of § 112. However, although such omission might create issues under the "regards as the invention" language of § 112, second paragraph (MPEP § 2172.01[8]), unless there is a specific issue of claim clarity such omission, without more, relates to breadth as opposed to indefiniteness. Regarding the second ground, the Examiner points out that no specific effect is specified. Final Act. 7. This, without more, is again a question of breadth as opposed to indefiniteness. The Examiner also raises issues with regard to how the effect is generated. Final Act. 7. This relates only to a lack of clarity in the operation of the device as opposed to a lack of clarity in the metes and bounds of the claimed subject matter. Although this may relate to issues of utility and enablement, as discussed above, the Examiner has not, on the record before us, demonstrated how these issues create uncertainty as to the scope of the claimed subject matter.

With regard to claims 7 and 11, the Examiner states with regard to the limitation,

> a "magnetic coil connected to a driving mechanism, a laser device, or a microwave device". It is unclear if this is meant to mean the coil may be connected to any of these three items

[8] Citing *In re Collier*, 397 F.2d 1003 (CCPA 1968) (holding the claim "fails to comply with section 112, second paragraph, in failing distinctly to claim what appellant in his brief insists is his actual invention").

> (driving mechanism, laser device, or microwave) or if the laser device and/or microwave are intended to be distinct sources from the coil connected to a driving mechanism.

Final Act. 7. However, in light of Appellants' consistent use of commas and semi-colons throughout the claim, only the first of the Examiner's proposed interpretations is reasonable. Thus, we are not apprised of any ambiguity in the specific clause quoted by the Examiner.

For the foregoing reasons, we do not sustain the Examiner's rejections under § 112, second paragraph on the bases set forth by the Examiner.

DECISION

The Examiner's rejections under § 101 and § 112, first paragraph are affirmed. The Examiner's rejection under § 112, second paragraph, is reversed.

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