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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte EMILY GAIL FABES, SEAN STINSON,
CLIVE WARDEN KENNARD, and SHANE LEE MCEWEN

Appeal 2018-004762
Application 13/232,155¹
Technology Center 3600

Before JASON V. MORGAN, IRVIN E. BRANCH, and
ADAM J. PYONIN, *Administrative Patent Judges*.

MORGAN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Introduction

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–6, 11–15, and 17–24. Claims 7–10 and 16 are canceled. Appeal Br. 31, 34. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Appellants identify Honeywell International Inc. as the real party in interest. Appeal Br. 3.

Summary of the disclosure

Appellants disclose using a user interview as the basis for configuring gas detection equipment. Abstract.

Exemplary claims (key limitations emphasized)

1. A method comprising:

detecting, via control circuitry associated with a user interface, that a piece of gas detection equipment in a non-compliant state, wherein the gas detection equipment comprises a gas detector;

presenting, by the user interface, a plurality of questions to a user regarding the piece of gas detection equipment;

receiving, via the user interface, user feedback to each of the plurality of questions; and

determining, via the control circuitry associated with the user interface, configuration parameters, in accordance with the user feedback to each of the plurality of questions;

transmitting the configuration parameters to the gas detector;

configuring the gas detector with the configuration parameters;

performing one or more operations on the gas detector based on the user feedback; and

changing the gas detector from the non-compliant state to a compliant state based on using the configuration parameters and the performing of the one or more operations on the gas detector.

13. A method comprising:

docking a first piece of gas detection equipment with a docking station, wherein the first piece of gas detection equipment comprises a first gas detector;

detecting that the first piece of gas detection equipment is in a non-compliant state when the first piece of gas detection equipment is docked with the docking station;

receiving, by a user interface, manual user input from a user for selecting of a set of configuration parameters for the first piece of gas detection equipment;

transmitting, by control circuitry associated with the user interface, the set of configuration parameters to the first gas detector;

configuring, by the control circuitry associated with the user interface, the first piece of gas detection equipment with the set of configuration parameters in response to transmitting the set of configuration parameters to the first gas detector;

changing the first piece of gas detection equipment from the non-compliant state to a compliant state in response to configuring the first piece of gas detection equipment with the set of configuration parameters;

creating, by the control circuitry, a configuration profile with the set of configuration parameters;

configuring, by the control circuitry, a second piece of gas detection equipment with the configuration profile; and

changing the second piece of gas detection equipment to the compliant state.

Rejections and references

The Examiner rejects claims 1–6, 11–15, and 17–24 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 3–7.

The Examiner rejects claims 1–5, 12, 17, 19, 20, and 23 under 35 U.S.C. § 103(a) as being unpatentable over McElhattan et al. (US 6,442,639 B1; issued Aug. 27, 2002) (“McElhattan”) and Amundson et al. (US 7,181,317 B2; issued Feb. 20, 2007) (“Amundson”). Final Act. 7–19.

The Examiner rejects claims 6, 11, 18, 22, and 24 under 35 U.S.C. § 103(a) as being unpatentable over McElhattan, Amundson, Brillhart et al. (US 2012/0130934 A1; published May 24, 2012) (“Brillhart”), and White et

al. (US 2010/0281355 A1; published Nov. 4, 2010) (“White”). Final Act. 19–29.

The Examiner rejects claims 13–15 under 35 U.S.C. § 103(a) as being unpatentable over McElhattan and Zishaan (US 2010/0225493 A1; published Sept. 9, 2010). Final Act. 29–36.

The Examiner rejects claim 21 under 35 U.S.C. § 103(a) as being unpatentable over McElhattan, Amundson, Zishaan, Brillhart, and White. Final Act. 36–38.

35 U.S.C. § 101

Principles of law

To be statutorily patentable, the subject matter of an invention must be a “new and useful process, machine, manufacture, or composition of matter, or [a] new and useful improvement thereof.” 35 U.S.C. § 101. There are implicit exceptions to the categories of patentable subject matter identified in § 101, including: (1) laws of nature; (2) natural phenomena; and (3) abstract ideas. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014). The Supreme Court has set forth a framework for distinguishing patents with claims directed to these implicit exceptions “from those that claim patent-eligible applications of those concepts.” *Id.* at 217 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)). The evaluation follows a two-part analysis: (1) determine whether the claim is *directed to* a patent-ineligible concept, e.g., an abstract idea; and (2) if so, then determine whether any element, or combination of elements, in the claim is sufficient to ensure that the claim amounts to *significantly more* than the patent-ineligible concept itself. *See id.* at 217–18.

“[A]ll 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 “‘must be careful to avoid oversimplifying the claims’ by looking at them generally and failing to account for the specific requirements of the claims.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1313 (Fed. Cir. 2016) (quoting *In re TLI Commc’ns LLC Pat. Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016)).

The U.S. Patent and Trademark Office (USPTO) recently published revised guidance on the application of the two-part analysis. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (January 7, 2019) (“Memorandum”). Under that guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (*see id.* at 54 (step 2A, prong one)); and

(2) additional elements that integrate the judicial exception into a practical application (*see id.* at 54–55 (step 2A, prong two); MPEP §§ 2106.05(a)–(c), (e)–(h)).

See Memorandum, 84 Fed. Reg. at 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.

See Memorandum, 84 Fed. Reg. at 56.

Memorandum step 2A, prong one

In rejecting claim 1 as being directed to patent-ineligible subject matter, the Examiner determines that claim 1 recites steps of

detecting, presenting, receiving, determining, and changing data, etc. similar to other concepts that have been identified as abstract by the courts, such as collecting information, analyzing it, and displaying certain results of the collection and analysis in *Electric Power Group*^[2], or collecting and analyzing information to detect misuse and notifying a user when misuse is detect[ed] in *FairWarning*^[3].

Final Act. 4; *see also* Ans. 2–3.

We agree with the Examiner that at least some of the features of claim 1—which includes recitation directed to presenting questions to a user, receiving feedback from the user, and making determinations based on the feedback—recite abstract ideas in the form of mental processes (e.g., forming judgments based on user feedback) or certain methods of organizing human activity (e.g., providing instructions for a user to follow in the form

² *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1351 (Fed. Cir. 2016).

³ *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1091 (Fed. Cir. 2016).

of questions to be answered). Memorandum, 84 Fed. Reg. at 52. Therefore, we agree with the Examiner that claim 1 recites an abstract idea.

Memorandum step 2A, prong two

Appellants contend the Examiner erred because “gas detectors are re-configured by the claimed methods, which farther particularizes them as non-generic machines directed to a particular purpose. Thus, the claims clearly relate to a particular machine and are thus patentable subject matter under *Diamond v. Diehr*⁴.” Reply Br. 6; *see also* Appeal Br. 14–15.

Appellants contrast the claimed reconfiguration of a gas detector with the patent-ineligible inventions of both *Electric Power Group*, where “[t]here were no physical devices or . . . modification of a physical structure as a result of any data,” and *FairWarning*, which was “directed solely to the collection of data for a patient’s health information and logging an event according to a rule.” Appeal Br. 15.

We agree with Appellants that the invention of claim 1, in reciting steps such as “transmitting the configuration parameters to the gas detector,” “configuring the gas detector with the configuration parameters,” “performing one or more operations on the gas detector,” and “changing the gas detector from the non-compliant state to a compliant state based on using the configuration parameters and the performing of the one or more operations on the gas detector,” recites “[i]ndustrial processes [that] are the types which have historically been eligible to receive the protection of our patent laws.” *Diehr*, 450 U.S. at 184 (citing *Corning v. Burden*, 56 U.S. 252, 267 n.7 (1853); *Tilghman v. Proctor*, 102 U.S. 707, 722 (1880)). Although

⁴ *Diamond v. Diehr*, 450 U.S. 175 (1981).

what it means to configure a gas detector is claimed and disclosed broadly (e.g., “to be compliant with governmental regulations or company policies” (Spec. ¶ 4)), the Examiner provides insufficient determinations showing that such configuration represents, for example, “insignificant post-solution activity [that would] not transform an unpatentable principle into a patentable process” (*Diehr*, 450 U.S. at 191–92 (citing *Parker v. Flook*, 437 U.S. 584 (1978))).

For these reasons, claim 1 integrates the underlying abstract ideas into a practical application. *See* Memorandum, 84 Fed. Reg. at 55 (citing, e.g., *Diehr*, 450 U.S. at 184, 187). Therefore, the Examiner’s determinations do not show that claim 1 is directed to a judicial exception that would make claim 1 patent-ineligible. *Id.* at 52. Accordingly, we do not sustain the Examiner’s 35 U.S.C. § 101 rejection of claim 1, or claims 2–6, 11–15, and 17–24, which the Examiner rejects for similar reasons. Final Act. 6–7. Because our analysis under the Memorandum step 2A, prong two, is dispositive, we do not reach step 2B of the Memorandum.

35 U.S.C. § 103(A)

Claims 1–6, 11, 12, 17–20, and 22–24

In rejecting claim 1 as obvious, the Examiner finds that McElhattan’s teaching’s regarding (1) a docking station that reviews data for alerts requiring immediate or local action and (2) a manufacturer of a monitoring instrument updating the instrument’s software to correct problems, introduce new features, change settings, or comply with new regulations teaches or suggests *changing the gas detector from the non-compliant state to a compliant state based on using the configuration parameters and the performing of the one or more operations on the gas detector*. Final Act. 9–

10 (citing McElhattan, col. 6, ll. 50–60, col. 8, ll. 10–15); *see also* Ans. 6. The Examiner relies on Amundson’s use of interview questions to solicit scheduling information from a user for a configuring controller to teach or suggest *determining the configuration parameters, in accordance with the user feedback to each of the plurality of questions. Id.* at 10–11 (citing Amundson, col. 3, ll. 17–38, 40–50, Fig. 1). The Examiner concludes that it would have been obvious to an artisan of ordinary skill to combine the teachings and suggestions of McElhattan and Amundson in the claimed manner because “the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately,” therefore, the combination would have yielded predictable results. *Id.* at 11.

Appellants contend the Examiner erred because, when updating software, McElhattan’s changes “to the instrument . . . would not be based on using configuration parameter[s] . . . or the performance of the one or more operations on the gas detector, which is based on the user feedback.” Appeal Br. 23; *see also* Reply Br. 9 (McElhattan’s “manufacturing software updates . . . are not based on or in accordance with user feedback”). Appellants’ arguments are unpersuasive of error.

McElhattan teaches a manufacturer software update of a monitoring instrument “to correct problems that have been identified, introduce new features, change settings or modify the monitoring instrument to comply with new regulations.” McElhattan, col. 8, ll. 11–14. Although the Examiner does not rely on the cited portions of McElhattan to teach or suggest that such updates are based on user feedback, the Examiner properly relies on Amundson’s presenting and receiving responses to interview questions to

build or modify a schedule for a controller to cure this deficiency. Final Act. 10–11 (citing Amundson, Fig. 1, col. 3, ll. 17–38, 40–50). Appellants do not persuasively distinguish *determining configuration parameters in accordance with the user feedback* from building or modifying a schedule using responses to interview questions. In particular, a schedule is a type of configuration. Use of configuration parameters (e.g., such as a schedule) determined in accordance with user feedback represents the performance of *one or more operations based on the user feedback*. For these reasons, we agree with the Examiner that the combination of McElhattan and Amundson teaches or suggests “determining . . . configuration parameters, in accordance with the user feedback to each of the plurality of questions” and “performing one or more operations on the gas detector based on the user feedback,” as recited in claim 1. Final Act. 8–9 (emphasis omitted).

Appellants further argue “nothing in *McElhattan* teaches any change in a compliance state based on the use of any configuration parameters or the performance of the one or more operations on the gas detector.” Appeal Br. 23. Appellants further argue that the combination of McElhattan and Amundson “would not result in any change to the compliance state being based on using the configuration parameters and the performance of one or more operations on the gas detector.” *Id.* at 24. Appellants’ arguments are unpersuasive, however, because McElhattan software update teachings specifically identify “comply[ing] with new regulations” as a purpose of such updates. McElhattan, col. 8, l. 14. Therefore, we agree with the Examiner that the combination of McElhattan and Amundson teaches or suggests “changing the gas detector from the non-compliant state to a compliant state based on using the configuration parameters and the

performing of the one or more operations of the gas detector,” as recited in claim 1. Final Act. 9–10 (emphasis omitted); Ans. 6.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 1, as well as the Examiner’s 35 U.S.C. § 103(a) rejections of claims 2–6, 11, 12, 17–20, and 22–24, which Appellants argue are patentable for similar reasons. Appeal Br. 25.

Claims 13–15 and 21

In rejecting claim 13 as obvious, the Examiner relies on Zishaan’s use of a user interface—on a device remotely connected to a monitoring unit—to select configuration parameters for the monitoring unit to teach or suggest *receiving, by a user interface, manual user input from a user for selecting of a set of configuration parameters for the first piece of gas detection equipment*. Final Act. 32–33 (citing Zishaan ¶ 172). The Examiner relies on McElhattan’s uploading of new configurations upon detection that configuration requirements for a device have changed, and on McElhattan’s transmission of an upgrade to multiple monitoring instruments, to teach or suggest, not just *configuring the first piece of gas detection equipment with the set of configuration parameters*, but also *creating a configuration profile with the set of configuration parameters and configuring a second piece of gas detection equipment with the configuration profile*. *Id.* at 30–32 (citing, e.g., McElhattan, col. 6, ll. 28–50, col. 8, ll. 15–30).

Appellants contend the Examiner erred because McElhattan’s update does not use configuration parameters that are created for a first piece of gas detection equipment by the control circuitry, and *then* used to modify a second piece of gas detection equipment to a compliant state. It is specifically the initial creation of the configuration parameters by the control

circuitry that is *then* used with a second piece of gas detection equipment that is not taught or suggested by McElhattan.

Appeal Br. 26 (emphases added); *see also* Reply Br. 9–10.

Appellants’ arguments, which rely on the disputed steps following a particular order, are unpersuasive because “although a method claim necessarily recites the steps of the method in a particular order, as a general rule the claim is not limited to performance of the steps in the order recited, unless the claim explicitly or implicitly requires a specific order.” *Baldwin Graphic Sys., Inc. v. Siebert, Inc.*, 512 F.3d 1338, 1345 (Fed. Cir. 2008). We do not ascertain any such requirements in the disputed recitations; therefore, Appellants’ arguments are not commensurate with the scope of the claimed invention. *See also, e.g.*, Spec. ¶ 73 (“the logic flows depicted in the figures do not require the particular order shown, or sequential order, to achieve desirable results”).

Furthermore, McElhattan teaches or suggests updating multiple monitoring instruments using the same information (e.g., a software upgrade or new configuration requirements). *See* McElhattan, col. 6, ll. 44–47, col. 8, ll. 20–26. That is, McElhattan teaches or suggests creating a configuration profile with a set of configuration parameters to configure both a first piece of gas detection equipment and a second piece of gas detection equipment. Appellants do not persuasively distinguish configuring gas detection equipment with *configuration parameters* from configuring gas detection equipment with a configuration profile *created with a set of configuration parameters*. Appellants also fail to show error in the Examiner’s reliance on Zishaan’s user interface to teach or suggest receiving manual user input in the manner claimed.

For these reasons, we agree with the Examiner that the combination of McElhattan and Zishaan teaches or suggests “receiving, by a user interface, manual user input from a user for selecting . . . a set of configuration parameters for [a] first piece of gas detection equipment,” “creating . . . a configuration profile with the set of configuration parameters,” “configuring the first piece of gas detection equipment with the set of configuration parameters,” and “configuring . . . a second piece of gas detection equipment with the configuration profile,” as recited in claim 13. *See* Final Act. 30–33.

Accordingly, we sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 13, and the Examiner’s 35 U.S.C. § 103(a) rejections of claims 14 and 21, which Appellants argue are patentable for similar reasons. *See* Appeal Br. 28.

Appellants provide additional arguments with respect to the Examiner’s 35 U.S.C. § 103(a) rejection of claim 15. Reply Br. 10–11. These additional arguments are untimely and, therefore, we also sustain the Examiner’s 35 U.S.C. § 103(a) rejection of claim 15. *See* 37 C.F.R. § 41.41(b)(2).

DECISION

Claims Rejected	Basis	Affirmed	Reversed
1-6, 11-15, 17-24	§ 101	None	1-6, 11-15, 17-24
1-5, 12, 17, 19, 20, 23	§ 103(a) McElhattan, Amundson	1-5, 12, 17, 19, 20, 23	None
6, 11, 18, 22, 24	§ 103(a) McElhattan, Amundson, Brillhart, White	6, 11, 18, 22, 24	None
13-15	§ 103(a) McElhattan, Amundson, Zishaan	13-15	None
21	§ 103(a) McElhattan, Amundson, Zishaan, Brillhart, White	21	None
Outcome		1-6, 11-15, 17-24	None

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. § 41.50(f).

AFFIRMED