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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEV A. KOYRAKH, JEFFREY A. SCHWEITZER,
DANIEL R. STARKS, and CARLOS CARBONERA

Appeal 2018-005517
Application 15/412,097
Technology Center 3700

Before ANNETTE R. REIMERS, ERIC C. JESCHKE, and
ARTHUR M. PESLAK, Administrative Patent Judges.

REIMERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Pursuant to 35 U.S.C. § 134(a), Appellant² appeals from the Examiner’s decision to reject claims 2–16. Claim 1 has been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

The claimed subject matter “relates to a method and system for detecting the movement of a reference point utilized in a non-ionizing localization system, such as is often employed in navigating a medical device through a patient.” Spec. ¶ 2. Claims 2 and 13 are independent.

Claim 2 is illustrative of the claimed subject matter and recites:

2. A method of detecting dislodgement of a navigational reference catheter from an initial reference location within a non-ionizing localization field, the method comprising:

detecting a perceived dislodgement of the navigational reference catheter from the initial reference location based upon a magnitude of a perceived distance moved by the navigational reference catheter from the initial reference location;

confirming that the perceived dislodgement of the navigational reference catheter from the initial reference location is an actual dislodgement of the navigational reference catheter from the initial reference location based upon a direction of the perceived dislodgement of the navigational reference catheter from the initial reference location; and

¹ The subject application, 15/412,097, is a continuation of application 12/972,253, now U.S. Patent 9,585,586 B2, issued Mar. 7, 2017, in which the Board issued a decision on appeal. *See Ex parte Koyrakh*, Appeal No. 2014-007443, dated Aug. 12, 2016.

² We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as St. Jude Medical, Atrial Fibrillation Division, Inc. Appeal Brief (“Appeal Br.”) 2, filed Jan. 18, 2018.

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generating a signal indicating the actual dislodgement of the navigational reference catheter.

Appeal Br. 16 (Claims App.).³

REJECTIONS

Claims 2–16 are rejected under nonstatutory double patenting over claims 1–18 of U.S. Patent 9,585,586.⁴

Claims 2–16 are rejected under 35 U.S.C. § 101 as patent-ineligible.

Claims 2, 3, and 11–13 are rejected under 35 U.S.C. § 102(b) as anticipated by Hauck (US 2008/0161681 A1, published July 3, 2008).

Claim 4 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hauck and Koh (US 2010/0152801 A1, published June 17, 2010).

ANALYSIS

1. Patent Eligibility

Principles of Law

Section 101 of the Patent Act provides that “any new and useful process, machine, manufacture, or composition of matter, or any new and

³ Claims Appendix (“Claims App.”).

⁴ Appellant does not appeal the nonstatutory double patenting rejection of claims 2–16 over claims 1–18 of U.S. Patent 9,585,586. *See* Appeal Br. 7 n.1; *see also* Final Office Action (“Final Act.”) 2–4, dated Oct. 23, 2017; Examiner’s Answer (“Ans.”) 2–4, dated Apr. 6, 2018. Accordingly, this rejection is not before us for review. We summarily affirm rejections not contested. *In re Berger*, 279 F.3d 975 (Fed. Cir. 2002) (Affirming the Board’s affirmance of an uncontested rejection, holding that the appellant had waived the right to contest the rejection by not presenting arguments on appeal to the Board); *Hyatt v. Dudas*, 551 F.3d 1307, 1314 (Fed. Cir. 2008) (“the applicant can waive appeal of a ground of rejection”).

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useful improvement thereof” is patent eligible. 35 U.S.C. § 101. Claim 2 falls within the literal scope of this provision because it recites a process.

The Supreme Court, however, has long recognized an implicit exception to this section: “Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (quoting *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). To determine whether a claim falls within one of these excluded categories, the Court has set out a two-part framework. The framework requires us first to consider whether the claim is “directed to one of those patent-ineligible concepts.” *Alice*, 573 U.S. at 217. If so, we then examine “the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 78, 79 (2012)). That is, we examine the claims for an “inventive concept,” “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Under the 2019 Eligibility Guidance, to decide whether a claim is “directed to” an abstract idea, we evaluate whether the claim (1) recites an abstract idea grouping listed in the guidance *and* (2) fails to integrate the recited abstract idea into a practical application. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50, 51 (Jan. 7, 2019)

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(“2019 Eligibility Guidance”).⁵ Concepts that have been 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 v. Kappos*, 561 U.S. 593, 611 (2010)); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). 2019 Eligibility Guidance at 52.

If the claim is “directed to” an abstract idea, as noted above, we then determine whether the claim recites an inventive concept. The guidance explains that, when making this determination, we should consider whether the additional claim elements add “a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field” or “simply append[] well-understood, routine, conventional activities previously known to the industry.” 2019 Eligibility Guidance at 56.

Examiner’s § 101 Rejection

The Examiner determines that claims 2–16 are patent-ineligible under 35 U.S.C. § 101. Final Act. 4–5. As Appellant argues claims 2–16 as a single group in its appeal (Appeal Br. 8–12), we select claim 2 as representative, and claims 3–16 stand or fall with claim 2. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Examiner determines that claim 2 of the subject invention is directed to “detecting a dislodgement of a catheter using coordinate data,” which includes an abstract idea because it recites the “mental activity” of “analyzing position and orientation data” of the catheter. Final Act. 4–5; *see*

⁵ An update to the 2019 Revised Patent Subject Matter Eligibility Guidance issued in October 2019 (“October 2019 Update,” available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

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also Ans. 10 (“The data analysis of detecting a perceived dislodgement . . . and confirming the perceived dislodgement . . . are similar to . . . manipulating and/or relating data, organizing information through correlations, calculating parameters; and/or collecting and comparing known data”); *see also id.* at 12 (“The claims of the present invention do not require specific hardware as the navigational reference catheter is a generic and conventional structure in the art which is utilized only as a reference to acquire and analyze data” and “the specific criteria which is analyzed is limited to determinations of magnitude, distance and direction which are all well-known and conventional mathematical correlations for which an individual could determine the ‘dislodgement’ as a mental activity.”).

The Examiner further determines claim 2 does not recite additional elements that amount to significantly more than the judicial exception itself. Final Act. 4. The Examiner characterizes the “generating a signal” step as insignificant post-solution activity. Ans. 9. The Examiner also characterizes the additional claim element “navigational reference catheter within a non-ionizing localization field” as a generic and conventional structure, used for “data gathering,” which merely links the abstract idea to a particular environment, i.e., medical analysis. Ans. 9, 12 (“[T]he navigational reference catheter is a generic and conventional structure in the art which is utilized only as a reference to acquire and analyze data.”); Final Act. 4.

Guidance Step 2A: Is the claim “directed to” a judicial exception?

Step 2A, Prong 1:

Does the claim recite a judicial exception?

Step 2A of the guidance is a two-prong inquiry. In Prong 1, we evaluate whether the claim *recites* a judicial exception, such as an abstract idea. 2019 Eligibility Guidance, 84 Fed. Reg. at 51. The guidance

synthesizes the key concepts identified by the courts as abstract ideas into three primary subject-matter groupings: mathematical concepts, certain methods of organizing human activities, and mental processes—concepts performed in the human mind or via pen and paper (including observation, evaluation, judgment, and opinion). *Id.* at 52. For the reasons discussed below, claim 2 recites an abstract idea that falls in the guidance’s subject-matter grouping of mental processes. *Id.*

Claim 2 recites a process with three steps (1)–(3):

(1) detecting a perceived dislodgement of the navigational reference catheter from the initial reference location based upon a magnitude of a perceived distance moved by the navigational reference catheter from the initial reference location;

(2) confirming that the perceived dislodgement of the navigational reference catheter from the initial reference location is an actual dislodgement of the navigational reference catheter from the initial reference location based upon a direction of the perceived dislodgement of the navigational reference catheter from the initial reference location; and

(3) generating a signal indicating the actual dislodgement of the navigational reference catheter.

Step (1), detecting a perceived dislodgement based upon a magnitude, and step (2), confirming an actual dislodgement based upon a direction, both recite mental processes that observe and evaluate/analyze data as explained below.

Step (1) of “detecting a perceived dislodgement of the navigational reference catheter from the initial reference location based upon a magnitude of a perceived distance moved by the navigational reference catheter from the initial reference location” is nothing more than mentally observing/evaluating that an object, in this case a catheter, has moved a distance and may have dislodged.

Similarly, step (2) of “confirming that the perceived dislodgement . . . is an actual dislodgement of the navigational reference catheter from the initial reference location based upon a direction of the perceived dislodgement of the navigational reference catheter from the initial reference location” also includes mere observation/evaluation that the catheter has moved in a direction and actually dislodged.

Thus, steps (1) and (2) of claim 2 recite mental processes. We discuss step (3) of claim 2 below. Our above analysis of steps (1) and (2) of claim 2 is consistent with the Examiner’s findings that claim 2 involves the mental processes of collecting data and data analysis. Ans. 10. Appellant does not argue that the detecting and confirming cannot be done mentally. *See* Appeal Br. 9–12.

Based on the forgoing, claim 2 fits squarely into the 2019 Eligibility Guidance’s subject-matter grouping of mental processes and therefore *recites* an abstract idea. We now proceed to Prong 2 to determine whether the claims are *directed to* the abstract idea.

Step 2A, Prong 2:

Is the judicial exception integrated into a practical application?

If a claim recites a judicial exception, then, in Prong 2, we determine whether the recited judicial exception is integrated into a practical application of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they integrate the exception into a practical application. *See* 2019 Eligibility Guidance at 54–55. This evaluation requires an additional element or a combination of additional elements in the claim to

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apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the exception. *See id.* at 54. If the *recited* judicial exception is not integrated into a practical application, the claim is *directed to* the judicial exception. *See* MPEP § 2106.05(a)–(c), (e)–(h).

We note the guidance indicates that in the context of *Prong 2* of Step 2A, an exemplary consideration indicative that an additional element (or combination of elements) may have integrated the exception into a practical application is that an additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field. *See* 2019 Eligibility Guidance at 55.

Here, claim 2 recites the additional elements “a navigational reference catheter in a non-ionization field,” and step (3) “generating a signal indicating the actual dislodgement of the navigational reference catheter.”

As an initial matter, we agree with the Examiner, and Appellant does not argue, that generating a signal as recited in step (3) is merely insignificant post-solution activity. Ans. 9.

We now turn our focus to Appellant’s arguments related to the additional element of “a navigational reference catheter in a non-ionization field.”

Appellant contends that the claims focus on an improvement to the catheter navigation system functionality “related to detecting if and when a reference catheter has dislodged from its initial reference location.” Appeal Br. 10 (citing *Enfish, LLC v. Microsoft*, 822 F. 3d 1327 (Fed. Cir. 2018));

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Reply Brief 4–5.⁶ Appellant further argues that the Examiner oversimplifies the claims, which recite specific hardware (a navigational reference catheter within a non-ionizing localization field) to achieve specific results. Appeal Br. 9 (citing *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)). Appellant explains that the recited hardware is not a mere tool in the claims, but that the claims focus on an improvement in the hardware itself. *Id.* at 11; *see also* Reply Br. 5 (a specific improvement in the capabilities of an electroanatomical mapping system).

We are not persuaded that claim 2 recites technological improvements. Rather, claimed steps (1) and (2) are mental steps in the particular field of use/technological environment, i.e., navigational reference catheters in non-ionizing localization fields. We are also not persuaded that the Examiner oversimplifies the claims, because no claimed hardware is recited, i.e., (the catheter) is merely a tool used “as a reference to acquire and analyze data,” and the claims do not recite any technical improvements to the catheter hardware itself. Ans. 12. Unlike the claims in *Enfish* and *McRO*, claim 2 does not recite any improvements in computer capabilities, specific rules or algorithms for a computer to achieve an improved technological result, or any other improvements to existing techniques in the field. Instead of claiming improvements, claim 2 broadly claims detecting and confirming catheter movement (i.e., by analyzing distance and direction), which can be done mentally during observation of a surgeon utilizing a catheter.

With the exception of generating the signal, which falls under insignificant post-solution activity as explained above, claim 2 can be

⁶ Reply Brief (“Reply Br.”), filed May 3, 2018.

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performed entirely in the human mind. As such, Appellant has not explained how claim 2 constitutes a technological improvement sufficient to integrate the judicial exception into a practical application.

Appellant also argues that the claims are directed towards a concept inextricably tied to computer technology and distinct from concepts found to be abstract. *Id.* at 11 (citing 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74,618 (Dec. 16, 2014)). We disagree, however, because claim 2 does not require a computer, as it reads on a person simply obtaining distance and a direction information about a moving catheter and evaluating that information to generate a signal.⁷ Moreover, courts have held similar concepts involving collecting and analyzing data, in a way that can be performed mentally, or is analogous to human mental work, fall within the realm of abstract ideas. *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (“we have treated analyzing information by steps people go through in their minds . . . without more, as essentially mental processes within the abstract-idea category”).

Appellant also argues that the claims as a whole do not seek to tie up the judicial exception such that others cannot practice it, because the claims require specific hardware and the analysis of specific criteria. Appeal Br. 11. Appellant states the claims are neither merely attempting to limit an abstract idea to a particular technological environment nor “a drafting effort designed to monopolize.” *Id.*

⁷ Unlike independent claim 2, independent claim 13 requires a computer processor. However, claim 13 merely invokes a computer in its conventional capacity as a tool for receiving and generating signals and analyzing data. Claim 13 does not recite any improvements to the underlying computer technology.

We are not persuaded. To the extent that Appellant argues preemption, this is unpersuasive because the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). “[Q]uestions on preemption are inherent in and resolved by the § 101 analysis” according to *Mayo* and *Alice*, which we applied here. *Id.* Furthermore, as discussed above, the claim 2’s recitation “navigational reference catheter” only limits the claims to a specific technological environment, and claim 2 does not require “analysis of specific criteria” in a way that distinguishes the claimed steps from basic mental processes. As written, claim 2 ties up the judicial exception in that it could read on a surgeon watching a catheter move in the body and saying “the catheter moved.”

Analogizing to *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), Appellant further argues that the claimed method solves a specific problem, in this case arising in electroanatomical mapping. Appeal Br. 11 (also citing *Messaging Gateway Sols., LLC v. Amdocs, Inc.*, 2015 U.S. Dist. LEXIS 49408 (D. Del. Apr. 15, 2015), *Cal. Inst. of Tech. v. Hughes Commc’ns, Inc.*, 59 F. Supp. 3d 974, 990 (C.D. Cal. Nov. 3, 2014), and *BASCOM Glob. Internet Servs. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)).

We are not persuaded. Although the Specification describes electroanatomical mapping (*see generally* Spec. ¶¶3–6, 30–79), the particular problem the claim addresses does not arise specifically in the realm of electroanatomical mapping. Ans. 10. In the present appeal, the claim solves the problem of confirming that a catheter moved relative a structure in the body, such as the heart. Catheter movement is a problem not

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limited to electroanatomical mapping but a problem for any medical procedure using a catheter. Notably, claim 2 does not recite any electronics, “mapping,” or any other reference to the hardware needed for electroanatomical mapping other than the reference navigation catheter. As pointed out by the Examiner, the reference navigation catheter is claimed broadly, i.e., no claimed hardware is recited, such that it reads on any conventional catheter known in the medical art. In addition, the Specification does not limit the invention to electroanatomical mapping. Spec. ¶31.

Appellant does not persuade us that any additional element or combination of additional elements recited in any of the claims improve computer functionality, technology and/or a technical field to the claimed invention, or otherwise integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Eligibility Guidance. We conclude, for the reasons outlined above, that the claims recite mental processes, i.e., an abstract idea, and that the additional elements recited in the claim are insignificant post-solution activity, do no more than generally link the abstract idea to a particular technological environment and use computers as tools to implement the abstract idea. Therefore, the additional elements do not integrate the abstract idea into a practical application. Accordingly, we are not persuaded that the Examiner erred in determining that the claims, as a whole, are *directed* to an abstract idea.

Guidance Step 2B: “Does the claim provide an inventive concept?”

Having determined that claim 2 is directed to an abstract idea, we turn to Step 2B. We evaluate whether claim 2 provides an inventive concept (i.e., whether the additional elements amount to significantly more than the exception itself). The Examiner determined the claims do not recite an

inventive concept, because the additional elements in the claims do not amount to “significantly more” than an abstract idea. Final Act. 4–5. We agree.

Under the 2019 Eligibility Guidance, we look to whether claim 2 recites any additional elements, individually or in combination, that are not “well-understood, routine, or conventional.” See MPEP § 2106.05(d). We are unable to identify any such additional elements.

Claim 2’s only additional elements are the “navigational reference catheter” and step (3) generating a signal. According to the Examiner, the additional elements/steps are also routine and conventional without any improvements. Final Act. 5. The Examiner states that “[t]he navigational reference catheter is described at a high level of generality and is no more than a generic reference catheter which is conventional in the technological field.” Ans. 10; *id.* at 12. Appellant argues that the Examiner’s conclusion is not supported by evidence. Reply Br. 5–6 (citing *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018)).

Turning to the Specification, it does not provide technical details regarding the navigational reference catheter, but rather states in its “Background Art” section:

It is well known to generate heart chamber geometry Often, a mapping catheter tip is placed within the heart chamber It is desirable for the three-dimensional coordinate system relative to which the geometry points are measured to have a stable reference point or origin. This stable reference point or origin is referred to herein as a “navigational reference” for the localization system. While any stable position will suffice, it is desirable for many reasons to utilize a navigational reference that is proximate to the mapping catheter. Thus, a catheter-mounted reference localization element is often inserted into the heart and positioned in a fixed location It is known, however, that the

navigational reference may become dislodged. For example, the mapping catheter may collide or become entangled with the catheter carrying the navigational reference (referred to herein as the “reference catheter”), or the practitioner moving the mapping catheter may inadvertently jostle the reference catheter. The navigational reference may also be dislodged by patient movement. Other factors, such as patient hydration and respiration, may make it appear as if the navigational reference has become dislodged when, in fact, it has not become dislodged.

Spec. ¶¶ 3–5

Thus, the Specification only describes the navigational reference catheter at a high level of generality and confirms that the claimed steps can be performed by generic components.

Similarly, the Specification describes the manner of generating a signal at a high level of generality and without technical detail. According to the Specification, the generating a signal step includes a signal generator 25 coupled to a computer 20 generating “a suitable signal (*e.g.*, an audible signal, a visible signal, or a combination thereof).” Spec. ¶¶ 41, 64.

Thus, the Specification is intrinsic evidence that the claimed “navigational reference catheter” and the generating a signal step (3) are well-understood, routine, or conventional, and therefore, they do not amount to significantly more than an abstract idea. Rather, claim 2 simply appends well-understood, routine, conventional components previously known to the industry, specified at a high level of generality, to the claimed abstract idea. We fail to see how combining the additional elements (navigational reference catheter with the generating a signal step) would make the combination unconventional.

Regarding Appellant’s argument that the Examiner fails to consider the claims “as a whole,” arguing that the combination is unconventional, we are not persuaded. Appeal Br. 12.

As discussed above, the Examiner addresses each individual element of claim 2 and analyzes the claim as a whole. Final Act. 4–5; Ans. 9–10, 12. Further, as shown above, the combination of additional elements are conventional.

In view of the foregoing, we are not persuaded the Examiner erred in determining the additional elements in claim 2, including in combination, do not amount to significantly more than the judicial exception itself. Final Act. 4–5. Considering the claim limitations as an ordered combination adds nothing to the abstract idea that is not already present when the limitations are considered separately. *See Mayo*, 566 U.S. at 79. The ordered combination of limitations amounts to nothing more than certain mental processes implemented with generic components that operate “in a conventional way.” *See* Ans. 10, 12; *see also Alice*, 573 U.S. at 225–26. Accordingly, we conclude the Examiner did not err in determining claim 2 does not provide an inventive concept.

Conclusion – Patent Eligibility

For the reasons set forth above, after applying the 2019 Eligibility Guidance, we sustain the Examiner’s decision to reject claims 2–16 under 35 U.S.C. § 101.

2. Anticipation by Hauck

Appellant does not offer arguments in favor of dependent claims 3 and 11–13 separate from those presented for independent claim 2. *See* Appeal Br. 12–13. We select claim 2 as the representative claim, and claims 3 and 11–13 stand or fall with claim 2. 37 C.F.R. § 41.37(c)(1)(iv).

Appellant argues that Hauck does not disclose claim 2’s step of “confirming that the perceived dislodgement of the navigational reference catheter from the initial reference location is an actual dislodgement of the

navigational reference catheter from the initial reference location *based upon a direction of the perceived dislodgement* of the navigational reference from the initial reference location” (emphasis added), and the similarly recited step in claim 13. Appeal Br. 13. Appellant argues that Hauck at most confirms actual dislodgement *based upon magnitude* of the perceived distance moved. *Id.*

We are not persuaded. As correctly pointed out by the Examiner (Ans. 13), Hauck confirms actual dislodgement using a displacement vector, which includes both magnitude and direction. Thus, according to the broadest reasonable interpretation, consistent with the specification, Hauck confirms actual dislodgement “based upon a direction of the perceived dislodgement.” As the Examiner further correctly points out, the claim does not provide specifics as to how the direction information is used/analyzed to confirm actual dislodgement, only that the confirmation is “based upon” that information. Final Act. 11. As such, we are not persuaded that Hauck’s method of employing the displacement vector does not read on claim 2’s recitation, under its broadest reasonable construction.⁸

In summary, and based on the record presented, we are not persuaded the Examiner erred in rejecting claim 2 as anticipated by Hauck. Accordingly, we sustain the Examiner’s rejection of claim 2. We further

⁸ Regarding Appellant’s argument with respect to *Ex parte* Koyrakh, Appeal No. 2014-007443 (*see* Appeal Br. 13), we do not find our result here inconsistent with that case, which involved different claim language (“analyzing a direction . . . to determine whether there has been a dislodgement”) and different prior art (Koh US 2010/0152801, published June 17, 2010) applied in an obviousness rejection, resulting in a different analysis in that Decision.

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sustain the Examiner’s rejection of claims 3 and 11–13, which fall with claim 2.

3. Obviousness over Hauck and Koh

Appellant does not offer arguments in favor of dependent claim 4 separate from those presented for independent claim 2. Appeal Br. 14. As we find no deficiencies in the Examiner’s rejection of claim 2 as anticipated by Hauck, we likewise sustain the Examiner rejection of claim 4 as unpatentable over Hauck and Koh.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
2–16		Nonstatutory Double Patenting ⁹	2–16	
2–16	101	Eligibility	2–16	
2, 3, 11–13	102(b)	Hauck	2, 3, 11–13	
4	103(a)	Hauck, Koh	4	
Overall Outcome			2–16	

⁹ As indicated above in footnote 4, the nonstatutory double patenting rejection is summarily affirmed.

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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