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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEFAN SCHÄTZL

Appeal 2018-008002
Application 12/801,141
Technology Center 3700

Before JOHN C. KERINS, STEFAN STAICOVICI, and
JEREMY M. PLENZLER, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ seeks our review under 35 U.S.C. § 134(a) of the Examiner's Decision rejecting claims 11–17, 19–22, 24, 26–36, 38–41, 43, 45–48, and 53–60. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ The term “Appellant” is used herein to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies RESMED R&D GERMANY GMBH as the real party in interest. Appeal Br. 3.

CLAIMED SUBJECT MATTER

Claims 11, 24, 30, and 43 are independent. Claim 11 is illustrative, and is reproduced below:

11. An apparatus for identifying different indications of a patient, the apparatus comprising:

a sensor configured to sense a parameter of a patient's breathing and generate a signal based on the sensed parameter;

a first A/D converter in communication with the sensor via a first channel and the first A/D converter configured to generate a flow channel signal based on the signal from the sensor;

a second A/D converter in communication with the sensor via a second channel and the second A/D converter configured to generate a snore channel signal based on the signal from the sensor;

a processor in communication with the first A/D converter and the second A/D converter and said processor configured to process the flow channel signal and/or the snore channel signal to calculate at least two from the group consisting of:

a snoring index based on the flow channel signal from the first A/D converter and the snore channel signal from the second A/D converter, the snoring index being calculated by comparing a number of snoring events to a preset internal time base or threshold with a timer or a counter,

an apnea/hypopnea index (AHI) based on a start and/or a stop of an apnea, hypopnea, and/or hyperventilation that is based on an envelope of the flow channel signal from the first A/D converter, and

a periodic breathing index comprising:

a periodicity index based on an average hypopnea length, an average hypopnea pause, and/or a hyperventilation length, and/or

a Cheyne Stokes (CS) index based on the envelope of the flow channel signal from the first A/D converter; and

a display in communication with the processor, said display configured to display results of calculating at least two of the group consisting of: the snoring index, the AHI, and the periodic breathing index.

REJECTIONS

The Examiner rejects:

(i) claims 11–17, 19–22, 24, 26–36, 38–41, 43, 45–48, and 53–60 under 35 U.S.C. § 101, as being directed to ineligible subject matter;

(ii) claims 11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, and 59 under 35 U.S.C. § 103(a) as being unpatentable over Stasz (US 6,702,755 B1, issued Mar. 9, 2004) in view of Hadas (US 6,368,287 B1, issued Apr. 9, 2002), Berthon-Jones (US 5,704,345, issued Jan. 6, 1998), Sullivan (US 5,245,995, issued Sept. 21, 1993), Kitajima (US 2007/0118028 A1, published May 24, 2007), Sierra (US 2007/0282212 A1, published Dec. 6, 2007), and Krausman (US 2006/0212273 A1, published Sept. 21, 2006);

(iii) claims 12, 13, 31, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Griebel (US 4,982,738, issued Jan. 8, 1991);

(iv) claims 19–21 and 38–40 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Axe (US 5,203,343, issued Apr. 20, 1993);

(v) claims 24, 27–29, 43, 46–48, 54, 56, 58, and 60 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Griebel; and

(vi) claims 26 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, Griebel, and Axe.

OPINION

Claims 11–17, 19–22, 24, 26–36, 38–41, 43, 45–48 and 53–60--§ 101

Appellant argues that the Examiner’s rejection of all pending claims under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. Appeal Br. 12–23; Reply Br. 1–5. Appellant does not present separate arguments directed specifically to any individual claims, but references independent claim 11 in several instances. We take claim 11 as representative of the group, and the remaining claims stand or fall with claim 11.

We address the rejection by applying the USPTO’s Revised Guidance, informed by our governing case law concerning 35 U.S.C. § 101.

PRINCIPLES OF LAW

A. 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-part framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). 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 (1854))); 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.* (citation omitted) (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 (internal quotation marks 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.*

B. USPTO Section 101 Guidance

In January 2019, the U.S. Patent and Trademark Office (USPTO) published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).² “All USPTO personnel are, as a matter of

² In response to received public comments, the Office issued further guidance on October 17, 2019, clarifying the 2019 Revised Guidance. USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October

internal agency management, expected to follow the guidance.” *Id.* at 51; *see also* October 2019 Update at 1.

Under the 2019 Revised Guidance and the October 2019 Update, 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) (“Step 2A, Prong One”); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP §§ 2106.05(a)–(c), (e)–(h) (9th ed. Rev. 08.2017, Jan. 2018)) (“Step 2A, Prong Two”).³

2019 Revised Guidance, 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, under Step 2B, 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

2019 Update”) (available at https://www.uspto.gov/sites/default/files/documents/peg_oct_2019_update.pdf).

³ This evaluation is performed by (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception, and (b) evaluating those additional elements individually and in combination to determine whether the claim as a whole integrates the exception into a practical application. *See* 2019 Revised Guidance — Section III(A)(2), 84 Fed. Reg. 54–55.

(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 Revised Guidance, 84 Fed. Reg. at 52–56.

C. ANALYSIS

Step 1 – Statutory Category

Claim 11, as an apparatus, is a machine or manufacture, and thus recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. Therefore, the issue before us is whether claim 11 is directed to a judicial exception without significantly more.

Step 2A(i): Does the Claim Recite a Judicial Exception?

The Examiner determined that claim 11 is directed to calculating indices for snoring, apnea/hypopnea, periodic breathing, and/or Cheyne Stokes (CS), which the Examiner determines to be mathematical algorithms using mathematical relationships and equations. Final Act. 2. The 2019 Revised Guidance instructs that mathematical concepts are a form of abstract idea, which is one of the categories of judicial exceptions. 2019 Revised Guidance 84 Fed. Reg. at 52. Appellant acknowledges that the claims on appeal, including claim 11, utilize mathematical concepts. Appeal Br. 15. Therefore, claim 11 recites a judicial exception in the form of an abstract idea.

Appellant argues that the claims on appeal, including claim 11, “do not merely limit mathematical relationship and equations to a particular technological environment nor are they merely accompanied by ‘insignificant post-solution activity.’” Appeal Br. 14–15. Appellant

maintains that the claimed “mathematical concepts are implemented and applied in a specific structure and/or process,” and that claim 11 “includes a specific operational arrangement of a sensor, a first A/D converter, a second A/D converter, and a processor configure[d] to process flow channel signal and/or the snore channel signal to calculate specific values.” *Id.* at 15.

Appellant does not, however, argue that claim 11 does not recite an abstract idea in some form. Appellant’s above arguments are more in the nature of asserting that, even though the claims involve an abstract idea, other limitations are present that are directed to a non-conventional application of that abstract idea. We thus find that the claims recite a judicial exception in the form of an abstract idea. Appellant’s arguments are more appropriately addressed under the second prong of Step 2A, below.

Step 2A(ii): Judicial Exception Integrated into a Practical Application?

Since claim 11 recites a judicial exception, as we conclude above, we proceed to the “practical application” inquiry in *Step 2A(ii)*, in which 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. In other words, we evaluate claim 11 to determine whether it not only recites a judicial exception, but also whether it is *directed to* that judicial exception, or, alternatively, is directed to some technological implementation or application of, the judicial exception.

Appellant argues, as noted above, that claim 11 “includes a specific operational arrangement of a sensor, a first A/D converter, a second A/D

converter, and a processor configure[d] to process flow channel signal and/or the snore channel signal to calculate specific values.” Appeal Br. 15; Reply Br. 2. Appellant states that “the claimed features provide for an apparatus which is simple enough to fit into a low cost processor but still reliable and good enough to have sufficient sensitivity and specificity required for a screening device.” *Id.*

In addition to, as well as aside from, the provision of a generically-recited processor to calculate a snoring index, an AHI, and a periodic breathing index, claim 11 includes a broad recitation of a sensor that is capable of sensing an unspecified breathing parameter of a patient, two A/D converters, and a display for displaying the results of the calculation(s). *See* claim 11, *supra*. This collection of data, processing of the data, and effectuating a display of results from the processing, is quite similar to the concepts of “selecting certain information, analyzing it using mathematical techniques, and reporting or displaying the results of the analysis,” that were at issue and found to be patent-ineligible in *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018).

Appellant argues that other Federal Circuit case law compels a different result, i.e., that claim 11 is patent-eligible. Appeal Br. 15–18. Appellant first cites to *Thales Visionix Inc. v. United States*,⁴ in which the court held that claims directed to “systems and methods that use inertial sensors in a non-conventional manner to reduce errors in measuring the relative position and orientation of a moving object on a moving reference frame” were patent-eligible. Appeal Br. 15. Appellant attempts to liken the claims on appeal to those in *Thales*, contending that claim 11 on appeal is

⁴ 850 F.3d 1343 (Fed. Cir. 2017).

not merely directed to mathematical equations, and repeats the argument regarding the recitation in the claims of specific apparatuses and methods, and a specific operational arrangement of the structural components. *Id.* at 16.

The argument is not persuasive. In *Thales*, the claims involved positioning inertial sensors in different specific locations relative to an object and a moving reference frame, and then based on signals received from the sensors, determining an orientation of the object relative to the moving reference frame. *Thales*, 850 F.3d at 1345–46 (reproducing claim 22). The court found that this involved, and was directed to, the use of “inertial sensors in a non-conventional manner” to reduce measurement errors. *Id.* at 1348–49. Appellant’s Specification evidences that the sensor invoked by claim 11, and the manner in which it is used, are purely conventional, in that the disclosure is highly generalized to the point that the sensor is not even shown in the accompanying drawings. Spec. 5:2–5. The description entails a generic recitation that the sensor may be “a pressure sensor, a differential pressure sensor, and or a flow sensor,” and is devoid of any suggestion that there is anything non-conventional about the sensor or its use in “sensing signals indicative of a patient’s breathing.” *Id.* We thus view *Thales*, if anything, as distinguishing between the claims on appeal therein (non-conventional use of sensors, patent-eligible) and the type of claim presented in this appeal (conventional use of sensors, patent-ineligible).

Appellant additionally attempts to liken the claims here on appeal to the situation presented in *Finjan, Inc. v. Blue Coat Systems, Inc.*⁵ Appellant

⁵ 879 F.3d 1299 (Fed. Cir. 2018).

points out that *Finjan* cites to *Enfish*,⁶ as distinguishing between patent-eligible claims which focus on a “specific asserted improvement in computer capabilities,” from patent-ineligible claims that focus on “a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” Appeal Br. 18, citing *Finjan*, 879 F.3d at 1303.

Appellant asserts that the claims on appeal “are specifically directed to an improvement in ‘computer functionality’ and not on ‘economic or other tasks’ for which a computer is used in its ordinary capacity.” *Id.* Appellant argues, without pointing to evidence in support, that its “technology relates to a system that can, among other aspects, *provide reduced processing requirements.*” *Id.* (emphasis added). Appellant again notes that claim 11 recites “a specific operational arrangement of a sensor, a first A/D converter, a second A/D converter, and a processor.” *Id.* However, this operational arrangement is nothing more than having a breathing property sensor at a position where the breathing property may be sensed, outputting analog signals to A/D converters to convert the signals to digital ones, such that the processor can recognize and process the signals in order to generate the claimed indices. No part of this system evidences any reduction in processing requirements.

We conclude that claim 11 is directed to achieving the result of obtaining various indices related to a patient’s breathing patterns, via processing, using certain mathematical relationships and data gathered from the patient, and displaying results. This amounts to the recitation of applying mathematical relationships to data acquired in a conventional

⁶ *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

manner. Claim 11 does not integrate the judicial exception into a practical application.

Step 2B – “Inventive Concept”/“Significantly More”?

The next aspect of the inquiry is whether claim 11 provides an inventive concept because the additional elements beyond the recited judicial exception provide significantly more than that judicial exception.

Appellant reiterates the belief that the “specific operational arrangement of a sensor, a first A/D converter, a second A/D converter, and a processor” provide significantly more than the recited abstract idea. Appeal Br. 19. Appellant criticizes the Examiner’s findings that the recited elements are conventional and routine in the art, and argues that the findings lack the evidentiary support required by *Berkheimer*.⁷ *Id.* at 20. Appellant argues that the Examiner’s analysis falls short of the analysis performed in *Bascom*⁸ because it fails to consider the combination of elements set forth in claim 11. Appeal Br. 22. Appellant, in this regard, points to the inclusion in claim 11 of first and second A/D converters receiving data from a sensor and being configured to generate specific signals. *Id.* Appellant avers that, even if the elements recited in the claims are considered to be conventional, the specific arrangement and operation of the components is non-conventional and non-generic, for the reasons set forth in arguments directed to the prior art rejections on appeal. *Id.* Although Appellant, for the most part, simply reiterates the limitations set forth in claim 11, it appears that Appellant wishes to emphasize the lack of disclosure of a second A/D converter in the

⁷ *Berkheimer v. HP Inc.*, 890 F.3d 1369 (Fed. Cir. 2018).

⁸ *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

evidence relied on by the Examiner as being indicative of error. Reply Br. 4 (“Because the Examiner merely shows a conventional A/D converter connected to a processor . . . all claimed limitations of claim 11 were clearly not considered.”).

We are of the opinion that, in both the Final Action and the Answer, the Examiner has adequately analyzed claim 11, taking the elements of claim 11 separately, and considered collectively, to determine whether claim 11 provides significantly more than the judicial exception set forth in the claim. That the Examiner has not pointed to evidence of the use of both first and second A/D converters does not change our opinion. The use of two conventional A/D converters in a conventional manner, as in claim 11, is simply in furtherance of obtaining or collecting the necessary data as to a patient’s breathing in order to provide the ability to generate the various indices recited in claim 11 that are defined by mathematical relationships or abstract ideas. “It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.” *Berkheimer*, 890 F.3d at 1374 (Moore, J., concurring).

Appellant additionally argues that claim 11 does not preempt the judicial exception. Appeal Br. 22–23. However, as our reviewing court has explained, “the principle of preemption is the basis for the judicial exceptions to patentability,” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 216). Although “preemption may signal patent ineligible subject

matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.* Moreover, “[w]here a patent’s claims are deemed only to disclose patent ineligible subject matter under the [*Alice/Mayo*] framework . . . , preemption concerns are fully addressed and made moot.” *Id.*; *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”). Appellant’s argument as to absence of preemption does not apprise us of error in the rejection.

Therefore, analysis of claim 11, as a whole, with its limitations considered both individually and as ordered combination, confirms the Examiner’s conclusion that the claim is directed to an abstract idea without significantly more.

Conclusion

The rejection of independent claim 11 is sustained. Claims 12–17, 19–22, 24, 26–36, 38–41, 43, 45–48, and 53–60 fall with claim 11.

*Claims 11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, and 59--§ 103(a)--
Stasz/Hadas/Berthon-Jones/Sullivan/Kitajima/Sierra/Krausman*

The Examiner does not find, in the combined teachings of these references, a first A/D converter in communication with a sensor via a first channel and configured to generate a flow channel signal, together with a second A/D converter in communication with the same sensor via a second channel and configured to generate a snore channel signal. Final Act. 5–12. The Examiner instead concludes that, in combining the Hadas A/D converter with Stasz, “constructing a formerly integral structure in various elements (A/D converter to A/D converters) involves only routine skill in the art, and

since it has been held that mere duplication of the essential working parts of a device (A/D converter to A/D converters) involves only routine skill in the art.” Ans. 11.

Appellant is correct that the provision of two A/D converters, where previously only one was present, is not modifying a previously integral structure into a structure having more than one component. Reply Br. 7 (“the Examiner is attempting to duplicate instead of separating a single component into two components”).

The Examiner’s proposed provision of first and second A/D converters in order to meet the limitations of claim 11 and the other independent claims is also not seen as a mere duplication of parts having no patentable significance. As noted by Appellant, “[t]he arrangements and results provided by the first A/D converter and the second A/D converter[] are not the same in the quoted claim language.” Reply Br. 7–8. In other words, a mere duplication would result in two elements performing the same function, whereas, in claim 11, the first and second A/D converters perform different functions.

As such, the Examiner’s proposed modification to provide first and second A/D converters as claimed is not supported by relevant case law, and lacks rational underpinnings in the record. The rejection of claims 11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, and 59 under 35 U.S.C. § 103(a) as being unpatentable over Stasz, Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, and Krausman is not sustained.

Claims 12, 13, 31, and 32--§ 103(a)--Stasz/Hadas/Berthon-Jones/Sullivan/Kitajima/Sierra/Krausman/Griebel

Claims 19–21 and 38–40--§ 103(a)--Stasz/Hadas/Berthon-Jones/Sullivan/Kitajima/Sierra/Krausman/Axe

Claims 24, 27–29, 43, 46–48, 54, 56, 58, 60--§ 103(a)--Stasz/Hadas/Berthon-Jones/Sullivan/Kitajima/Sierra/Krausman/Griebel

Claims 26 and 45--§ 103(a)--Stasz/Hadas/Berthon-Jones/Sullivan/Kitajima/Sierra/Krausman/Griebel/Axe

These rejections suffer from the same deficiencies noted in the previous section, and the rejections are not sustained.

DECISION

The rejection of claims 11–17, 19–22, 24, 26–36, 38–41, 43, 45–48 and 53–60 under 35 U.S.C. § 101, as being directed to ineligible subject matter, is affirmed.

The rejection of claims 11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, and 59 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, and Krausman is reversed.

The rejection of claims 12, 13, 31, and 32 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Griebel is reversed.

The rejection of claims 19–21 and 38–40 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Axe is reversed.

The rejection of claims 24, 27–29, 43, 46–48, 54, 56, 58, and 60 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, and Griebel is reversed.

The rejection of claims 26 and 45 under 35 U.S.C. § 103(a) as being unpatentable over Stasz in view of Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, Griebel, and Axe is reversed.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
11–17, 19–22, 24, 26–36, 38–41, 43, 45–48, 53–60	101	Eligibility	11–17, 19–22, 24, 26–36, 38–41, 43, 45–48, 53–60	
11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, 59	103(a)	Stasz, Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman		11, 14–17, 22, 30, 33–36, 41, 53, 55, 57, 59
12, 13, 31, 32	103(a)	Stasz, Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman		12, 13, 31, 32
19–21, 38–40	103(a)	Stasz, Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, Axe		19–21, 38–40
24, 27–29, 43, 46–48, 54, 56, 58, 60	103(a)	Stasz, Hadas, Berthon-Jones, Sullivan, Kitajima, Sierra, Krausman, Griebel		24, 27–29, 43, 46–48, 54, 56, 58, 60
26, 45	103(a)	Stasz, Hadas, Berthon-Jones,		26, 45

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
		Sullivan, Kitajima, Sierra, Krausman, Griebel, Axe		
Overall Outcome			11–17, 19–22, 24, 26–36, 38–41, 43, 45–48, 53–60	

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

AFFIRMED