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HUNTLEY, MICHAEL J	

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GARY A. DAGE and MICHAEL T. SPENCER

Appeal 2018-008045
Application 13/735,136
Technology Center 2100

Before CAROLYN D. THOMAS, JOSEPH P. LENTIVECH, and SCOTT RAEVSKY, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the Examiner's decision to reject claims 1, 5–7, 9, 12–14, and 21–30. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

[1] We use the word "Appellant" to refer to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Ford Global Technologies, LLC. Appeal Br. 1.

The present invention relates generally to a climate control system that includes adjusting a blower speed. *See* Abstr.

Independent claim 1, reproduced below, is representative of the appealed claims:

> 1. A computer-implemented method comprising:
> initiating a blower at a locally stored default speed, the speed determined responsive to at least one determined environmental variable value;
> receiving input changing a blower speed of the initiated blower;
> responsive to the user input, querying a user as to whether the changed blower speed should be a new default speed; and
> responsive to user confirmation of the query, replacing a locally stored default speed, stored in association with the environmental variable value, with a new speed corresponding to the changed blower speed.

Appellant appeals the following rejections:

R1. Claims 21 and 28–30 are rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2–4.

R2. Claims 1, 9, 21, 22, 24, 25, 27, 28, and 30 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Obradovich (US 6,131,060; iss. Oct. 10, 2000) and Jensen (US 2012/0078420 A1; publ. Mar. 29, 2012). Final Act. 5–10.

R3. Claims 5–7 and 12–14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Obradovich, Jensen, Nakamura (US 2008/0229768 A1; publ. Sept. 25, 2008), and Ichishi (US 7,346,440 B2; iss. Mar. 18, 2008). Final Act. 10–16.

R4. Claims 23, 26, and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Obradovich, Jensen, and Klapp (US 2002/0002833

A1; publ. Jan. 10, 2002). Final Act. 16–17.

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 101

The Examiner rejected claims 21 and 28–30 under 35 U.S.C. § 101 as directed to the abstract idea of "An Idea of Itself." Final Act. 2. In response, Appellant presented numerous argument rebutting the § 101 rejection. *See* Appeal Br. 5–8. In view of Appellant's arguments in the Appeal Brief, as well as recent court decisions, the Examiner determined that the "blower engaged at a default setting that corresponds, based on a predefined association, to a determined environmental variable value" qualifies as "significantly more" in light of *Berkheimer*. *See* Ans. 4; *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("[w]hether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.").

As a result, the Examiner withdrew the rejection of claims 21 and 28–30 under 35 U.S.C. § 101. Ans. 4.

Rejections under § 103(a)

Appellant contends that "under no conceivable circumstance [in Jensen] would the system 'replac[e] a locally stored default speed, stored in association with the environmental variable value, with a new speed corresponding to the changed blower speed.' . . . [It] would defeat the

express purpose of the invention, which is to achieve noise reduction." Appeal Br. 9. Appellant emphasizes that "the replacement of the default speed, is not appropriate to the teachings of Jensen." *Id.*

However, the Examiner points out, and we agree, that "[i]t is noteworthy that Jensen is only relied upon in the claim rejections to teach limitations that involve an association of fan speed with environmental conditions" (Ans. 5), not for teaching receiving input changing a blower speed and replacing a locally stored default speed. Instead, the Examiner relies upon Obradovich to teach and/or suggest changing a speed and replacing a stored default speed. *See* Final Act. 6. Here, Appellant fails to specifically rebut the findings in Obradovich. *See* Appeal Br. 8–9.

Furthermore, Appellant concedes that Jensen teaches an association of fan speed with environmental conditions. *See* Appeal Br. 8 ("in paragraphs [0039] and [0040] Jensen teaches that while fans may be operated based on detected temperatures . . ."). However, Appellant fails to sufficiently rebut the combination of Jensen and Obradovich.

Therefore, Appellant's arguments against Jensen separately from Obradovich does not persuasively rebut the combination made by the Examiner. One cannot show non-obviousness by attacking references individually, where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425–26 (CCPA 1981).

Specifically, Appellant's arguments do not take into account what the collective teachings of the prior art would have suggested to one of ordinary skill in the art and is therefore ineffective to rebut the Examiner's prima facie case of obviousness. *See In re Keller*, 642 F.2d at 425 ("The test for

obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.") (citations omitted). This reasoning is applicable here.

Accordingly, we sustain the Examiner's rejection of claim 1. Appellant's arguments regarding the Examiner's rejection of independent claims 9 and 21 rely on the same arguments as for claim 1, and Appellant does not argue separate patentability for the dependent claims. *See* App. Br. 8–10. We, therefore, also sustain the Examiner's rejections of claims 5–7, 9, 12–14, and 21–30.

CONCLUSION

In summary:

Claims Rejected	**35 U.S.C. §**	**Reference(s)/Basis**	**Affirmed**	**Reversed**
1, 9, 21, 22, 24, 25, 27, 28, 30	103	Obradovich, Jensen	1, 9, 21, 22, 24, 25, 27, 28, 30	
5–7, 12–14	103	Obradovich, Jensen, Nakamura, Ichishi	5–7, 12–14	
23, 26, 29	103	Obradovich, Jensen, Klapp	23, 26, 29	
Overall Outcome			1, 5–7, 9, 12–14, 21–30	

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

AFFIRMED