UNITED STATES PATENT AND TRADEMARK OFFICE

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14/381,617	08/28/2014	Christoph Luckhardt	AEG-53152	5984

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EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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Ex parte CHRISTOPH LUCKHARDT
_____

Appeal 2019-000681
Application 14/381,617
Technology Center 1700

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Before BRADLEY R. GARRIS, CATHERINE Q. TIMM, and
BRIAN D. RANGE, *Administrative Patent Judges*.

RANGE, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Pursuant to 35 U.S.C. § 134(a), Appellant[1] appeals from the
Examiner's decision to reject claims 1–11 and 16. We have jurisdiction
under 35 U.S.C. § 6(b).

We AFFIRM.

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[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 Electrolux
Home Products Corporation N.V. Appeal Br. 2. (The Appeal Brief does not
include page numbering. The numbering herein reflects pages considered
consecutively from the cover page through the Claims Appendix.)

STATEMENT OF THE CASE[2]

Appellant describes the invention as relating to an appliance for processing food, such as an oven. Spec. 1:5–7. In particular, the Specification explains that images of food captured from within an oven may be used to determine control of an automatic cooking process. *Id.* at 1:9–14. Claim 1 is illustrative of the subject matter on appeal and is reproduced below with certain limitations bolded for emphasis:

> 1.   A method of operating an appliance for processing food, wherein the appliance comprises a chamber adapted to accommodate and process at least one food item, wherein the method comprises steps of:
>   a)   capturing at least one image of the at least one food item placed or to be placed into the chamber;
>   b)   extracting a set of characteristic features of at least one of the at least one food item from the captured image;
>   c)   **comparing the set of characteristic features with at least one existing dataset stored in a feature database;**
>   d)   suggesting, based on the comparison, at least one food category to at least one of the at least one food item;
>   e)   assigning at least one final food category based on a user input in which the user is requested to affirm or correct the food category suggested;
>   f)   **generating and storing an additional new dataset comprising the extracted set of features linked to the assigned food category in the feature database, if at least one of the following situations applies**:
>   i.   after the comparison, the extracted set of characteristic features is found to be not contained in the database;

> ii. after the comparison, the extracted set of
> characteristic features is found to differ from a dataset
> stored in the database by a predefined amount; and
> iii. the assigned food category differs from the food
> category suggested; and
> g) executing a food processing program assigned to
> the extracted set of characteristic features and assigned food
> category, wherein the assigned food category is from a
> predefined set of food categories.

Appeal Br. 12 (Claims App.).

REFERENCES

The Examiner relies upon the prior art below in rejecting the claims

on appeal:

Russell et al. ("Russell")	US 2005/0114377 A1	May 26, 2005
Lee	US 2005/0247695 A1	Nov. 10, 2005
Hiraishi	JP 02122119 (A)	May 9, 1990

REJECTIONS

The following rejections are before us on appeal:

Rejection 1. Claims 1–10 and 16 under 35 U.S.C. § 103 as

unpatentable over Hiraishi in view of Russell. Final Act. 2.

Rejection 2. Claim 11 under 35 U.S.C. § 103 as unpatentable over

Hiraishi in view of Lee and Russell. *Id.* at 4.

ANALYSIS

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),

cited with approval in In re Jung, 637 F.3d 1356, 1365 (Fed. Cir. 2011) ("[I]t has long been the Board's practice to require an applicant to identify the alleged error in the examiner's rejections."). After considering the evidence presented in this Appeal and each of Appellant's arguments, we are not persuaded that Appellant identifies reversible error. Thus, we affirm the Examiner's rejections for the reasons expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

Appellant argues all rejections and all claims as a group. *See* Appeal Br. 6–9. Therefore, consistent with the provisions of 37 C.F.R. § 41.37(c)(1)(iv) (2013), we limit our discussion to claim 1, and all other claims on appeal stand or fall together with claim 1.

The Examiner finds that Hiraishi teaches a control process where an image of a substance to be cooked is photographed, compared to patterns, and a most similar pattern is displayed. Final Act. 3 (citing Hiraishi). The Examiner finds that Hiraishi further teaches that the user can confirm the contents of the display (confirming it as being the correct food to cook) and cooking is started. *Id.*

The Examiner finds that Hiraishi fails to teach, for example, "comparing a set with an existing set stored in a [database]." *Id.* The Examiner finds that Russell teaches, for example, such a comparison. *Id.* at 3–4 (citing Russell ¶¶ 30–35). The Examiner determines that "[i]t would have been obvious to modify the stored image as taught by Russell (as applied to food and food categories as taught by Hiraishi) and suggest and generate new data sets since this would help improve the cooking process in an automated fashion." *Id.* at 4.

Appellant argues that the cited references do not teach comparing input data to additional data sets. Appeal Br. 6–7. In particular, Appellant argues that Russell teaches comparing output data to create an optimized set of algorithms whereas claim 1 requires comparing characteristic features extracted from a food item placed in a cooking appliance to characteristic features in a database. *Id.* Appellant's argument is unpersuasive because the Examiner's finding that Russell teaches comparing data with data stored in a database is supported by a preponderance of the evidence. Final Act. 3–4. Contrary to Appellant's argument that Examiner's finding lacks support (Reply Br. 2), the Examiner cites paragraphs 30–35 of Russell. Those paragraphs of Russell teach, for example, that "sample data **50** can be provided to dataset system **32** (**FIG. 1**) which can obtain a plurality of datasets that include sample data **50**." Russell ¶ 31. Obtaining a dataset that includes the sample data requires a comparison. Appellant's arguments do not persuasively dispute the Examiner's finding regarding Russell and do not adequately explain why Russell does not teach a comparison.

To the extent Appellant argues that Russell lacks comparing data to features of a defined food category in a database, the argument is unpersuasive because it does not address the combined teachings of the references as the Examiner presents. "Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references." *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Examiner does not rely on Russell for teachings relating to food preparation. Ans. 3. Rather, Hiraishi teaches comparing an image of food to be cooked "with a plurality of prestored substance-to-be-cooked patterns" (Hiraishi Abstract), and the Examiner

relies on Russell as teaching a comparison of a dataset to data in a database. Final Act. 3–4; Ans. 3. Appellant does not persuasively dispute the Examiner's findings regarding Russell and does not persuasively dispute the Examiner's rationale for combining teachings of Russell with the Hiraishi process.

Appellant also argues that the cited art does not teach "generating and storing an additional new dataset . . . if at least one of the following situations applies" (claim 1) or "generating and storing an additional new dataset . . . if the assigned food category differs from the food category suggested" (claim 16). Claims 1 and 16 are both method claims, and the claims only require that the "generating and storing" step be performed if a recited condition precedent is met. When the condition is not met, the step does not have to be performed. *See Ex parte Schulhauser*, Appeal No. 2013-007847, 2016 WL 6277792 (PTAB April 28, 2016) (precedential) (holding that, given claim language at issue requiring condition precedent, certain recitations need not be performed if condition precedent is not met). Because the Hiraishi/Russell combination, at a minimum, teaches or suggests the recited steps in a scenario where the food matches a food in the database (i.e., when the recited condition precedent is not met), Appellant's argument regarding these conditional recitations does not identify harmful error.

Because Appellant's arguments do not identify harmful error in the Examiner's rejections, we sustain the rejections.

DECISION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–10, 16	103	Hiraishi, Russell	1–10, 16	
11	103	Hiraishi, Lee, Russell	11	
Overall Outcome			1–11, 16	

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

AFFIRMED