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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GRAHAM ARTHUR MCELHINNEY,
GARY WILLIAM UTTECHT, ERIC WRIGHT, and
JOHN LIONEL WESTON

Appeal 2019-002717
Application 14/301,123
Technology Center 2800

Before JEFFREY B. ROBERTSON, LILAN REN, and
JANE E. INGLESE, *Administrative Patent Judges*.

REN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 1, 3–13, and 27–33. *See* Final Act. 2. We have jurisdiction 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 “Gyrodata, Incorporated.” Appeal Br. 3.

CLAIMED SUBJECT MATTER

Appellant’s invention is directed to a method “for determining the relative and absolute spatial positions of multiple subterranean wellbores for drilling the wellbores in close proximity to each other for a substantial part of their length, for the avoidance of collisions between wellbores, or for interceptions of the wellbores at all angles.” Spec. ¶ 2. Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A method for steering a drill string spaced from an existing first wellbore, the drill string drilling a second wellbore, the method comprising:

using at least one sensor module disposed on the drill string to measure a magnetic field and to generate at least one first signal indicative of the measured magnetic field;

using the at least one sensor module to *gyroscopically measure an azimuth, an inclination, or both* of the at least one sensor module and to generate at least one second signal indicative of the measured azimuth, inclination, or both;

using the at least one first signal and the at least one second signal *to calculate a distance* between the existing first wellbore and the at least one sensor module, a direction between the existing first wellbore and the at least one sensor module, or both a distance and a direction between the existing first wellbore and the at least one sensor module; and

steering the drill string based on the calculated distance, the calculated direction, or combinations thereof.

Claims Appendix (Appeal Br. 21) (emphasis added).

REFERENCES

The prior art references relied upon by the Examiner are:

Name	Reference	Date
Morris	US 4,072,200	Feb. 7, 1978
McElhinney	US 2012/0139530 A1	June 7, 2012

REJECTION

Claims 1, 3–13, and 27–33 are rejected under 35 U.S.C. § 103 as being unpatentable over Morris in view of McElhinney. Final Act. 2.

OPINION

We review the appealed rejections for reversible error based upon the issues identified by Appellant and in light of the arguments and evidence produced thereon. *Cf. 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 having considered the evidence presented in this Appeal and each of Appellant’s contentions, we are not persuaded that reversible error has been identified, and we affirm the Examiner’s § 103 rejection for the reasons expressed in the Final Office Action and the Answer. We add the following primarily for emphasis.

The Examiner rejects claim 1² finding that all limitations are taught or suggested by Morris and McElhinney. Final Act. 3. Among others, the Examiner finds that column 27, lines 33 to 35 of Morris teach or suggest a method “using the at least one sensor module to gyroscopically measure an azimuth, an inclination, or both of the at least one sensor module . . .” as recited in claim 1. *Id.*

Appellant argues that the Examiner reversibly erred and asserts, without elaboration, that Morris’s teaching of “a gyroscope disposed in the

² Appellant does not separately argue for the rejection of claims 3–13, 27–33. *See* Appeal Br. 16–19. We select claim 1 as representative for this appeal. *See* 37 C.F.R. § 41.37(c)(1)(iv).

downhole tool to determine the orientation of the housing with respect to a geographical heading” (Morris 27:33–35) does not teach or suggest the limitation at issue. Appeal Br. 17. Such “mere statements of disagreement . . . do not amount to a developed argument.” *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006).

Appellant’s argument is unpersuasive because it does not address the Examiner’s fact findings on which the rejection is based and, therefore, does not identify error in the Examiner’s factual findings. *See* Appeal Br. 12; *see also 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 . . .”). Appellant’s argument instead discusses column 11, lines 11 to 43 of Morris and column 30, lines 39 to 44 of Morris only, which does not identify reversible error in the Examiner’s findings with regard to column 27, lines 33 to 35 of Morris in support of the rejection. *See* Appeal Br. 17.

We further note that the Examiner in the Examiner’s Answer, defines azimuth as “an angle or direction to a compass or geographical heading” (Ans. 3) from which Appellant does not provide a different definition. Reply Br. 1–3. Appellant instead argues that column 27, lines 33 to 35 of Morris should be “inferred [to teach] that that the gyroscope is used down hole to determine this rotational orientation, as opposed to an azimuth” as found by the Examiner. *Id.* at 3. We are not persuaded by this argument because Appellant – on the one hand, does not disagree with the Examiner’s definition of azimuth or Morris’s teaching of the gyroscope to determine a geographical heading– yet, on the other hand, does not sufficiently explain how rotational orientation discussed in Morris distinguishes the claim.

Appellant also argues that the Examiner erred in finding that Morris teaches or suggests a method to “calculate a distance between the existing first wellbore and the at least one sensor module, a direction between the existing first wellbore and the at least one sensor module, or both . . .” as recited in claim 1. Appeal Br. 18. Similar to the limitation discussed above, Appellant argues that Morris does not teach or suggest a “signal indicative of the measured azimuth, inclination, or both” which is addressed *supra* and found unpersuasive of reversible error.

Moreover, we again note that Appellant’s “mere statements of disagreement . . . do not amount to a developed argument,” *SmithKline*, 439 F.3d at 1320, and do not identify reversible error in the Examiner’s finding that column 4, lines 52 to 55 of Morris teaches or suggests this limitation. *Compare* Appeal Br. 18, *with* Final Act. 3 (citing Morris Abstract, 4:15–16, 4:52–55 as support). Appellant discusses column 4, lines 14 to 28 of Morris but does not address column 4, lines 52 to 55 of Morris, which the Examiner cites as support for the rejection. *Compare* Appeal Br. 19, *with* Final Act. 3. Because the finding based on column 4, lines 52 to 55 of Morris is reasonable and the Appellant has not challenged it, we accept it as fact. *See In re Kunzmann*, 326 F.2d 424, 425 n.3 (CCPA 1964). Appellant’s argument is unpersuasive because it is not based on the Examiner’s fact finding in support of the rejection and, therefore, does not identify error thereof. *See Jung*, 637 F.3d at 1365.

CONCLUSION

The Examiner’s rejection is affirmed.

More specifically,

DECISION SUMMARY

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1, 3-13, 27-33	103	Morris, McElhinney	1, 3-13, 27-33	

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