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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
)
Owen et al.) Art Unit: 2129
)
Application No.: 11/828,115) Examiner: Holmes, Michael B.
)
Filed: 07/25/2007) Atty. Docket No.:
) SVIPGP019E
For: DECISION-MAKING SYSTEM,)
METHOD AND COMPUTER) Date: 10/20/2008
PROGRAM PRODUCT)
_____)

AMENDMENT A

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Examiner:

In response to the Office Action mailed 09/29/2008, please enter the following amendments believed to place the claims in condition for allowance.

IN THE CLAIMS

Amended claims follow:

1. (Currently Amended) A method, comprising:
 - (a) executing an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
 - (b) retrieving first information from a database in accordance with the decision logic, utilizing a network;
 - (c) receiving second information from a user in accordance with the decision logic utilizing a user interface via the network; ~~[[and]]~~
 - (d) processing the first and second information utilizing the decision logic; and
 - (e) generating a tornado diagram and decision sensitivity output displays.
2. (Previously Presented) The method as recited in claim 1, wherein (b)-(d) are carried out using universal modules capable of interfacing with different applications adapted for applying the universal modules to different business sectors.
3. (Previously Presented) The method as recited in claim 1, wherein the decision logic is carried out in real-time.
4. (Previously Presented) The method as recited in claim 1, wherein the network is the Internet.
5. (Cancelled)

6. (Currently Amended) ~~The method as recited in claim 1, and further comprising~~ A method, comprising:
executing an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
retrieving first information from a database in accordance with the decision logic, utilizing a network;
receiving second information from a user in accordance with the decision logic utilizing a user interface via the network;
processing the first and second information utilizing the decision logic; and
collecting data from the decision logic for generating visual displays of a decision hierarchy and an influence diagram.
7. (Previously Presented) The method as recited in claim 6, wherein the user is prompted to approve the visual displays of the decision hierarchy and the influence diagram.
8. (Previously Presented) The method as recited in claim 7, wherein the data includes (a) policies that form boundary conditions associated with the decision logic, (b) strategic decisions to be made, (c) values that are important to the user, (d) uncertainties that may impact the values, and a relationship between (a)-(d).
9. (Previously Presented) The method as recited in claim 6, and further comprising creating a strategy table using the data.
10. (Previously Presented) The method as recited in claim 8, and further comprising assessing the uncertainties for analysis purposes.

11. (Cancelled)
12. (Currently Amended) ~~The method as recited in claim 1.~~ A method comprising:
executing an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
retrieving first information from a database in accordance with the decision logic, utilizing a network;
receiving second information from a user in accordance with the decision logic utilizing a user interface via the network; and
processing the first and second information utilizing the decision logic;
wherein the decision logic provides potential feasible hybrid themes.
13. (Previously Presented) The method as recited in claim 1, wherein (a)-(d) are carried out by a platform capable of accomplishing (b)-(d) for different purposes by executing the different applications each capable of performing different decision logic.
14. (Currently Amended) A computer program product embodied on a computer readable medium, comprising:
computer code for executing an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
computer code for retrieving first information from a database in accordance with the decision logic, utilizing a network;

computer code for receiving second information from a user in accordance with the decision logic utilizing a user interface via the network; and computer code for processing the first and second information utilizing the decision logic;
wherein the decision logic provides potential feasible hybrid themes.

15. (Currently Amended) A system, comprising:
logic for executing an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
logic for retrieving first information from a database in accordance with the decision logic, utilizing a network;
logic for receiving second information from a user in accordance with the decision logic utilizing a user interface via the network; and
logic for processing the first and second information utilizing the decision logic;
wherein the decision logic provides potential feasible hybrid themes.

16. (New) A computer program product embodied on a tangible computer readable medium, comprising, comprising:
computer code for causing execution of an application capable of performing decision logic, the application including at least one application that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application;
computer code for retrieving first information from a database, per the application;
computer code for receiving second information from a user utilizing a user interface, per the application;

computer code for processing the first information and the second information utilizing the decision logic;

computer code for generating at least two of: a tornado diagram, a decision sensitivity display, a decision hierarchy display, an influence diagram, and a potential feasible hybrid theme.

- 17 (New) The computer program product as recited in claim 16, wherein at least a portion of the computer code is carried out using universal modules capable of interfacing with different applications adapted for applying the universal modules differently.
18. (New) The computer program product as recited in claim 16, wherein the decision logic is performed in real-time.
19. (New) The computer program product as recited in claim 16, wherein the first information is retrieved via a network.
20. (New) The computer program product as recited in claim 19, wherein the network is the Internet.
21. (New) The computer program product as recited in claim 16, wherein the second information is received via a network.
22. (New) The computer program product as recited in claim 21, wherein the network is the Internet.
23. (New) The computer program product as recited in claim 16, wherein the decision logic is industry-independent.
24. (New) The computer program product as recited in claim 16, wherein the decision logic is performed by a collaborative decision platform.

25. (New) The computer program product as recited in claim 16, wherein at least a portion of the computer code is carried out using universal modules capable of interfacing with different applications adapted for applying the universal modules to different business sectors.
26. (New) The computer program product as recited in claim 25, wherein the business sector includes at least one of a real estate-related business sector, medical-related business sector, corporate-related business sector, and financial-related business sector.
27. (New) The computer program product as recited in claim 25, wherein the universal modules include at least one of a framing module, an alternatives module, an analysis module, and a connection module.
28. (New) The computer program product as recited in claim 27, wherein the universal modules include the framing module.
29. (New) The computer program product as recited in claim 27, wherein the universal modules include the alternatives module.
30. (New) The computer program product as recited in claim 27, wherein the universal modules include the analysis module.
31. (New) The computer program product as recited in claim 27, wherein the universal modules include the connection module.
32. (New) The computer program product as recited in claim 16, wherein the universal modules include a framing module, an alternatives module, an analysis module, and a connection module.

33. (New) The computer program product as recited in claim 16, wherein the decision logic relates to which products or services are suitable for a business.
34. (New) The computer program product as recited in claim 16, wherein the decision logic relates to customer relationship management.
35. (New) The computer program product as recited in claim 34, wherein the customer includes a business.
36. (New) The computer program product as recited in claim 16, and further comprising computer code for creating a strategy table.
37. (New) The computer program product as recited in claim 16, and further comprising computer code for assessing uncertainties for analysis purposes.
38. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating at least three of: the tornado diagram, the decision sensitivity display, the decision hierarchy display, the influence diagram, and the potential feasible hybrid theme.
39. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating at least four of: the tornado diagram, the decision sensitivity display, the decision hierarchy display, the influence diagram, and the potential feasible hybrid theme.
40. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating at least five of: the tornado diagram, the decision sensitivity display, the decision

hierarchy display, the influence diagram, and the potential feasible hybrid theme.

41. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating the tornado diagram.
42. (New) The computer program product as recited in claim 41, wherein the tornado diagram identifies sources of risk.
43. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating the decision sensitivity display.
44. (New) The computer program product as recited in claim 43, wherein the decision sensitivity display compares a value of a first strategy with alternatives and identifies sources of value.
45. (New) The computer program product as recited in claim 43, wherein the decision sensitivity display identifies sources of value.
46. (New) The computer program product as recited in claim 43, wherein the decision sensitivity display identifies sources of value for each of a plurality of strategies.
47. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating the decision hierarchy display.

48. (New) The computer program product as recited in claim 47, wherein the decision hierarchy display identifies decisions that are within a scope of a decision making process.
49. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating the influence diagram.
50. (New) The computer program product as recited in claim 49, wherein the influence diagram includes an information directory.
51. (New) The computer program product as recited in claim 49, wherein the influence diagram identifies a plurality of uncertainties.
52. (New) The computer program product as recited in claim 49, wherein the influence diagram identifies a plurality of risks.
53. (New) The computer program product as recited in claim 49, wherein the influence diagram identifies decisions and a plurality of values that are important to a user.
54. (New) The computer program product as recited in claim 16, wherein the computer code for generating includes computer code for generating the potential feasible hybrid theme.
55. (New) The computer program product as recited in claim 54, wherein the computer code for generating includes computer code for generating a plurality of the potential feasible hybrid themes.
56. (New) The computer program product as recited in claim 54, wherein the feasible hybrid theme includes a hybrid strategy.

57. (New) The computer program product as recited in claim 56, wherein the hybrid strategy combines a plurality alternative strategies.
58. (New) The computer program product as recited in claim 57, wherein at least one of the plurality alternative strategies is pre-defined.
59. (New) The computer program product as recited in claim 16, wherein the at least one application is the corporate-related application.
60. (New) The computer program product as recited in claim 16, wherein the at least one application is the real estate-related application.
61. (New) The computer program product as recited in claim 16, wherein the at least one application is the medical-related application.
62. (New) The computer program product as recited in claim 16, wherein the at least one application is the product supply-related application.
63. (New) The computer program product as recited in claim 16, wherein the at least one application is the service supply-related application.
64. (New) The computer program product as recited in claim 16, wherein the at least one application is the financial-related application.
65. (New) The computer program product as recited in claim 16, and further comprising computer code for allowing a user to modify at least one of the tornado diagram, the decision sensitivity display, the decision hierarchy display, the influence diagram, and the potential feasible hybrid theme.
66. (New) The computer program product as recited in claim 16, wherein the decision logic is related to a business-to-business transaction.

REMARKS

Per MPEP 609.02, applicant has not re-submitted any disclosures, references, etc. cited in the parent application (U.S. Pat. No.: 7,401,059). It assumed, however, that per such MPEP section, the Examiner has considered the same in connection with the instant application. If applicant's assumption is in error or the Examiner requires re-submission of any such references, etc., applicant requests that the Examiner contact the undersigned so that applicant can satisfy such request.

The Examiner has rejected Claims 1-15 under 35 U.S.C. 101 as being non-statutory subject matter. Applicant respectfully disagrees with such rejection. However, in the interest of expediting prosecution of the present application, applicant has amended the claims to further avoid such rejection. Specifically, applicant has amended each of the independent claims to require at least one application "that is a real estate-related application, a medical-related application, a corporate-related application, a product supply-related application, a service supply-related application, or a financial-related application," in the context claimed.

Applicant further makes note of the double patenting rejection. Such rejection is deemed overcome by virtue of the terminal disclaimer submitted herewith.

Applicant has amended independent Claims 1, 6, 12, and 14-15 to include the subject matter of at least one of the following dep. claims deemed allowable by the Examiner: 6, 7, 11, and 12. Still yet, Claim 16 has been added to include, at least in part, the subject matter of at least one of the following dep. claims deemed allowable by the Examiner: 6, 7, 11, and 12. See Claim 16 above, for the details. Claims 17-66 depend on Claim 16 are thus deemed allowable for similar reasons.

Thus, all of the independent claims are deemed allowable. Moreover, the remaining dependent claims are further deemed allowable, in view of their dependence on such independent claims. **It should be noted that no claims are intended to be construed under 35 USC 112, paragraph 6.**

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 505-5100. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-1351 (Order No. SVIPGP019E).

Respectfully submitted,
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Office Action Summary

Application No. 11/828,115	Applicant(s) OWEN ET AL.	
Examiner MICHAEL B. HOLMES	Art Unit 2129	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE (3) MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 25 July 2007.
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 is/are rejected.
- 7) Claim(s) 6,7,11 and 12 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 25 July 2007 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/28/2007-02/25/2008-09/23/2008.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.



UNITED STATES PATENT AND TRADEMARK OFFICE

P.O. Box 1450, Alexandria, Virginia 22313-1450 – www.uspto.gov

Examiner's Detailed Office Action

1. This Office Action is responsive to communication, filed 07/25/2007.

Information Disclosure Statement

2. Applicant is respectfully remind of the Duty to disclose 37 C.F.R. 1.56 all pertinent information and material pertaining to the patentability of applicant's claimed invention, by continuing to submitting in a timely manner PTO-1449, Information Disclosure Statement (IDS) with the filing of applicant's of application or thereafter.

Drawings

3. The formal drawings submitted have been reviewed by the Office of Initial Patent Examination (OIPE) and/or the USPTO Office of Draftperson's Patent Drawings Review.

Specification

4. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Appropriate correction is required.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. The invention as disclosed in claims 1-15 are rejected under 35 U.S.C. § 101 as being non-statutory subject matter. *see In re Comiskey*, Case No. 2006-1286, at 8, 16-21, (Fed. Cir., September 20, 2007). “Only if the requirements of § 101 are satisfied is the inventor allowed to pass through to the other requirements for patentability, such as novelty under § 102 and, non-obviousness under § 103.” “Moreover, ... when an abstract concept has no claimed practical application, it is not patentable.”

7. *No preemption is permitted* i.e., when a claim is so broad that it reads on both statutory and nonstatutory subject matter, *it must be amended*. A claim that recites a computer that solely calculates a mathematical formula is not statutory. In other words, one may not patent a process that comprises every “substantial practical application” of an abstract idea, because such a patent in “practical effect would be a patent on the [abstract idea] itself.” Regarding claims 1-15 i.e., “a method for providing a decision platform” would in fact cover virtually all decision platforms. Nothing is specified in the claims to limit the invention to a particular application e.g., an Accounting systems; Alliance management systems; Asset management systems; Brand management systems; Budgeting/financial planning systems; Business intelligence systems; Call management systems; Cash management systems; Channel management systems; Commodity risk management systems; Content management systems; Contract management systems; Credit-risk management system Customer relationship management systems; Data

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integration systems; Demand chain systems; Decision support systems; Document management systems; Email management systems; Employee relationship management systems; Energy risk management systems; Executive dashboard systems; Expense report processing systems; Fleet management systems; Fraud management systems; Freight management systems; Human capital management systems; Human resource management systems; Incentive management systems; Innovation management systems; Insurance management systems; Intellectual property management systems; Intelligent storage systems Interest rate risk management systems; Investor relationship management systems; Knowledge management systems; Learning management systems; Location management systems; Maintenance management systems; Material requirement planning systems; Metrics creation system; Online analytical processing systems; Ontology management systems; Partner relationship management systems; Payroll systems; Performance management systems; Price optimization systems; Process management systems; Product life-cycle management systems; Project management systems; Project portfolio management systems; Revenue management systems; Risk management information system Risk simulation systems; Sales force automation systems; Scorecard systems; Sensor grid systems; Service management systems; Six-sigma quality management systems; Strategic planning systems; Supply chain systems; Supplier relationship management systems; Support chain systems; Taxonomy development systems; Technology chain systems; Unstructured data management systems; Visitor (web site) relationship management systems; Weather risk management systems; Workforce management systems; or Yield management systems. Without clearly stating in the claim a particular application, it *preempts* all decision platforms. Where as, the courts have also held that a claim may not preempt ideas, laws of nature or natural

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phenomena. The concern over preemption was expressed as early as 1852. See Le Roy v. Tatham, 55 U.S. (14 How.) 156, 175 (1852) (“A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right.”); See Funk Bros. Seed Co. v. Kalo Inoculant Co., 333 U.S.127, 132, 76 USPQ 280, 282 (1948).

8. The claims fail to provide a “useful, concrete or tangible result.” Moreover, there must be a practical application, by either (1) transforming (physical thing) or (2) by having the **FINAL RESULT** (not the steps) achieve or produce a “useful” (specific, substantial, AND credible), “concrete” (substantially repeatable/non-unpredictable), AND “tangible” (real world/non-abstract) result. Moreover, the claims are directed to an abstract idea rather than a practical application of an abstract idea which would produce a “useful, concrete or tangible results.” Accordingly, the claims fail to provide a practical application and is insufficient to establish a real world “tangible” result, *see In re Warmerdam*, 31 USPQ2d, 1354.

9. Devoid of such, applicant’s claimed invention is an abstract idea e.g., a computational model or a mathematical manipulation of a function or equation. A process that merely manipulates an abstract idea or performs a purely mathematical algorithm is non-statutory despite the fact that it might inherently have some usefulness. *see In re Sarkar*, 588 F.2d at 1335, 200 USPQ at 139, wherein the court explained why this approach must be followed:

No mathematical equation can be used, as a practical matter, without establishing and substituting values for the variables expressed therein. Substitution of values dictated by the formula has thus been viewed as a form of mathematical step. If the steps of gathering and substituting values were alone sufficient, every mathematical equation, formula, or algorithm having any practical use would be per se subject to patenting as a “process” under 101. Consideration of whether the substitution of specific values is enough to convert the disembodied ideas present in the formula into an embodiment of those ideas, or into an application of the formula, is foreclosed by the current state of the law.

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10. A claim is limited to a practical application when the invention as claimed, produces a concrete, tangible and useful result; i.e., the invention recites a steps or a process or act of producing something that is concrete, tangible and useful. *See AT &T*, 172 F.3d at 1358, 50 USPQ2d at 1452. *See* MPEP § 2106(IV) The claimed invention as a whole must accomplish a practical application. That is, it must produce a “useful, concrete and tangible result.” *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02. Remember, the claims define the property rights provided by a patent, and thus require careful scrutiny. Therefore, it is not enough to set forth invention in the specification. The claims must also reflect the scope and breath of applicant’s invention. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551(CCPA 1969). The situation in this application appears to be more difficult since it does not appear that the practical application is contained within the specification.

11. Claims 1-15 constitute an array of software modules devoid of any apparent hardware, and therefore are computer programs e.g., “functional descriptive material.” Moreover, since the computer programs are not embodied on an appropriate computer-readable storage medium, they are not patent eligible subject matter in accordance with *In re Warmerdam*, 31 USPQ2d, 1354. The inclusion of a computer in the preamble is not sufficient i.e., if the claim does not recite any hardware in the body of the claim then we give the device in the preamble little or no patentable weight, because the body of the claim is only software per se. However, if they tie hardware, device or apparatus into the body of the claim then they are claiming structure and therefore the claim is directed to an device or apparatus which is not just software. Furthermore,

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as mentioned above, the software modules as claimed does not produce any tangible result that has a practical application i.e., merely manipulating data not tied to the real-world is not patent eligible subject matter, *see In re Warmerdam*, 31 USPQ2d, 1354.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-5, 8-10, 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by *McAndrew et al.* (USPN 5,517,405).

Regarding claims 1, 14 & 15.

McAndrew et al. describes a method, comprising: (a) executing an application capable of performing **decision logic**; (b) retrieving information from a database in accordance with the **decision logic** utilizing a network; (c) receiving information from a user in accordance with the **decision logic** utilizing a user interface via the network; and (d) processing the information utilizing the **decision logic**. [*see* Abstract, C 5, L 08-38 & C 5, L 50 to C 6, L 39 & FIG. 1 & FIG. 2]

Regarding claims 2-5, 8-10 & 13.

of which, are rejected under the same rationale as their respective base claim. [*see* Abstract, C 5, L 08-38 & C 5, L 50 to C 6, L 39 & FIG. 1 & FIG. 2]

Claim Objection(s)

14. Claims 6, 7, 11 & 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, the issues under 35 U.S.C. 101 need to be resolved before patentability can be granted.

Double Patenting

15. Claims 1-15 of application 11/828,115 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-88 of U.S. Patent No. 7,401,059. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969). A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement. Effective January 1, 1994, a registered attorney or agent of record may sign a

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terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Interpretation

16. The claims and only the claims form the metes and bounds of the invention. “Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Moreover, limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541,550-551 (CCPA 1969)” (MPEP p 2100-8, c 2,145-48; p 2100-9, c 1,1 1-4).

17. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. The Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

18. Examiner’s Notes are/if provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the citations are self-explanatory to one skilled in the art and do not need any further explanation. Moreover, the Examiner’s Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently or obviously appropriate.

19. Unless otherwise annotated, as aforementioned, Examiner’s statements are to be

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interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent or obviousness prima facie case or statement(s).

Correspondence Information

20. Any inquires concerning this communication or earlier communications from the examiner should be directed to Michael B. Holmes, who may be reached Monday through Friday, between 8:00 a.m. and 5:00 p.m. EST. or via telephone at (571) 272-3686 or facsimile transmission (571) 273-3686 or email michael.holmesb@uspto.gov.

If you need to send an Official facsimile transmission, please send it to (571) 273-8300.

If attempts to reach the examiner are unsuccessful the Examiner's Supervisor, David Vincent, may be reached at (571) 272-3080.

Hand-delivered responses should be delivered to the Receptionist @ (Customer Service Window Randolph Building 401 Dulany Street Alexandria, VA 22313), located on the first floor of the south side of the Randolph Building.

Finally, information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Moreover, status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

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Patent & Trademark Office

Friday, September 26, 2008

MBH

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