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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MARCO MAGATTI

Appeal 2023-000550
Application 15/778,861
Technology Center 3600

Before JEAN R. HOMERE, ADAM J. PYONIN, and JOHN R. KENNY,
Administrative Patent Judges.

PYONIN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's rejection. Appeal Br. 1. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm, and we enter a new ground of rejection.

¹ Herein, "Appellant" refers to "applicant" as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as SOCIETE DES PRODUITS NESTLE S.A. Appeal Br. 2.

STATEMENT OF THE CASE

Introduction

Appellant’s claimed subject matter relates to a “beverage or foodstuff preparation system which can monitor container consumption for the purpose of reordering, which is flexible and convenient to operate for the end user.” Spec. 2. Each of the containers comprises “a single-serving of a beverage or foodstuff material,” such as a coffee capsule. Spec. 1. Claims 1, 3–7, 9–13, 16, and 19–26 are pending; claims 1, 7, and 16 are independent. Appeal Br. 30–36. Claim 1 is reproduced below for reference (emphases added):

1. A beverage or foodstuff preparation machine comprising:
 - a container processing subsystem configured to process a beverage or foodstuff container to prepare a beverage or foodstuff therefrom, the container processing subsystem comprising a fluid supply operable to supply fluid to the container, the fluid supply comprising (i) a reservoir configured for containing the fluid, (ii) a fluid pump, and (iii) a fluid heater, wherein the reservoir, the fluid pump, and the fluid heater are in fluid communication with each other to form a fluid line;
 - a control subsystem configured to control the container processing subsystem to prepare the beverage or foodstuff from the container;
 - a consumption monitoring subsystem configured to monitor consumption of containers by the container processing subsystem and to determine therefrom container consumption information relating to the consumption of the containers; and
 - a networking subsystem comprising a network interface configured for communication with an external electronic device over a network, the consumption monitoring subsystem is configured to:
 - store stock state information, the stock state information comprises information relating to an amount of containers at a location of the beverage or foodstuff preparation machine;

update the stock state information using the container consumption information;

receive, via the networking subsystem, stock order information, the stock order information comprises information detailing an amount of containers purchased by a user, and to further update the stock state information into further updated stock state information using the stock order information;

transmit, via the networking subsystem, the further updated stock state information to the external electronic device;

receive, via the networking subsystem, a first stock order identifier that is associated with the stock order information;

compare the first stock order identifier to a second stock order identifier stored on at least one of the external electronic device or the beverage or foodstuff preparation machine;

determine if the first stock order identifier is different from the second stock order identifier, and store the first stock order identifier as the second stock order identifier or as an additional second stock order identifier on at least one of the external electronic device or the beverage or foodstuff preparation machine; and

update the stock state information using the stock order information associated with the *first stock order identifier*.

Appeal Br. 30–31 (Claims App.).

The Examiner's Rejection

Claims 1, 3–7, 9–13, 16, and 19–26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Yoakim (US 2012/0173357 A1; July 5, 2012), Varga (US 6,181,981 B1; Jan. 30, 2001), and Silver (US 7,987,118 B1; July 26, 2011).

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's arguments. Arguments Appellant could have made but did not make are forfeited or deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellant that the Examiner erred and adopt as our own the findings and reasons set forth by the Examiner, to the extent consistent with our analysis below. We further find independent claim 1 does not comply with the judicially determined eligibility requirements of 35 U.S.C. § 101, and we enter a new ground of rejection.

Obviousness

A. *Using the First Stock Order Identifier*

Appellant argues the Examiner’s rejection of independent claim 1 is in error, because “none of the cited references discloses or suggests updating the stock state information using the stock order information associated with the first stock order identifier as required under claim 1.” Appeal Br. 10 (emphasis and capitalizations omitted). Appellant contends “*Silver* at most discloses saving new order information to reflect changes to orders by customers after those orders were placed, which does not use any order information associated with a first stock order identifier,” and “*Varga* discloses the use of a unique **identifier for each vending machine.**” Appeal Br. 11, 12. Appellant also cites to a declaration² to buttress these arguments.

We are not persuaded the Examiner errs. We note Appellant does not provide a definition or construction of “stock order identifier.” The Specification merely provides that such identifier may “comprise a numerical (e.g. binary) or alphanumeric (e.g. ASCII) *or other suitable representation*, which may optionally be encrypted.” Spec. 23 (emphasis

² The Declaration of Gilles Gavillet under 37 C.F.R. § 1.132, submitted May 13, 2022 (the “Gavillet Declaration” or “Decl.”).

added). Silver *identifies* orders based on representations such as delivery address or items ordered; these identified orders are then compared to see if they are the same or different orders. Silver Fig. 3 (depicting an order management routine for analyzing both potential orders and completed orders), 2:30–39; Final Act. 8. Appellant fails to show how the claimed first and second identifiers are patentably distinct from the representations used to identify and compare orders in Silver.

Moreover, Appellant’s arguments are unpersuasive of error because they attack the references individually, and thus fail to address the Examiner’s findings. *See* MPEP § 2145(IV) (“One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references”). Here, the Examiner finds the combination of Silver—with the inventory management and identifiers teachings of Varga and the consumption management of Yoakim—renders the disputed limitations obvious. *See* Final Act. 2–3; Ans. 3; Varga 6:15–37 (“The standard reporting format data is combined with the unique identifier (80) associated with the vending machine,” and “periodically update the inventory status of each item at each machine.”); Yoakim Abstract (“monitoring via the network consumption of the consumable ingredient capsules in the beverage preparation machine”). Appellant’s attacks on the individual references fail to show the Examiner’s combination findings are in error.

The Gavillet Declaration, similarly, is unpersuasive of Examiner error, as it merely restates the arguments provided in the Appeal Brief. *See*, for example, the proffered argument regarding Silver:

However, *Silver* merely discloses determining whether an order is a duplicate of another order recently placed by the user. 2 The automatic identification of erroneous orders can be identified by a variety of comparisons including a degree of similarity between an order and a prior order, identical items, identical numbers of copies of the included item, identical destination shipping addresses for the orders. 3 Once a duplicate order is identified and confirmed by the user as a duplicate, the system stores information about the order as a prior order for later use in identifying potentially erroneous orders.

More specifically, as one of skill in the art, I respectfully submit that *Silver* does not teach or suggest updating stock state information [of a beverage or foodstuff preparation machine] using the stock order information associated with the first stock order identifier, as required under the pending claims. Instead, *Silver* at most discloses saving new order information to reflect changes to orders by customers after those orders were placed, which does not use any order information associated with a first stock order identifier.

Gavillet Decl. 8–9; *cf.* Appeal Br. 11.

The statements provided in the Gavillet Declaration are conclusory and are not supported by any corroborating evidence. Thus, we do not give the Declaration sufficient probative weight to disturb the reasonable findings of the Examiner. *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1368 (Fed. Cir. 2004) (“[T]he Board is entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations.”); MPEP § 716.01(c)(III). Accordingly, although we have considered the Gavillet Declaration, we nevertheless find that a preponderance of the evidence of record supports the Examiner’s determination of obviousness.

B. Intended Purpose of Yoakim

Appellant argues that “[i]n the present case, *Yoakim* is entirely directed to preventing a shortage of consumable ingredient capsules for use in a beverage machine at a customer location,” and “*Silver* is entirely directed to avoiding duplicate orders.” Appeal Br. 13; Reply Br. 5. Appellant contends, therefore, that “[t]o modify *Yoakim* to avoid duplicate orders as taught by *Silver*, the system of *Yoakim* would not function properly,” and “the person of ordinary skill in the art would not combine the system of *Yoakim* with the disclosure of *Silver* because the proposed modification would improperly render *Yoakim* unsatisfactory for its intended purpose.” *Id.* at 13, 14.

We are not persuaded the Examiner errs. We agree with the Examiner that “*Yoakim* in view of *Silver* does not change the basic principle under which *Yoakim* was designed to operate,” because “*Yoakim* could confirm new orders while identifying erroneous/duplicate orders.” Ans. 4. Appellant fails to explain why avoiding duplicate orders (as taught by *Silver*) would result in shortages, as opposed to merely having the correct amount of sufficient inventory. *See Yoakim* ¶ 25 (“the capsule supply system is fully automated so that the customer does not have to take any action to be supplied in permanence with sufficient capsules.”).

Moreover, Appellant cites the Gavillet Declaration for support. *See* Appeal Br. 13, 14. As discussed above, however, the Declaration is merely a restatement of the arguments of the briefs without any underlying factual evidence. *Compare* Appeal Br. 13–14 (as quoted above), *with* Decl. 16–17. Thus, although we have considered the Gavillet Declaration, we nevertheless

find that a preponderance of the evidence of record supports the Examiner's determination of obviousness.

C. Hindsight

Appellant argues "the obviousness rejections are based on a piecemeal analysis of the references and are therefore improper combinations and modifications of the cited references," and the "Examiner has apparently used Appellant's claimed invention as a guide to select certain elements of the cited art and ignore other elements and then combine those selected elements to arrive at the claimed invention." Appeal Br. 14; *see also* Decl. 6 ("I believe that the obviousness rejection is based on a mischaracterization of these references and the pending claims and furthermore is based on hindsight that is not representative of what the skilled artisan would have taken from the references.").

We are not persuaded of Examiner error. Appellant's assertion of hindsight is a conclusion unsupported by objective evidence. *See Cheese Sys., Inc. v. Tetra Pak Cheese & Powder Sys., Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013) ("In this regard, objective evidence operates as a beneficial check on hindsight."). Here, the Examiner provides rational underpinnings in finding claim 1 to be no more than the predictable combination of known techniques as evidenced by Yoakim, Varga, and Silver. *See* Final Act. 8–9. Appellant does not directly address the Examiner's combination rationale.

Accordingly, we find the weight of the evidence before us shows that the proffered combination is merely a predictable use of prior art elements according to their established functions. We are unpersuaded of Examiner error in the rejection of claim 1, or for claims 4–6 and 23–26 not separately

argued. *See* Appeal Br. 15. Appellant presents similar arguments with respect to claims 7, 10–13, 16, and 19–22, which we find similarly unpersuasive. *See* Appeal Br. 16–21, 23–28.

D. In Response to a Request

Dependent claim 3 recites the following:

The beverage or foodstuff preparation machine of claim 1, wherein the consumption monitoring subsystem is configured to transmit, via the networking subsystem, the or^[3] each stored second stock order identifier to the external electronic device *in response to a request from the external electronic device or upon achieving a network connection to the external electronic device.*

Appeal Br. 31 (emphasis added).

Appellant argues the Examiner’s rejection of claim 3 is in error:

[T]he cited references fail to render obvious this presently claimed invention. In this regard, there is no disclosure whatsoever in *Varga* that an identifier is transmitted to the remote processing center in response to a request from the remote processing center or upon achieving a network connection to the remote processing center. *Varga* merely discloses that data is transmitted to the remote processing center, but without any specificity regarding frequency or triggering conditions

Appeal Br. 16.

We are not persuaded the Examiner errs. The Examiner finds the limitations of claim 3 to be obvious in view of the combination of cited references. *See* Final Act. 10. We agree, as each reference teaches an inventory management system that communicates to external devices, and

³ For purposes of this appeal, we read claim 3 as not including the apparently errant “the or” clause.

Appellant has not shown that combining the prior art in the fashion claimed was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007); *Yoakim* ¶¶ 16–17; *Varga* Fig. 1; *Silver* Figs. 2–3.

Accordingly, we are not persuaded the Examiner’s obviousness rejection of claim 3 is in error. We sustain the rejection of dependent claim 3.

E. Dependent Claim 9

Dependent claim 9 recites the following:

The computer program of claim 7, wherein the computer program is further configured to: effect the transmission of both the first stock order identifier and the associated stock order information received from the remote resource to the beverage or foodstuff preparation machine if the first stock order identifier is different from the second stock order identifier.

Appeal Br. 33.

Appellant argues the Examiner’s rejection of claim 9 is in error, because “the system of *Silver* merely identifies erroneous orders.” Appeal Br. 22. Appellant contends “*Silver* does not suggest whatsoever transmission of both the first stock order identifier and the associated stock order information received from the remote resource to the beverage or foodstuff preparation machine if the first stock order identifier is different from the second stock order identifier, as required under pending Claim 9.” *Id.*

We are not persuaded the Examiner errs. As discussed above with respect to independent claim 1 (and similarly, claim 7), the Examiner relies on the combination of Yoakim, Varga, and Silver. *See* Final Act. 11–12. Appellant’s argument against Silver, alone, does not persuade us the Examiner’s rejection is in error.

We sustain the Examiner’s rejection of dependent claim 9.

New Grounds of Rejection

Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection and separately reject independent claim 1 as patent ineligible under 35 U.S.C. § 101.

Specifically, we find claim 1 is ineligible for being directed to a judicial exception to eligible subject matter, without reciting significantly more. *See Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217 (2014) (Describing the two-part framework “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.”); USPTO patent eligibility guidance (the “Guidance”) found within Sections 2103 through 2106.07(c) of the MPEP, describing the three-part (Step 2A Prong One, Step 2A Prong Two, Step 2B) framework for determining whether a claim satisfies the judicial criteria for subject matter eligibility.

Under MPEP § 2106, 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 (“Step 2A, Prong Two”).

MPEP § 2106.04(a), (d).

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 activity” in the field; or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

MPEP § 2106.05(d).

Under Step 2A, Prongs One and Two, we determine claim 1 is directed to a judicial exception (an abstract idea). Under Step 2B, we determine the claim does not include additional elements that are sufficient to amount to significantly more than the recited judicial exception. We discuss each of the steps, in turn below.

Step 2A, Prong One

Pursuant to step 2A, Prong One, of the Guidance, we look to whether the claim recites any judicial exception, 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). *See* MPEP § 2106.04(a). We note that “[c]laims can recite a mental process even if they are claimed as being performed on a computer.” MPEP § 2106.04(a)(2).

Here, claim 1 comprises a beverage or foodstuff preparation machine that that uses containers, and that stores inventory (stock) information by tracking the number of containers used and the number of containers on order. *See* Spec. 2 (“An object of the present disclosure is to provide a beverage or foodstuff preparation system which can monitor container consumption for the purpose of reordering, which is flexible and convenient to operate for the end user.”). For example, the machine may be a single-serve coffee maker, and the machine may monitor consumption and purchases of coffee containers. *See* Fig. 1; Spec. 1. Broadly, then, the claim encompasses the mental process of keeping an inventory record of food or beverage containers for use with food or beverage preparation equipment.

Claim 1 recites individual limitations that fall within this mental process abstract category, pursuant to Step 2A, Prong One of the Guidance. *See* MPEP § 2106.04(a)(2). The claim includes a consumption monitoring subsystem configured to store stock state information, the stock state information comprising information relating to an amount (number) of containers at a location of the beverage or foodstuff preparation machine, and to update the stock state information using the container consumption information. Appeal Br. 30. These limitations represent mental steps, which can be performed with pen and paper. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (determining that a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” is directed to an unpatentable mental process). For example, a barista at a coffee shop keeping track of the number of containers used at the coffee shop by remembering or writing down the stock amount, and updating the amount when coffee is brewed. These limitations

encompass the mental process examples of “observations [and] evaluations” under the Guidance. MPEP § 2106.04(a)(2).

Claim 1 also recites steps relating to tracking orders using stock order identifiers:

receive . . . stock order information, the stock order information comprises information detailing an amount of containers purchased by a user, and to further update the stock state information into further updated stock state information using the stock order information;

transmit, . . ., the further updated stock state information to the external electronic device;

receive, . . ., a first stock order identifier that is associated with the stock order information;

compare the first stock order identifier to a second stock order identifier . . .;

determine if the first stock order identifier is different from the second stock order identifier, and store the first stock order identifier as the second stock order identifier or as an additional second stock order identifier;

update the stock state information using the stock order information associated with the first stock order identifier.

Appeal Br. 30–31.

These limitations are also tantamount to mental processes, and they are equivalent to a barista checking purchase orders with a supplier, to ensure that orders of new containers are not accidentally placed or double-counted in inventory. They comprise one or more of “observations, evaluations, judgments, and opinions,” which are examples of the mental process abstract concept grouping of the Guidance. MPEP § 2106.04(a)(2). These limitations “can practically be performed in the human mind, with or without the use of a physical aid such as pen and paper.” *Id.*

As the claim “limitation[s] fall[] within the mental processes grouping, . . . the claim recites an abstract idea.” *Id.* Based on the foregoing, independent claim 1 recites a judicial exception under Prong One of the Guidance. See MPEP § 2106.04(a); *Intellectual Ventures I LLC v. Cap. One Bank (USA)*, 792 F.3d 1363, 1365 (Fed. Cir. 2015) (Determining as ineligible the claimed “methods of budgeting, particularly methods of tracking and storing information relating to a user's purchases and expenses and presenting that information to the user vis-à-vis the user's pre-established, self-imposed spending limits.”); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category”).

Step 2A, Prong Two

Prong Two of the Guidance comprises determining whether the claim will “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” MPEP § 2106.04(d). “For a claim reciting a judicial exception to be eligible, the additional elements (if any) in the claim must ‘transform the nature of the claim’ into a patent-eligible application of the judicial exception, *Alice Corp.*, 573 U.S. at 217.” MPEP § 2106.04 (d).

Here, claim 1 recites various additional elements, including a beverage or foodstuff preparation machine comprising computer and networking subsystems, and a fluid supply made up of a reservoir, fluid

pump, and fluid heater. *See* Appeal Br. 30–31. The additional elements do not impose any meaningful limit on the recited judicial exception. Rather, these elements merely use a generic beverage or foodstuff preparation machine and computer as tools to perform the abstract idea. *See* Spec. 1 (“Increasingly machines for the preparation of a beverage or foodstuff are configured to operate using a container that comprises a single-serving of a beverage or foodstuff material, e.g. coffee.”); MPEP § 2106.05(f). The focus of the claim is to manage inventory of the relevant foodstuff or beverages; the focus is unchanged from the addition to the claim of the machine used to prepare the foodstuff or beverages. The hardware and computing elements do not improve the underlying or other technology, or otherwise integrate the judicial exception into a practical application. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (Determining as unavailing the patent owner’s “attempts to distinguish its claims from those found to be abstract in Alice and other cases by showing that its claims require not only a computer but also an additional machine—a scanner,” as the “claims are drawn to the basic concept of data recognition and storage.”).

Accordingly, claim 1 does not integrate the recited judicial exception into a practical application. *See* MPEP § 2106.04 (“If, however, the additional elements do not integrate the exception into a practical application, then the claim is directed to the recited judicial exception (Step 2A: YES), and requires further analysis under Step 2B (where it may still be eligible if it amounts to an ‘inventive concept’).”).

Step 2B

Step 2B of the Guidance looks for an inventive concept that amounts to significantly more than the judicial exception. *See* MPEP 2106.05(a) (“[A]n ‘inventive concept’ is furnished by an element or combination of elements that is recited in the claim in addition to (beyond) the judicial exception, and is sufficient to ensure that the claim as a whole amounts to significantly more than the judicial exception itself.”). We determine claim 1 does not include such an inventive concept.

As discussed above with respect to Step 2A, Prong Two, claim 1 recites additional elements comprising a beverage or foodstuff preparation machine and the associated computing subsystems. An example of such a machine is an internet connected coffee maker. *See, e.g.*, Figs. 1–2. These elements are well known, routine, and conventional in the art. *See* Spec. 1–2 (Background), 20–21 (describing implementations of the elements); *see also* Yoakim ¶ 8 (“Beverage preparation machines that can be integrated in a network such as the internet are well known.”). Individually and as an ordered combination, the claim elements do not add significantly more to the recited abstract concept. *See* MPEP § 2106.05 (II).

Accordingly, claim 1 does not recite an inventive concept and is not patent eligible, pursuant to the Guidance. *See* MPEP § 2106.05.

For the above reasons, we find claim 1 does not comply with 35 U.S.C. § 101, so we reject independent claim 1 based on our authority under 37 C.F.R. § 41.50(b).

We note the Patent Trial and Appeal Board is a review body, rather than a place of initial examination. Accordingly, we have not reviewed the remaining claims to the extent necessary to determine whether those claims

also are ineligible. We leave it to the Examiner to apply the above discussion when analyzing the remaining claims under 35 U.S.C. § 101.

DECISION SUMMARY

The following table summarizes our decision:

Claim(s) Rejected	35 U.S.C. §	Reference(s)/ Basis	Affirmed	Reversed	New Ground
1, 3-7, 9-13, 16, 19-26	103	Yoakim, Varga, Silver	1, 3-7, 9-13, 16, 19-26		
1	101	Eligibility			1
Overall Outcome			1, 3-7, 9-13, 16, 19-26		1

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, **WITHIN TWO MONTHS FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

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(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. . . .

(2) Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

AFFIRMED; 37 C.F.R. § 41.50(b)