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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte WILLIAM H. MITCHELL

Appeal 2023-003309
Application 16/449,422
Technology Center 2100

Before MICHAEL J. STRAUSS, CHRISTA P. ZADO, and
JOHN R. KENNY, *Administrative Patent Judges*.

ZADO, *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 1–13, all the claims pending in the present application. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ “Appellant” refers to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as PB Funding Group, LLC. Appeal Br. 2.

BACKGROUND AND CLAIMED SUBJECT MATTER

According to the Specification, “[b]eer making has been practiced for many years.” Spec. ¶ 2. Traditional beer making includes various steps, including malting, germination, kilning, milling, mashing, separating the wort, boiling the wort, and fermentation. Britannica (updated February 12, 2024) (available at <https://www.britannica.com/topic/beer>). Malting is a process in which barley is steeped in warm water and aerated, which imbibes the barley with water and prepares it for germination. *Id.* The malted barley next is placed in heaps and turned to promote oxygen interaction, which promotes germination. *Id.* Moisture then is removed from the germinated barley by curing with a flow of dry air (kilning), wherein curing arrests enzyme development. *Id.* The kilned barley is then milled, wherein the milled barley is called “grist.” *Id.* The next step is mashing, which involves mixing the grist with hot water, which converts enzymes into fermentable sugar. *Id.* Mashing procedures may include varying temperatures and times, which impacts types and amounts of resultant sugar, and therefore the characteristics of the beer. *Id.* According to Ramsey (US 2015/0329808), “mash temperature fluctuations of less than 2°F can lead to beer with drastically different characteristics.” Ramsey ¶ 103. Wort then is extracted from the mash. Extracting wort involves “adding hot water to the top of the grains to rinse the grains and extract[ing] the sugars from the grain husks while simultaneously draining and filtering out the sugary water from the bottom of the grains and collecting it into a boil kettle.” *Id.* The wort then is boiled, typically for 60 to 90 minutes. *Id.* ¶ 221. Hops are added throughout the boil at various times depending on hop characteristics desired in the final beer. *Id.* Ramsey explains how timing of adding hops impacts beer characteristics:

Hops added at the beginning of the boil are boiled the longest and impart mostly bitterness with little to no flavor or aroma. Hops added with about 30 minutes of boil time left impart slight bitterness, mostly flavor, and very little aroma. Hops added at the end of the boil (with about 5 minutes of boil time left or less) impart very little bitterness, very little flavor, and mostly aroma to the finished beer.

Id. The wort next is cooled and yeast is added for fermentation. *Id.* ¶ 104. “Yeast converts the fermentable sugars into ethanol and carbon dioxide, eventually resulting in beer.” *Id.*

The instant application relates to an automated beer brewing system. Spec. ¶ 2. Automated and semi-automated beer brewing systems include programmable controls for some or all portions of the brewing process, wherein the programmable controller executes a recipe program that defines a portion of the brewing process. *Id.* ¶¶ 3–4. Portions that may be automated include mashing and boiling. *Id.* ¶ 3.

More specifically, the instant application is directed to an automated beer brewing system that modifies a beer recipe in order to adjust sensory characteristics of the beer. *Id.* ¶ 5. In an exemplary embodiment, a user selects a baseline recipe for a type of beer. *Id.* ¶ 20. The baseline recipe includes ingredients, such as grain, hops, yeast, and other ingredients. *Id.* ¶¶ 20, 64. The baseline recipe also includes a set of brewing steps that when executed will generate the baseline beer. *Id.* The baseline recipe also has an associated set of beer characteristics, which may include maltiness, mouthfeel (e.g., thick, thin), and hops characteristics (e.g., bitterness, flavor, and aroma). *Id.* ¶¶ 21, 81. A user may review the beer characteristics associated with the baseline beer and adjust the characteristics to suit their

preferences. *Id.* ¶¶ 21, 65, 81. The beer brewing system, based on the adjusted characteristics, changes the recipe by, e.g., modifying mashing steps, boiling steps, or other programmatically controlled variables to achieve the user’s requested adjustments. *Id.*

The beer brewing system’s recipe generator may use a performance model of a brewing system to calculate recipe adjustments. *Id.* ¶¶ 24, 65. “The performance model may consist of multiple components, including heuristic and other guidelines that may be derived from human experts, as well as numerical and other measured data that may be collected from previous brewing sessions.” *Id.* ¶ 24. For example, the “performance model may include a model that may predict flavor characteristics based on mashing and boiling schedules.” *Id.* ¶ 26; *see also id.* ¶ 65 (describing adjusting recipe for flavor and taste characteristics).

Claims 1 and 2, reproduced below annotated with bracketed labeling, illustrate the claimed subject matter:

1. A system comprising:

[1a] a hardware platform comprising a computer;

[1b] a control system executing on said hardware platform configured to:

[1c] receive a performance model of a computer controlled brewing system, said computer controlled brewing system having a recirculating boiling flow path having a plurality of hops addition flow paths;

[1d] determine a first recipe, said first recipe having a first set of ingredients and a first mashing schedule;

[1e] determine a first set of beer characteristics for said first recipe, said first set of beer characteristics being based on a first boiling schedule;

[1f] receiving a first user input to adjust a first flavor characteristic;

[1g] changing said first boiling schedule to a second boiling schedule and determining a second set of beer characteristics for said second boiling schedule using said performance model;

[1h] transmitting said second boiling schedule as a second recipe to said computer controlled brewing system, said computer controlled brewing system being capable of brewing beer using said second recipe.

2. The system of claim 1, said first flavor characteristic being hoppiness.

Appeal Br. 14 (Claims App.).

REFERENCES

The prior art relied upon by the Examiner is:

Name	Reference	Date
Ramsey	US 2015/0329808 A1	Nov. 19, 2015
BrewTarget	“Brewtarget 2.0.1 Manual,” available at https://web.archive.org/web/20141007024443/http://www.brewtarget.org/manual.html	2014
Palmer	Palmer, John, “How to Brew,” available at https://web.archive.org/web/20140704151513/http://howtobrew.com/section1/chapter5-1.html	2014

REJECTIONS

The claims stand rejected as follows:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis
1–13	101	Eligibility
2–4	112(b)	Indefiniteness

Claims Rejected	35 U.S.C. §	Reference(s)/Basis
1–13	103	Ramsey, BrewTarget, Palmer

OPINION

I. 35 U.S.C. § 101

A. Patent Eligibility Under § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. Even if a claim is directed to one of these enumerated statutory categories, the U.S. Supreme Court has interpreted § 101 to include implicit exceptions that may nonetheless render a claim patent ineligible, including “[l]aws of nature, natural phenomena, and abstract ideas.” *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In *Mayo* and *Alice* the Court provides a two-part framework to determine whether a claim falls within an exception. *Id.* at 217–18; *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012). First, courts determine what concept the claim is “directed to,” e.g., law of nature, natural phenomena, abstract idea, etc. *Alice*, 573 U.S. at 219; *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010). Concepts determined to be abstract ideas include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

Second, if a claim is “directed to” an abstract idea, courts “must examine the elements of the claim to determine whether it contains an

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‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

B. USPTO Guidance Regarding § 101

In accordance with the Manual of Patent Examining Procedure (“MPEP”) § 2106, which incorporates the 2019 Revised Patent Subject Matter Eligibility Guidance² and October 2019 Update: Subject Matter Eligibility,³ Examiners apply the following in determining subject matter eligibility under § 101 (*see* MPEP § 2106 flowchart):

Step 1:

determine whether the claim is directed to a statutory category (i.e., a process, machine, manufacture, or composition of matter) (§ 2106.03);

Step 2A, Prong One:

if the claim falls within a statutory category, determine whether the claim is directed to a judicially recognized exception (e.g., laws of nature, natural phenomena, abstract ideas, mathematical concepts, certain methods of organizing human activity such as a fundamental economic practices, or mental processes) (MPEP § 2106.04);

² 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”).

³ USPTO, *October 2019 Update: Subject Matter Eligibility* (the “October 2019 Update”).

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Step 2A, Prong Two:

if the claim falls within a judicially recognized exception, determine whether the claim integrates the judicial exception into a practical application (MPEP § 2106.04); and

Step 2B:

if the claim recites a judicially recognized exception and does not integrate the judicial exception into a practical application, determine whether the claim adds a specific limitation beyond the judicially recognized exception that amounts to significantly more, i.e., that it has an inventive concept and is not “well-understood, routine, conventional” in the field (MPEP § 2106.05).

C. Analysis

The Examiner rejects claims 1–13 under § 101. Final Act. 8–13. Appellant appeals the rejection. Appeal Br. 6–8.

1. Step 1

The Examiner finds claim 1 is directed to a “system/machine”—i.e., a statutory category. Final Act. 9; Ans. 5. Appellant does not dispute this finding. Appeal Br. 6.

2. Step 2A, Prong One

The Examiner finds claim 1 is directed to a judicial exception—namely, an abstract idea, and more specifically, to a mental process. Final Act. 9–10; Ans. 5–8. In particular, the Examiner finds that steps recited in limitations 1d, 1e, 1f, and 1g “can all be considered a mental process of a person thinking about a beer recipe with a certain boiling schedule, and determining a modification to that boiling schedule to create a second boiling schedule (i.e. recipe) with characteristics that a person having ordinary skill in the beer making arts would be able to mentally think about

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with the aid of a simple pencil and paper.” Final Act. 9–10. The steps, moreover, “are all common steps in beer making and would be well within the scope of what a person having ordinary skill in the art would have to think about when making a beer recipe,” according to the Examiner. *Id.* at 10. We agree with the Examiner’s determination that claim 1 is directed to a mental process, and adopt the Examiner’s findings and conclusions as to step 2A, prong one.

Appellant does not present arguments regarding step 2A, prong one, namely, Appellant does not address the Examiner’s finding that claim 1 is directed to a mental process. *See* Appeal Br. 6–8; *see also* Reply Br. 2–5. Instead, Appellant presents arguments that eligibility is self-evident. Appeal Br. 6–8 (citing MPEP § 2106.06); Reply Br. 2–5 (citing MPEP § 2106.06). Section 2106.06 of the MPEP provides that the *examiner* may use a streamlined eligibility analysis when the eligibility of the claim is self-evident, e.g., because the claim clearly improves a technology or computer functionality. MPEP § 2106.06.

As an initial matter, we note that the streamlined analysis “is not a means of avoiding a finding of ineligibility,” because its results “will always be the same as the full [eligibility] analysis.” *Id.* A streamlined eligibility analysis is a discretionary tool available to examiners when the patent eligibility of a claim is self-evident. *Id.* If there is any doubt as to eligibility, an examiner should conduct a full analysis to determine whether the claim integrates the judicial exception into a practical application or recites significantly more than the judicial exception. *Id.* Here, it is not self-evident that claim 1 is patent eligible and, as such, the Examiner properly performed a full § 101 analysis of the claim. (Final Act. 9–12), In addition, Appellant’s arguments are insufficient to rebut the Examiner’s finding that

the steps recited in limitations 1d, 1e, 1f, and 1g are directed to a mental process, and as mentioned above we adopt the Examiner’s findings and conclusions on this point.

The MPEP provides that a claim’s patent eligibility may be self-evident if the claim 1) “clearly does not seek to tie up any judicial exception such that others cannot practice it” (MPEP § 2106.06(a)) or, 2) is directed to clear improvements to computer-related technology or other technologies or technological processes beyond computer improvements (MPEP § 2106.06(b)).

As to 1), Appellant does not assert that claim 1 meaningfully limits the judicial exception—i.e., the mental steps relating to adjusting a beer brewing recipe—such that claim 1 does not clearly seek to tie up the judicial exception.

As to 2), Appellant argues that claim 1 “improve[s] the functionality of a very specific system: ‘a computer controlled brewing system having a recirculating boiling flow path having a plurality of hops addition flow paths.’” Appeal Br. 6. Appellant argues further that claim 1 “clearly improves a technology or computer functionality by changing the brewing sequence to achieve a desired ‘flavor characteristic.’” *Id.* Appellant submits that “[w]ithout the invention, a brewmaster would have to use their experience and expertise to make adjustments to the boiling cycle to achieve the desired outcome,” and that “even an experienced, trained brewmaster would have to experiment with several iterations to achieve the precise goals of flavor modification.” *Id.* at 6. In support of this assertion, Appellant argues that the invention requires “a performance model of a computer controlled brewing system,” and that the performance model of claim 1 “can be far superior than even the most experienced and talented brewmaster, as it

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can be developed using statistical modeling, heuristics, and other techniques.” *Id.* at 6–7.

Appellant’s arguments are not persuasive. The claimed performance model does not improve a computer-related technology or technological process. The claimed system comprises a hardware platform (limitation 1a) and a control system (limitation 1b) configured to perform steps of receiving and transmitting information (limitations 1c and 1h) and performing processes that can be performed mentally (limitations 1d through 1g). The performance model is used in the performance of one of the mental steps, i.e., determining beer characteristics for a modified boiling schedule. Appeal Br. 14 (Claim 1, Claims App.) (limitation 1g, reciting “determining a second set of beer characteristics for said second boiling schedule using said performance model”). Nothing is done with the second set of beer characteristics. In other words, the performance model does nothing other than determine a set of characteristics. It does not alter a recipe or change or alter, or in any way, impact the claimed system. Therefore, contrary to Appellant’s assertion, the claim does not require using a performance model to achieve precise flavor modification. Appeal Br. 6–7. Appellant has not identified, nor do we discern, any improvement to a computer-related technology or technological process.

To the extent Appellant’s argument suggests the step of determining a set of second set of beer characteristics cannot be performed mentally (limitation 1g), but instead requires a sophisticated performance model, the evidence contradicts Appellant’s assertion that one of ordinary skill in the art could not have determined beer characteristics. Appeal Br. 6–7. In addition, Appellant’s arguments regarding the performance model are not commensurate with the scope of what is claimed. Appellant suggests the

performance model has a degree of sophistication beyond what may be accomplished as part of a mental process; however, claim 1 requires only that the performance model is used to determine a set of beer characteristics. Appeal Br. 14 (Claim 1, Claims App.) (reciting “determining a second set of beer characteristics for said second boiling schedule using said performance model”). Ramsey demonstrates that the impact on beer characteristics of a boiling schedule was well known in the art and easy to determine as part of a mental process, and could be performed manually to achieve desired beer characteristics:

Hops added at the beginning of the boil are boiled the longest and impart mostly bitterness with little to no flavor or aroma. Hops added with about 30 minutes of boil time left impart slight bitterness, mostly flavor, and very little aroma. Hops added at the end of the boil (with about 5 minutes of boil time left or less) impart very little bitterness, very little flavor, and mostly aroma to the finished beer. In one or more exemplary embodiments, these hop additions may be performed manually

Ramsey ¶ 221.

For the foregoing reasons, we agree with the Examiner that claim 1 is directed to a judicial exception—namely, an abstract idea, and more specifically, to a mental process.

3. *Step 2A, Prong Two*

The Examiner finds claim 1 does not integrate the judicial exception into a practical application. Final Act. 10–12; Ans. 8–12. The Examiner finds the claimed computer processor with control system (*see, e.g.*, preamble and limitations 1a and 1b) are generic computing components, and the steps of transmitting and receiving (limitations 1c and 1h) are mere insignificant extra-solution activity. Final Act. 10–11; Ans. 8–11. In addition, various elements including the functionality of a computer

controlled brewing system are common features relating to a field of use.

Ans. 10. We agree with, and adopt as our own, the Examiner’s findings and conclusions as to step 2A, prong two. Final Act. 10–11; Ans. 8–11.

Appellant does not address step 2A, prong two in the Appeal Brief or Reply Brief. As discussed above, *supra* section 1.C.2, Appellant uses a streamlined analysis. Appeal Br. 6–8; Reply Br. 2–5. For reasons discussed above, *supra* section 1.C.2, Appellant’s streamlined analysis does not persuade us that the eligibility of claim 1 is self-evident.

We find, therefore, that claim 1 does not integrate the judicial exception into a practical application.

4. Step 2B

The Examiner finds claim 1 does not add a specific limitation beyond the judicial exception that amounts to significantly more than “well-understood, routine, conventional” activity in the field. Ans. 12–14.⁴ The Examiner finds that nothing in claim 1 provides an inventive concept:

Nothing in claim 1 provides an inventive concept, as the creation of beer recipes and determination of characteristics from a recipe are well-understood, routine and conventional in the beer making arts, and are more than capable of being performed in the human mind. The level of detail in the claim limitations are not so complex a PHOSITA would have to rely upon a computer to perform any of these steps, as these are all well within the scope of what a person could think in their mind, especially when considering beer has been brewed for millennia.

⁴ Appellant argues that the Final Action does not address step 2B. Appeal Br. 8. The Examiner addresses this step in the Answer, and Appellant does not object to the Answer as introducing new matter and had full opportunity in the Reply Brief to address the Answer’s findings. Reply Br. 2–5.

Ans. 12. The Examiner further finds that to the extent Appellant argues the claimed brewing system is inventive (with regard to the streamlined analysis pursuant to MPEP § 2106.06), Appellant’s arguments are not commensurate with what is claimed. *Id.* We agree with the Examiner’s findings, and adopt them as our own as to step 2B. Ans. 2–14. In addition, we find Appellant’s arguments that the claimed system circumvents tedious trial and error and fundamentally changes the way brewing is done is unpersuasive, because these features are not claimed. Reply Br. 2–3. Appellant argues the performance model of the claimed system changes brewing behavior by recalculating a recipe based on user tastes. *Id.* However, claim 1 does not recite this feature. Claim 1 recites receiving a user input and changing a boiling schedule, but does not link the two steps.

We, therefore, find claim 1 does not add a specific limitation beyond the judicial exception that amounts to significantly more than “well-understood, routine, conventional” activity in the field.

5. Conclusion

For the foregoing reasons, we affirm the Examiner’s rejection of claim 1 as patent ineligible under § 101. As to claims 2–13, we adopt the Examiner’s findings and conclusions as our own, and Appellant does not provide arguments specific to claims 2–13. We, therefore, affirm the Examiner’s rejection of claims 2–13 as patent ineligible under § 101.

2. 35 U.S.C. § 112(b)

The Examiner rejects claims 2–4 under § 112(b) as indefinite. Claim 2 depends from claim 1, and further recites “said first flavor characteristic being hoppiness.” Final Act. 13–14; Appeal Br. 14 (Claims App.) Claims 2 and 4 each depend directly from claim 1. In particular, the Examiner takes issues with the term “hoppiness,” and what it means for a

“flavor” characteristic to be “hoppiness.” The Examiner points to claim 8, which also depends from claim 1, which recites “said first flavor characteristic being hops flavor,” and explains “[i]t is unclear what the meaning of ‘hoppiness’ is or how ‘hoppiness’ is distinguished from the ‘hops flavor’ of claims 8–10.” Final Act. 13; Appeal Br. 15 (Claims App.).

Appellant essentially seeks to read out the word “flavor” from claim 2. Appellant argues “hoppiness” (claim 2) is distinguishable from “hops flavor” (claim 8), on the grounds that “hoppiness” also encompasses bitterness and aroma. Appeal Br. 8–9. In particular, according to Appellant, “‘hoppiness’ is an overall combination of the bitterness, flavor, and aroma of the hops.” *Id.* at 9. Appellant argues “hoppiness” in claim 2 is not indefinite, and should be interpreted as an overall combination of bitterness, flavor, and aroma of hops. *Id.*

Even if we were to accept Appellant’s argument as to the meaning of “hoppiness,” claim 2 is not directed to an overall combination of bitterness, flavor, and aroma, but rather specifically recites a “flavor characteristic being hoppiness.” Given “hoppiness is a broad term whereby any of changing bitterness, flavor or aroma in a final beer product affects the ‘hoppiness’” (Ans. 17), we agree with the Examiner that it is unclear what is meant by a flavor characteristic being hoppiness. Appellant does not respond to the Examiner’s Answer.

For the foregoing reasons, we affirm the Examiner’s rejection of claims 2–4 under § 112(b).

3. 35 U.S.C. § 103

Appellant appeals the rejection under § 103 of claims 1–13 (Appeal Br. 9–12), wherein claim 1 is independent and claims 2–13 depend from claim 1 either directly or indirectly (*id.* at 14–15 (Claims App.)). Appellant

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provides a heading and argument only for claim 1. *Id.* at 9–12. Appellant, therefore, argues the rejection under § 103 of claims 1–13 as a group, and we select claim 1 to decide the appeal as to the rejection under § 103 of this group. 37 C.F.R. § 41.37(c)(1)(iv) (“For each ground of rejection applying to two or more claims, the claims may be argued separately . . . , as a group . . . , or as a subgroup When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone.”).

First, Appellant argues that Ramsey neither teaches nor suggests claim limitation [1e] (“i.e., “determine a first set of beer characteristics for said first recipe, said first set of beer characteristics being based on a first boiling schedule”). Appeal Br. 9–11. This argument does not persuade us of Examiner error because the Examiner finds that BrewTarget teaches limitation [1e]. Final Act. 21–23 (citing BrewTarget 3–4, 7, 9); Ans. 23–25. Appellant does not address the Examiner’s findings regarding BrewTarget, and does not provide sufficient argument or evidence that BrewTarget does not teach or suggest this limitation. Appeal Br. 9–11 (discussed further below, Appellant provides arguments regarding BrewTarget separately at pages 11–12, but does not tie the arguments to limitation [1e] and such arguments are not commensurate in scope with limitation [1e]); *see also*, *e.g.*, *Nat’l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1336–37 (Fed. Cir. 2004) (rejecting argument directed at the wrong reference). Accordingly, even if, assuming *arguendo*, we were to agree with Appellant that Ramsey neither teaches nor suggests limitation [1e], this would not be

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sufficient to reverse the rejection because BrewTarget also is relied on for this teaching.

Next, Appellant argues that Ramsey neither teaches nor suggests claim limitation [1f] (i.e., “receiving a first user input to adjust a first flavor characteristic”). Appeal Br. 11. This argument does not persuade us of Examiner error because the Examiner relies also on BrewTarget for teaching limitation [1f]. Final Act. 23 (citing BrewTarget 3–5); Ans. 25–28.

Appellant does not address the Examiner’s findings regarding the combination of Ramsey and BrewTarget. Appeal Br. 11 (discussed further below, Appellant provides arguments regarding BrewTarget separately at pages 11–12, but does not tie the arguments to limitation [1f] and such arguments are not commensurate in scope with limitation [1f]).

Accordingly, even if, assuming arguendo, we were to agree with Appellant that Ramsey neither teaches nor suggests limitation [1f], this would not be sufficient to reverse the rejection because BrewTarget also is relied on for this teaching.

Finally, Appellant asserts that BrewTarget “do[es] not make up for the deficiency of Ramsey.” Appeal Br. 11. In so doing, Appellant asserts that the claims “work in the exact opposite way” from BrewTarget. *Id.* In particular, Appellant argues that in the claims a user inputs flavor characteristics and the brewing system calculates recipe parameters based on the characteristics, whereas in BrewTarget a user calculates recipe parameters, the system provides characteristics associated with a specific beer style and indicates whether the recipe meets the beer style, and allows a user to change ingredients to fit the beer style. *Id.* Appellant elaborates that:

In a simple example, Brew Target apparently allows a user to enter hops amount. Brew Target at page 5: “Now, go to the

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Hops tab and add 1 oz Cascade at 1 hr, 1 oz Cascade at 15 min, and 1 oz Cascade at 5 min, The IBUs should be about 32.4, and in the green, Add \NLP001 yeast to the recipe, Now everything should be in the green.”

This set of ingredients and timing is what is input by the user. (Appellant notes that Brew Target also fails to show any calculation for “hoppiness,” “hops aroma,” or other of the claimed flavor characteristics.)

In stark contrast, the claims have the flavor characteristic as an input, and the recipe is the output.

The principle of operation of Brew Target is for an advanced homebrewer to adjust recipe parameters to find a beer that they like.

The principle of operation of the claims is for a much-less-sophisticated beer enthusiast to merely indicate that they like specific flavor characteristics — and the claimed system calculates the required recipe.

Appeal Br. 12. A principal shortcoming of Appellant’s arguments is that they are not tied to specific claim language. Appellant provides argument regarding the “principle of operation of the claims” and argues BrewTarget operates in the exact opposite way from the claims, but does not identify the claim language at issue, much less how the Examiner erred in finding that BrewTarget teaches such language. In other words, Appellant’s arguments do not identify limitations recited by claim 1, and Appellant has not provided any explanation of how the claim limitations relate to the arguments provided. *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) (“It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for [patentable] distinctions over the prior art”).

If we were to assume, *arguendo*, that Appellant’s arguments refer to limitations [1e] and [1f], in light of Appellant’s arguments that Ramsey does not teach these limitations and BrewTarget does not make up for the deficiencies in Ramsey, as the Examiner finds in the Answer, Appellant’s arguments are not commensurate with the language claimed. Ans. 18–23. Here, the Examiner has made specific findings as to how BrewTarget teaches limitation [1e] and the combination of Ramsey and BrewTarget teaches [1f] (Final Act. 21–23; Ans. 23–28), and Appellant has not identified these findings.

For example, as to limitation [1e] (“determine a first set of beer characteristics for said first recipe, said first set of beer characteristics being based on a first boiling schedule”), based on a recipe (e.g., ingredients and boiling schedule), BrewTarget indicates whether the characteristics associated with the recipe fits a selected beer style or whether the characteristics are outside the selected beer style. BrewTarget 2–3; Ans. 24–25. BrewTarget, therefore, teaches or suggests determining a first set of beer characteristics associated with a first recipe, wherein the first set of beer characteristics is based on a first boiling schedule. Ans. 24–25. Appellant has not provided argument or evidence to show that selection of beer style and checking the recipe against the style fails to teach or suggest determining beer characteristics based on the recipe (which includes a boiling schedule).

As to limitation [1f] (“receiving a first user input to adjust a first flavor characteristic”), the Examiner relies on a combination of Ramsey and BrewTarget that Appellant never addresses. Ans. 25–28; *see, e.g.*, Reply Br. 5–10.

For the foregoing reasons, we affirm the rejection of claims 1–13 under § 103.

4. *Objection*

Appellant asserts the Examiner erred in objecting to the title of the patent application, and requests the Board overturn the objection and remand to the Examiner for further proceeding. Appeal Br. 12; *see* Final Act. 3 (objecting to the title, stating “the title is not descriptive enough”).

Ordinarily, an objection is petitionable to the Director of the U.S. Patent and Trademark Office, and a rejection is appealable to the Patent Trial and Appeal Board, unless the objection is “determinative of the rejection,” in which case the matter may be addressed by the Board. MPEP § 1201. Moreover, the line of demarcation between matters petitionable to the Director and appealable to the Board should be carefully observed. *Id.* “The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board.” *Id.*

Here, the objection by the Examiner concerning the title of the patent application is not determinative of a rejection. The objection, therefore, is not an appealable matter, but rather is a matter that must be petitioned to the Director.

CONCLUSION

The Examiner’s rejections under §§ 101, 112(b), and 103 are affirmed. We decline to address the Examiner’s objection to the title of the patent application.

DECISION SUMMARY

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed
1-13	101	Eligibility	1-13	
2-4	112	Indefiniteness	2-4	
1-13	103	Ramsey, BrewTarget, Palmer	1-13	
Overall Outcome			1-13	

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