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EXAMINER

ARAQUE JR, GERARDO

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KIARA GROVES CORRIGAN and AMIP J. SHAH

Appeal 2014-004350
Application 13/015,501
Technology Center 3600

Before JOSEPH A. FISCHETTI, BRUCE T. WIEDER, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

BAYAT, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ seek our review under 35 U.S.C. § 134(a) of the final rejection of claims 1–15 under 35 U.S.C. §103(a) as being unpatentable over Myers² and Xu.³ Final Action 4 (mailed Aug. 7, 2013). We have jurisdiction under 35 U.S.C. § 6(b).

STATEMENT OF THE DECISION

We AFFIRM.

¹ Appellants identify Hewlett-Packard Development Company, L.P., as the real party in interest. Appeal Br. 1 (filed Nov. 5, 2013).

² Myers, US 2002/0198808 A1, published Dec. 26, 2002.

³ Xu et al., US 2011/0119115 A1, published May 19, 2011, hereinafter “Xu”.

CLAIMED INVENTION

Appellants' claimed invention relates to "determining an entity's share of economic contribution and environmental burden." Specification, Title.

Independent claim 1, reproduced below with added bracketed matter, is representative of the subject matter on appeal.

1. An electronic device, comprising:
 - a processor to:
 - [a] estimate an entity's economic contribution related to an activity;
 - [b] estimate an aggregate economic contribution by multiple entities related to the activity based on an economic contribution factor related to the activity;
 - [c] determine the entity's share of the economic contribution by the activity based on a comparison of the entity's economic contribution and the aggregate economic contribution;
 - [d] estimate the entity's environmental burden related to the activity based on an environmental burden factor associated with the entity's performance of the activity;
 - [e] estimate an aggregate environmental burden of multiple entities related to the activity based on an aggregate environmental burden factor associated with the multiple entities' performance of the activity;
 - [f] determine the entity's share of the environmental burden caused by the activity based on a comparison of the entity's environmental burden and the aggregate environmental burden; and
 - [g] provide the entity's impact, the entity's impact being based on the entity's share of the economic contribution related to the activity and the entity's share of the environmental burden caused by the activity.

ANALYSIS⁴

As an initial matter, we note that Appellants argue independent claims 1, 6, and 11 as a group (Appeal Br. 6–11). We select claim 1 as being representative. Thus, claims 6 and 11 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Appellants do not dispute the Examiner’s findings as to limitations [a]–[f] of claim 1. The sole argument challenging the obviousness rejection is whether Myers and Xu teach or suggest “provid[ing] an entity’s impact, the entity’s impact being based on the entity’s share of the economic contribution related to an activity and the entity’s share of an environmental burden caused by the activity” (Appeal Br. 6), as called for in limitation [g].

Appellants contend that “[n]either Myers nor Xu teach[] an entity’s impact based on two or more factors, let alone the economic contribution and environmental burden, as recited in the pending claims.” *Id.* at 7. This contention however attacks the references individually. Appellants fail to address the Examiner’s actual rejection to establish an insufficiency in the combined teachings of the references. The Examiner does not rely on either reference alone as teaching an entity’s impact based on two factors, but instead relies on the combined teachings of Myers and Xu in rejecting limitation [g]. *See* Final Action 6–8. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated

⁴ The Examiner withdrew the indefiniteness rejection as to claims 1–10 in response to Appellants’ after final claim amendments filed on Oct. 7, 2013. *See* Advisory Action (mailed Oct. 17, 2013). The Examiner states that “no response has been provided in regards to the 35 USC 112(b) paragraph” (Answer 2), but such observation is deemed moot in light of the Examiner’s withdrawing the rejection in the Advisory Action.

upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

Appellants acknowledge that Myers discloses an entity's share of aggregate economic contribution, and Xu discloses an entity's share of aggregate environmental burden, but argue that there is no teaching, suggestion, or guidance in either Myers or Xu "of [an] 'entity's impact based on the entity's share of economic contribution and the entity's share of environmental burden.'" Appeal Br. 8. We disagree.

Xu is directed to a management system accessible to a large number of "entities [that] upload information relevant to determining a measure of environmental impact." Xu, Abstract. Because entities may either want to reduce energy usage to save money or be required to reduce emissions due to governmental caps, Xu provides a tool that helps each entity evaluate its performance against others to determine initiatives and strategies to meet the company's target for emissions, energy usage, or other goal. Xu ¶ 5. In order to determine the environmental impact for each entity, Xu utilizes information related to resource consumption to calculate measures of environmental impact, such as costs of energy used, types/amounts of products manufactured and emissions, raw input product usage (e.g., paper, metals, etc.), and costs of various pertinent resources. Xu ¶¶ 17, 26; *see also* Final Action 6–7 (citing Xu).

The Examiner is arguing that it would have been *obvious* to provide an entity's impact, based on the entity's share of economic contribution and environmental burden, given what Xu and Myers disclose.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to also analyze environmental impacts, as taught by Xu, with the method and

system of Myers since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Final Action 7–8; *see also* Answer 5–7 (mailed Dec. 18, 2013).

Therefore, the position the Examiner is taking is that the combination of cited prior art disclosures would have led one of ordinary skill in the art to the claimed subject matter, including a processor providing “the entity’s impact, the entity’s impact being based on the entity’s share of the economic contribution related to the activity and environmental burden caused by the activity.” Appellants have not addressed the findings and position the Examiner is in fact taking or pointed to any insufficiency with the Examiner’s articulated rationale for the combination.

Instead, Appellants assert that “a skilled artisan would not consult both Myers and Xu simultaneously to provide the claimed ‘impact.’” Appeal Br. 9; *see also* Reply Br. 3 (filed Feb. 18, 2014). In particular, Appellants argue that “Myers does not address environmental issues because environmental issues were not considered by Myers to be relevant to a supply chain economy . . . [and] Xu does not address the economic contributions of the organization or group of clients to an activity because Xu is only concerned with how an entity affects the environment compared to its peers.” Appeal Br. 9–10.

However, both Myers and Xu gather entity data to benchmark against other entities for measuring the value added share of the entity to determine the impact of each potential key participant in the supply chain or amongst other entities. *See* Myers ¶ 32. And as discussed above, Xu also utilizes

economic cost data as well as energy usage and emissions data to calculate the environmental impact of an entity. Xu ¶ 17. For instance, Xu discloses that the cost of various resources are as pertinent as the consumption of those resources in providing the environmental impact of an entity. *Id.* Therefore, we are not persuaded by Appellants' assertion because the rejection of claim 1 is based on obviousness, so all the disclosures in the cited references must be considered not in isolation, but rather, for what the combined teachings would have suggested to those of ordinary skill in the art.

For these reasons, Appellants' arguments are unpersuasive as to error by the Examiner in rejecting claim 1. Therefore, we sustain the rejection of independent claim 1, and independent claims 6 and 11, which fall with claim 1. We also sustain the rejection of dependent claims 2–5, 7–10, and 12–15, which are not argued separately except based on their dependence on claims 1, 6, or 11.

DECISION

The decision of the Examiner to reject claims 1–15 is affirmed.

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

AFFIRMED