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EXAMINER

LIN, JASON

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAOLO FONTANOT

Appeal 2015-007128
Application 12/701,823
Technology Center 2100

Before LARRY J. HUME, LINZY T. McCARTNEY, and JOYCE CRAIG,
Administrative Patent Judges.

McCARTNEY, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a rejection of claims
1–14. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

STATEMENT OF THE CASE

The present patent application concerns “a method and a system for scheduling a manufacturing process planned by an Enterprise Resource Planning (ERP) and produced by equipment of a shop floor, wherein within a Manufacturing Executing System (MES) a production scheduler is provided to schedule tasks of the manufacturing process.” Spec. ¶ 3. Claim 1 illustrates the claimed subject matter:

1. A method of scheduling a manufacturing process planned by an enterprise resource planning and performed by equipment of a shop floor, wherein a production scheduler within a manufacturing executing system schedules tasks of the manufacturing process, the method which comprises the following steps:

displaying a current production schedule by way of an interactive Gantt-chart;

displaying in the interactive Gantt-chart for each piece of equipment of the shop floor time periods already scheduled and time periods still unscheduled;

with a pointing device, selecting for a specific piece of equipment, one of the time periods still unscheduled being displayed on the interactive Gant chart;

querying a production database for the specific piece of equipment to find at least one task that can be performed by the specific piece of equipment and that fits into the time period still unscheduled; and

if a single task is found, scheduling the task, or if a plurality of tasks are found, scheduling at least one of the plurality of tasks, by way of a decision entered by a user interaction or by way of a decision determined automatically by a selection preference.

REJECTIONS

Claims 1–14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Baird et al. (US 2007/0094661 A1; April 26, 2007), Chua et al. (US 2005/0154625 A1; July 14, 2005), Castellani et al. (US 2002/0077878 A1; June 20, 2002), Van Den Nieuwelaar et al. (US 2005/0102723 A1; May 12, 2005), and Zhang et al., “Self-Construction Production Scheduling System,” Proc. of the 2006 IEEE Int’l Conf. on Automation Sci. & Engineering (2006).

ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellant’s arguments, and we disagree with Appellant that the Examiner erred. Appellant has waived arguments Appellant failed to raise or properly develop in Appellant’s briefing. *See* 37 C.F.R. § 41.41(b)(2).

Appellant argues “Chua et al. would not have suggested modifying Baird et al.’s method for scheduling a personal or collaborative task to be the method defined by claim 1.” Br. 9. According to Appellant, “Baird et al. are not in the slightest bit concerned with scheduling a manufacturing process planned by an enterprise resource planning and performed by equipment of a shop floor.” *Id.* at 7, 10. Appellant asserts “[i]t would not have been predictable and therefore, it would not have been obvious to have incorporated a manufacturing process planned by an enterprise resource planning and performed by equipment of a shop floor into Baird et al.’s teaching of scheduling personal or collaborative tasks for members of an organization.” *Id.* at 10.

We find Appellant’s arguments unpersuasive. Appellant’s arguments largely rest on the fact that Baird’s “goals do not include scheduling a

manufacturing” as recited in the claims. *Id.* at 5. But “neither the particular motivation nor the avowed purpose of the [inventor] controls” an obviousness analysis. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). “The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain.” *In re Heck*, 699 F.2d 1331, 1333 (Fed. Cir. 1983). Here, the Examiner found one of ordinary skill in the art would have been motivated to combine Chua’s teachings with Baird’s “to improve utilization by scheduling jobs for execution that are deemed to be best suited based on a set [of] rules.” Final Act. 4–5 (citing Chua Abstract). Appellant’s assertion that Baird is not concerned with scheduling a manufacturing process does not persuade us that the Examiner erred.

In addition, Appellant has offered little in the way of persuasive evidence or reasoning to support the contention that the Examiner’s combination of Chua’s and Baird’s teachings would not have been predictable. Appellant simply asserts that “it would have not have been predictable and therefore, it would not have been obvious” to combine Baird’s and Chua’s teachings because Baird teaches “scheduling personal or collaborative task for members of an organization.” App. Br. 10. But as noted by the Examiner, Baird explicitly discloses that Baird’s method of scheduling tasks applies to machines and devices. *See* Ans. 3; Baird ¶ 24. Appellant has simply failed to adequately explain why the Examiner’s combination of Baird’s and Chua’s teachings would not have been predictable. Accordingly, we find this argument unavailing.

Appellant also contends the Examiner has not explained how or why one of ordinary skill in the art would have combined Baird's and Van Den Nieuwelaar's respective querying methods to obtain the "querying" step recited in claim 1. *See* Br. 11–13. Appellant argues Examiner's "motivation does not address the established functions of the respective steps of the two teachings." *Id.* (emphasis omitted); *see also id.* at 12. According to Appellant, it would not have been predictable to combine Van Den Nieuwelaar's querying method with Baird's querying method, given their respective established functions. *Id.* at 13.

We find Appellant's arguments unpersuasive. As an initial matter, although the Examiner found Baird teaches querying to find a task that fits into an unscheduled period, the Examiner explicitly found the combination of Baird, Chua, Zhang, and Castellani does not disclose the "querying" step recited in claim 1. Final Act. 3, 6. However, the Examiner found Van Den Nieuwelaar remedies this deficiency. *Id.* at 6. Thus, contrary to Appellant's arguments, the Examiner did not find it would have been obvious to combine the "established functions" of Baird's and Van Den Nieuwelaar's querying methods. Rather, the Examiner found it would have been obvious to combine Van Den Nieuwelaar's query with *other aspects* of Baird, Chua, Zhang, and Castellani to arrive at the claimed invention.

Even if Appellant were correct that the Examiner combined Baird's and Van Den Nieuwelaar's querying methods, Appellant's arguments suggest that one of ordinary skill in the art would have been forced to mechanically apply Baird's and Van Den Nieuwelaar's respective methods. But "[a] person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 421 (2007).

There is no evidence that combining these querying steps to obtain the claimed “querying” step would have been “uniquely challenging or difficult for one of ordinary skill in the art.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). And here, too, Appellant fails to provide persuasive evidence or reasoning that it would not have been predictable to combine Van Den Nieuwelaar’s teachings with Baird’s. We therefore see no reason to disturb the Examiner’s rejection on these grounds.

DECISION

For the above reasons, we affirm the rejection of claims 1–14.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED