

REMARKS

Applicants hereby respond to the Office Action dated January 26, 2009.

Applicants acknowledge with gratitude the Examiner's allowance of claim 5. Applicants hereby amend claims 1, 6, 8, 10 and 11, and add new claims 12-14. The amendments are supported by the specification at, without limitation, page 10, line 12 to page 11, line 26, page 12, lines 18-24, page 13, lines 10-22, page 17, lines 19-30 and page 20, lines 16-22.

Amendments to the claims are not an acquiescence to any of the rejections. Silence with regard to any of the Examiner's rejections is not an acquiescence to such. Specifically, silence with regard to Examiner's rejection of a dependent claim, when such claim depends from an independent claim that Applicants consider allowable for reasons provided herein, is not an acquiescence to such rejection of the dependent claim(s), but rather a recognition by Applicants that such previously lodged rejection is moot based on Applicants' remarks and/or amendments relative to the independent claim (that Applicants consider allowable) from which the dependent claim(s) depends. Furthermore, any cancellations of and amendments to the claims are being made solely to expedite prosecution of the instant application. Applicants reserve the option to further prosecute the same or similar claims in the instant or a subsequent application.

Upon entry of the Amendment, claims 1-14 are pending in the present application.

Section 101 rejections

The Examiner rejected claims 1-4 and 6-11 under Section 101 as being directed to non-statutory subject matter. The Examiner stated, in particular, that (independent) method claims 1, 6 and 8 were directed to processes that neither are tied to another statutory class nor transform underlying subject matter. The Examiner further stated that the step of "generating a signal..." rendered the claims indefinite and non-statutory in that a signal was a transitory feature. Dependent claims 2-4, 7 and 9-11 were rejected as being based on rejected independent claims.

Without conceding the validity of the Examiner's rejection, Applicants have amended independent claims 1, 6 and 8 to address the Examiner's concerns. The amendments to the independent claims are similar, and hence claim 1 will be discussed.

Applicants have amended claim 1 to provide that "measuring an energy spectrum of photons scattered from the voxel" is done "with at least one photon detector". Applicants have further amended claim 1 to provide that subsequent steps of "determining", "estimating" or "computing" are done "in a processor". Applicants have further amended claim 1 to require:

- (i) ~~generating a signal~~ based upon the corrected estimated average mass computed, taking an action chosen from the group consisting of: scanning at least one of the plurality of voxels at a higher resolution; performing a NRF scan of at least one of the plurality of voxels; scanning at least one of the plurality of voxels with another scanning method; displaying an image of at least a part of the target to an operator; and notifying the operator of a potential threat.

Respectfully, Applicants suggest that the said amendments render the claim statutory. The amendments requiring the use of at least one photon detector and a processor require the use of specific apparatus to perform the claim. The term "generating s signal" which the Examiner rejected has been replaced by a group of specific and concrete actions: scanning at least one of the plurality of voxels at a higher resolution; performing a NRF scan of at least one of the plurality of voxels; scanning at least one of the plurality of voxels with another scanning method; displaying an image of at least a part of the target to an operator; and notifying the operator of a potential threat. The said actions are specific and concrete, and transform underlying subject matter.

Independent claims 6 and 8, insofar as they contain similar amendments, are allowable for similar reasons. Dependent claims 10 and 11 have been amended for consistency with the above amendments. Dependent claims 2-4, 7 and 9-11 are allowable for the reasons the independent claims from which they depend are allowable, and new claims 12-14, which depend from the same independent claims, are allowable for the same reasons.

Telephone Conversation with Examiner

The undersigned thanks the Examiner for the courtesies extended during the telephone conversation on May 13, 2009. During that time, the participants discussed the pending rejections of claims 1-4 and 6-11 on Section 101 grounds and possible amendments to claim language to overcome them. The amendments set forth herein reflect the results of the telephone conversation.

CONCLUSION

In view of the foregoing remarks and amendments, Applicants respectfully submit that the pending claims are in condition for allowance. Early and favorable consideration is therefore respectfully solicited.

If there are any remaining issues or the Examiner believes that a telephone conversation with Applicants' attorney would be helpful in expediting the prosecution of this application, the Examiner is invited to call the undersigned at 617-832-1118.

Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this application be charged to Deposit Account **No. 06-1448, Reference PSD-102.**

Respectfully submitted,

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