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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/358,620	01/26/2012	Robert M. Allen	1516.04RE	4338
21901	7590	05/18/2012		
Smith & Hopen, P.A. Attn: General Patent Matters 180 Pine Avenue North Oldsmar, FL 34677			EXAMINER NGUYEN, HIEP VAN	
			ART UNIT 3686	PAPER NUMBER
			NOTIFICATION DATE 05/18/2012	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 13/358,620	Applicant(s) ALLEN, ROBERT M.	
	Examiner HIEP V. NGUYEN	Art Unit 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/26/2012.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 7-26 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 7-26 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. See Continuation Sheet | 6) <input type="checkbox"/> Other: ____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :03/05/2012, 01/31/2012, 01/26/2012.

DETAILED ACTION

1. Claims 7-26 have been examined.

Claim Objections

2. Claim 7-26 are objected to because of the following informalities:

Claims 7-26 are objected to qualify as a proper reissue amendment under 37 CFR 1.173 which requires that any claims added in the reissue must always be totally underlined and never contain any bracketing". Appropriate correction is required.

Claim 7 is objected to as failing to comply with 37 CFR 1.75(i), which requires that, "where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation." Applicant is required to either cancel the claim(s), or else to rewrite the claim(s) in proper form.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 7-11 and 18-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based upon consideration of all of the relevant factors with respect to the claim as a whole, claim(s) 1-13 held to claim an abstract idea, and is/are therefore rejected as ineligible subject matter under 35 U.S.C. 101. The rationale for this finding is explained below:

Based on Supreme Court precedent (See also *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent Federal Circuit decisions, a §101 process should ordinarily at least (1) be tied to a particular machine or apparatus (machine implemented) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In addition, the tie to a particular apparatus, for example, cannot be mere extra-solution activity. See *Bilski v. Kappos*, 95 USPQ2d 1001 (US 2010).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps.

To meet prong (1), the method step should positively recite the particular apparatus (the thing or product) to which it is tied. This may be accomplished by having the claim positively recite the machine that accomplishes the method steps.

Alternatively or to meet prong (2), the method step should positively recite identifying the material that is being changed to a different state or positively recite the subject matter that is being transformed.

In this particular case, Claims 7 and 17 fail prong (1) because these claims recite a method comprising a plurality of steps, wherein the limitation “loading a unique, single

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