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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/592,784	11/03/2006	Matthew A. Katzer	7431.0092	1490

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EXAMINER	
LE, MARK T	

ART UNIT	PAPER NUMBER
3617	

MAIL DATE	DELIVERY MODE
04/03/2008	PAPER

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.

Office Action Summary	Application No.	Applicant(s)	
	11/592,784	KATZER, MATTHEW A.	
	Examiner	Art Unit	
	MARK T. LE	3617	

-- 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 *25 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ 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

4)☒ Claim(s) *12-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *12-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ 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).

11)☐ 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

12)☐ 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) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This communication is responsive to the amendments filed on January 25, 2008. Applicant's amendments and remarks have been carefully considered.

2. Claims 19, 27 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, "said validation" lacks antecedent basis. Note that claim 19 should depend from claim 17, which has the proper antecedent basis for the expression "said validation".

In claim 27, "all said generally purpose computers" lacks antecedent basis.

In claim 30, line 4, "said second command" lacks antecedent basis.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12, 14-16, 18, 20, 27-29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the digital command control system (DCC) and DigiToys Systems (DTS), described on pages 1-2 of the instant specification, in view of Digital Command Control of Stan Ames (DCCSA).

DTS described on page 2 of the instant specification is a model railroad control system similar to that recited in the instant claims, including a software and an interface designed for controlling a model railroad set from a remote location; wherein, the

software queues and sequentially sends control commands through the interface to a digital command station for execution of the commands. It is noted that the interface of DTS is external from the digital command station.

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to DTS so as to achieve the expected operating efficiency thereof.

Regarding the interface being a general purpose computer, note that it would have been obvious to one skilled in the art to use a general purpose computer instead of a dedicated computer for performing the same expected functions in DTS so as to achieve expected advantages thereof, such as lower cost, and greater flexibilities.

Regarding the instant claimed plurality of digital command stations, as recited in instant claim 14, it would have been obvious to one skilled in the art to provide additional command station(s) of the similar capabilities in DTS so as to allow the system to accommodate a larger track layout with more control features.

Regarding the instant claimed commands relating to speed of locomotives, note that control commands of a digital command control system being related to engine controls or the speed of locomotive are well known. Note for example, the last paragraph of page 1 of the instant specification, wherein, the commands controlling

train engines in a digital command control system are suggested, and obviously, the commands controlling train engines are considered as being related to the speed of locomotive as claimed.

Regarding instant claim 15, consider the DTS; wherein, the software issues a command to a communication interface and awaits confirmation that the command was executed by the digital command station, and when the software receives confirmation or response from the digital command station that the command executed, which is considered to represent the state of the digitally controlled railroad, the software program validates the response by sending the next command through the communication interface to the digital command station.

Regarding the instant claimed updating a database the state of the control, as recited in instant claim 18, note that such concept of compiling and updating a database of the state of controls of a computer controlled railroad system for current and future references is well known in the art of railroad control systems (Official Notice is taken); therefore, it would have been obvious to one skilled in the art to provide the same database compiling and updating capabilities in DTS so as to achieve expected advantages thereof.

Regarding the instant claimed interface and programs being operated on the same computer or different computers, as recited in instant claims 27-29, such a difference is not considered as being patentably significant because it would have been obvious to one skilled in the art to handle different operations on the same or different

computers having the same capabilities; wherein, the selection of the same or different computers may be made merely on the obvious basis of conveniences, the number of operators to take control of the railroad layout, and/or the availability of computers.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 12-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of the claims of U.S. Patents No. 6,494,408; 7,216,836; 6,702,235; 6,270,040; and 6,702,235. Although the conflicting claims are not identical, they are not patentably distinct from each other because they define essentially the same structure with minor differences in wordings.

7. Claims 12-30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of claims of U.S.

Patent No. 7,209,812; 6,877,699; 6,827,023; 6,676,089; 6,530,329; 6,460,467; 6,267,061; and 6,065,406 in view of Digital Command Control of Stan Ames (DCCSA).

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to the patent claim structure so as to achieve the expected operating efficiency thereof.

8. Claims 12-30 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the corresponding ones of the claims of copending Application No. 11/593,770 and 11/607,233 in view of in view of Digital Command Control of Stan Ames (DCCSA).

Regarding the instant claimed command being selected not in a first-in-first-out prioritization, consider page 28, section 3.1.9 of DCCSA; wherein, the concept of selecting a command in a command queue that is not on the basis of first-in-first-out prioritization is suggested. Therefore, it would have been obvious to one skilled in the art to apply the concept of selecting a command in a command queue that is not on the basis of first-in-first out, similar to that taught in DCCSA, to the copending application claim structure so as to achieve the expected operating efficiency thereof.

This is a provisional obviousness-type double patenting rejection.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK T. LE whose telephone number is (571)272-6682. The examiner can normally be reached on Mon-Fri, between 8:15-4:45 (Teleworking).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Le/
Primary Examiner
Art Unit 3617

mle
3/20/08