

North St. Petersburg, FL 33702 (813/570-5312).

**SUPPLEMENTARY INFORMATION:** The subject modification has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The original permit authorized the the Holder to capture, sample and/or conduct procedures for the assessment of various health parameters and subsequently release up to 150 individual dolphins near the Sarasota, Florida, area over a 5-year period. Special condition A.4 of the original permit has been altered to reflect the circumstances needed to conduct the specified research activities.

Dated: May 25, 1995.

**Ann D. Terbush,**

*Chief, Permits & Documentation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 95-13513 Filed 6-1-95; 8:45 am]

BILLING CODE 3510-22-F

## Patent and Trademark Office

[Docket No. 9505 31 44-5144-01]

### Request for Comments on Proposed Examination Guidelines for Computer-Implemented Inventions

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice and request for public comments.

**SUMMARY:** The Patent and Trademark Office (PTO) requests comments from any interested member of the public on proposed internal guidelines to be used by Office personnel in their review of patent applications on computer-implemented inventions. Because these guidelines govern internal practices, they are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A).

**DATES:** Written comments on the proposed guidelines will be accepted by the PTO until July 31, 1995.

**ADDRESSES:** Written comments should be addressed to the Commissioner of Patents and Trademarks, marked to the attention of Jeff Kushan. Comments submitted by mail should be sent to Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, DC 20231. Comments may also be submitted by telefax at (703) 305-8885 and by electronic mail through the

Internet to "comments-software@uspto.gov." Written comments should include the following information:

- name and affiliation of the individual responding;
- an indication of whether comments offered represent views of the respondent's organization or are the respondent's personal views; and
- if applicable, information on the respondent's organization, including the type of organization (e.g., business, trade group, university, non-profit organization) and general areas of interest.

Parties presenting written comments who wish to have their comments included in a publicly accessible electronic database of comments must provide their comments in machine-readable format. Such submissions may be provided in the form of an electronic mail message sent through the Internet, or on a 3.5" floppy disk formatted for use in either a Macintosh or MS-DOS based computer. Machine-readable submissions must be provided as unformatted text (e.g., ASCII or plain text).

All written comments, whether submitted on paper or in machine-readable form, will be available for public inspection no later than August 18, 1995, in Room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. In addition, comments provided in machine-readable format will be available no later than August 18, 1995, through anonymous file transfer protocol (ftp) via the Internet (address: comments.uspto.gov) and through the World Wide Web (address: www.uspto.gov).

**FOR FURTHER INFORMATION CONTACT:** Jeff Kushan by telephone at (703) 305-9300, by fax at (703) 305-8885, by electronic mail at kushan@uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

#### SUPPLEMENTARY INFORMATION

### I. Guidelines for Examination of Computer-Implemented Inventions

#### A. General Considerations

The following guidelines have been developed to assist Office personnel in their review of applications drawn to computer-implemented inventions. These guidelines respond to recent changes in the law that governs the patentability of computer-implemented inventions, and set forth the official policy of the Office regarding inventions in this field of technology.

It is essential that patent applicants obtain a prompt yet complete examination of their applications. The Office can best achieve this goal by raising any issue that may affect patentability in the initial action on the merits. Under the principles of compact prosecution, each claim should be reviewed for compliance with every statutory requirement of patentability in the initial review of the application, even if one or more claims is found to be deficient with respect to one statutory requirement. Deficiencies should be explained clearly, particularly when they serve as a basis of a rejection. Where possible, examiners should indicate how rejections may be overcome and problems resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

#### B. Procedures To Be Followed When Evaluating Computer-Implemented Inventions

The following procedures should be used when reviewing applications drawn to computer-implemented inventions.

1. *Determine what the applicant has invented by reviewing the written description and the claims.*

(a) Identify any specific embodiments of the invention that have been disclosed, review the detailed description of the invention and note the specific utility that has been asserted for the invention.

(b) Analyze each claim carefully, correlating each claim element to the relevant portion of the written description that describes that element. Give claim elements their broadest reasonable interpretation that is consistent with the written description. If elements of a claimed invention are defined in means plus function format, review the written description to identify the specific structure, materials or acts that correspond to each such element.

(c) Considering each claim as a whole, classify the invention defined by each claim as to its statutory category (i.e., process, machine, manufacture or composition of matter). Rely on the following presumptions in making this classification.

(i) A computer or other programmable apparatus whose actions are directed by a computer program or other form of "software" is a statutory "machine."

(ii) A computer-readable memory that can be used to direct a computer to function in a particular manner when used by the computer [1] is a statutory "article of manufacture".

(iii) A series of specific operational steps to be performed on or with the aid of a computer is a statutory "process".

A claim that clearly defines a computer-implemented process but is not cast as an element of a computer-readable memory or as implemented on a computer should be classified as a statutory "process." [2] If an applicant responds to an action of the Office based on this classification by asserting that subject matter claimed in this format is a machine or an article of manufacture, reject the claim under 35 U.S.C. 112, second paragraph, for failing to recite at least one physical element in the claims that would otherwise place the invention in either of these two "product" categories. The Examiner should also object to the specification under 37 CFR 1.71(b) if such an assertion is made, as the complete invention contemplated by the applicant has not been cast precisely as being an invention within one of the statutory categories.

A claim that defines an invention as any of the following subject matter should be classified as non-statutory.

- a compilation or arrangement of data, independent of any physical element;
- a known machine-readable storage medium that is encoded with data representing creative or artistic expression (e.g., a work of music, art or literature) [3], [4];
- a "data structure" independent of any physical element (i.e., not as implemented on a physical component of a computer such as a computer-readable memory to render that component capable of causing a computer to operate in a particular manner); or
- a process that does nothing more than manipulate abstract ideas or concepts (e.g., a process consisting solely of the steps one would follow in solving a mathematical problem [5]).

Claims in this form are indistinguishable from abstract ideas, laws of nature and natural phenomena and may not be patented. Non-statutory claims should be handled in the manner described in section (2)(c) below.

2. Analyze each claim to determine if it complies with § 112, second paragraph, and with § 112, first paragraph.

(a) Determine if the claims particularly point out and distinctly claim the invention. To do this, compare the invention as claimed to the invention as it has been described in the specification. Pay particular attention to the specific utility contemplated for the invention—features or elements of the invention that are necessary to provide

the specific utility contemplated for that invention must be reflected in the claims. If the claims fail to accurately define the invention, they should be rejected under § 112, second paragraph. A failure to limit the claim to reflect features of the invention that are necessary to impart the specific utility contemplated may also create a deficiency under § 112, first paragraph.

If elements of a claimed invention are defined using "means plus function" language, but it is unclear what structure, materials or acts are intended to correspond to those elements, reject the claim under § 112, second paragraph. A rejection imposed on this basis shifts the burden to the applicant to describe the specific structure, material or acts that correspond to the means element in question, and to identify the precise location in the specification where a description of that means element can be found. Interpretation of means elements for § 112, second paragraph purposes must be consistent with interpretation of such elements for §§ 102 and 103 purposes.

Computer program-related elements of a computer-implemented [6] invention may serve as the specific structure, material or acts that correspond to an element of an invention defined using a means plus function limitation. For example, a series of operations performed by a computer under the direction of a computer program may serve as "specific acts" that correspond to a means element. Similarly, a computer-readable memory encoded with data representing a computer program that can cause a computer to function in a particular fashion, or a component of a computer that has been reconfigured with a computer program to operate in a particular fashion, can serve as the "specific structure" corresponding to a means element.

Claims must be defined using the English language. See, 37 CFR 1.52(a). A computer programming language is not the English language, despite the fact that English words may be used in that language. Thus, an applicant may not use computer program code, in either source or object format, to define the metes and bounds of a claim. A claim which attempts to define elements of an invention using computer program code, rather than the functional steps which are to be performed, should be rejected under § 112, second paragraph, and should be objected to under 37 CFR 1.52(a).

(b) Construe the scope of the claimed invention to determine if it is adequately supported by an enabling disclosure. Construe any element

defined in means plus function language to encompass all reasonable equivalents of the specific structure, material or acts disclosed in the specification corresponding to that means element. Special care should be taken to ensure that each claim complies with the written description and enablement requirements of 35 U.S.C. § 112.

(c) A claim *as a whole* that defines non-statutory subject matter is deficient under § 101, and under § 112, second paragraph. Determining the scope of a claim as a whole requires a clear understanding of what the applicant regards as the invention. The review performed in step 1 should be used to gain this understanding.

(i) If the invention as disclosed in the written description is statutory, but the claims define subject matter that is not, the deficiency can be corrected by an appropriate claim amendment. Therefore, reject the claims under §§ 101 and 112, second paragraph, but identify the features of the invention that, if recited in the claim, would render the claimed subject matter statutory.

(ii) If the invention, both as disclosed and as claimed, is not statutory subject matter, reject the claims under § 101 for being drawn to non-statutory subject matter, and under § 112, second paragraph, for failing to particularly point out and distinctly claim an invention entitled to protection under U.S. patent law.

An invention is not statutory if it falls within any of the non-statutory claim categories outlined in section (1)(c) above. Also, in rare situations, a claim classified as a statutory machine or article of manufacture may define non-statutory subject matter. Non-statutory subject matter (i.e., abstract ideas, laws of nature and natural phenomena) does not become statutory merely through a different form of claim presentation. Such a claim will (a) define the "invention" not through characteristics of the machine or article of manufacture claimed but exclusively in terms of a non-statutory process that is to be performed on or using that machine or article of manufacture, and (b) encompass any product in the stated class (e.g., computer, computer-readable memory) configured *in any manner* to perform that process.

3. Determine if the claimed invention is novel and nonobvious under §§ 102 and 103. When evaluating claims defined using "means plus function" language, refer to the specific guidance provided in the *In re Donaldson* guidelines [1162 OG 59] and section (3)(a) above.

### C. Notes on the Guidelines

[1] Articles of manufacture encompassed by this definition consist of two elements: (1) a computer-readable storage medium, such as a floppy disk, and (2) the specific physical configuration of the substrate of the computer-readable storage medium that represents data (e.g., a computer program), where the storage medium so configured causes a computer to operate in a specific and predefined manner. The composite of the two elements is a storage medium with a particular physical structure and function (e.g., one that will impart the functionality represented by the data onto a computer).

[2] For example, a claim that is cast as "a computer program" but which then recites specific steps to be implemented on or using a computer should be classified as a "process." A claim to simply a "computer program" that does not define the invention in terms of specific steps to be performed on or using a computer should not be classified as a statutory process.

[3] The specific words or symbols that constitute a computer program represent the expression of the computer program and as such are a literary creation.

[4] A claim in this format should also be rejected under § 103, as being obvious over the known machine-readable storage medium standing alone.

[5] A claim to a method consisting solely of the steps necessary to converting one set of numbers to another set of numbers without reciting any computer-implemented steps would be a non-statutory claim under this definition.

[6] This includes the software and any associated computer hardware that is necessary to perform the functions directed by the software.

### II. Additional Information

An analysis of the law supporting the examination guidelines for computer-implemented inventions is being prepared. Interested members of the public are invited to comment on this legal analysis. Copies of the legal analysis can be obtained from Jeff Kushan on or after June 23, 1995, who can be reached using the information indicated above.

Dated: May 30, 1995.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and  
Commissioner of Patents and Trademarks.*  
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BILLING CODE 3510-16-M

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to and deletions from the Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

**EFFECTIVE DATE:** July 3, 1995.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On May 13, 1994, February 10, 17, March 17 and April 14, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 25038, 60 F.R. 7944, 9326, 14427 and 19026) of proposed additions to and deletions from the Procurement List.

#### Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the

commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List. Accordingly, the following commodities and services are hereby added to the Procurement List:

#### Commodities

Side Rack, Vehicle  
2510-00-179-7093  
Disk, Flexible  
7045-01-365-2069  
7045-01-365-2070  
7045-01-365-2071  
Suit, Contamination Avoidance  
8415-01-364-3320  
8415-01-364-3321  
8415-01-364-3322

#### Services

Grounds Maintenance, U.S. Army Reserve Center, 1816 East Main Street, Albemarle, North Carolina  
Grounds Maintenance, Naval and Marine Corps Reserve Center, 3190 Gilbert Avenue, Cincinnati, Ohio  
Grounds Maintenance, U.S. Army Reserve Center, 1984 Whiskey Road, Aiken, South Carolina  
Janitorial/Related Exterior Maintenance, VA Outpatient Clinic, 351 East Temple Street, Los Angeles, California  
Recycling Service, Robins Air Force Base, Georgia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

#### Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Gown, Operating, Surgical  
6532-01-058-2518 thru -2525

**Beverly L. Milkman,**

*Executive Director.*

[FR Doc. 95-13558 Filed 6-1-95; 8:45 am]

BILLING CODE 6820-33-P

### Procurement List Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from Procurement List.