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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DEAN MICHAEL LEAVITT
and JAMES EDWARD LISTER

Appeal 2016-003965
Application 13/649,935¹
Technology Center 3600

Before JOSEPH A. FISCHETTI, TARA L. HUTCHINGS, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1, 3–7, 15, and 17–27. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ Appellants identify Boost Payment Solutions, LLC as the real party in interest. Br. 2. After the briefing, however, an Assignment to Boost Payment Solutions, Inc. was recorded at Reel 044828, Frame 0339.

THE INVENTION

Appellants claim an “[e]lectronic systems for handling various payments between government, corporate, or institutional (i.e., non-consumer) customers (also referred to herein as ‘buyers’), and their suppliers, vendors and other payees (all of whom may sometimes be referred to as ‘merchants’)” Spec. ¶ 2.

Claim 1 reproduced below, is representative of the subject matter on appeal.

1. A method, comprising:
 - receiving an encrypted payment message from a buyer relating to a transaction with a merchant;
 - parsing, in a computing device, the encrypted payment message to obtain merchant identifying information;
 - further parsing the encrypted payment message to obtain a token that has been generated by the buyer and included in the payment message, wherein the token identifies payment information including at least a number and an expiration date for a payment card;
 - encrypting and submitting the payment information to a third party settlement processor on behalf of the merchant; and
 - reporting results of the transaction to at least one of the merchant and the buyer.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Ostrovsky	US 2010/0205095 A1	Aug. 12, 2010
McIsaac	US 2008/0222046 A1	Sept. 11, 2008

The following rejections are before us for review.

Claims 1, 3–7, 15, and 17–27 are rejected under 35 U.S.C. § 101.

Claims 1, 3–7, 15, and 17–27 are rejected under 35 U.S.C. § 112(a).

Claims 15 and 17–27 are rejected under 35 U.S.C. § 112(b).

Claims 1, 3–7, 15, 18–22, and 24–27 are rejected under 35 U.S.C. § 103(a).²

FINDINGS OF FACT

1. We adopt the Examiner’s findings as set forth on pages 3 and 7 of the Answer concerning the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 112(a) REJECTION

We will not sustain the rejection of claims 1, 3–7, 15, and 17–27 as failing to comply with the written description requirement.

The Examiner found,

Claim 1, recites “encrypting and submitting the payment information...” Although, Applicant’s Specification [0054] mentions FTP (file transfer protocol), Applicant’s Specification does not mention encrypting the FTP before submitting payment information to third party settlement. Claims 15 and 22 contain similar language.

² We treat the Examiner’s omission of claim 3 in the rejection heading at page 7 of the Final Office Action as inadvertent in light of the claim’s treatment at page 8.

(Final Act. 5).

Appellants, however, argue that the Specification provides more than adequate support for FTP transfers being secure, i.e., encrypted. For example, paragraph 0017 explains that a “transaction is securely processed on the supplier’s behalf.[”] Paragraph 0018 discusses the need to comply with the Payment Card Industry Data Security Standard (PCI DSS). Paragraph 0038 discusses sending and receiving payment data via encrypted emails. Paragraph 0040 discusses using secure FTP and other secure protocols.

(App. Br. 7).

Based on our review of the Specification at the sections cited by Appellants, and in particular paragraph 40, we agree with Appellants that the Specification explicitly describes using “secure file transfer protocol” (SFTP or FTPS). Also, paragraph 38 describes email (another data transfer mechanism), and clearly states, “payment data 110 may be an encrypted email, and the parsing module 125 may include instructions to parse card data from the encrypted email.”

35 U.S.C. § 112(b) REJECTION

i. We will not sustain the rejection of claims 15 and 22, and their dependent claims, as failing to set forth the subject matter which the inventor or a joint inventor, or for pre-AIA, the Applicants, regard as their invention.

The Examiner found, “Claims 15 and 22 recite (‘a token that has been generated by the buyer ...’). The steps attempt to claim both a system and method for using the system. Therefore, as it has been held, that a claim is

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considered indefinite if it does not reasonably apprise those skilled in the art of its scope.” (Final Act. 6) (citations omitted).

Appellants argue,

Claims 15 and 22 each recite and [sic] apparatus having a processor configured to execute certain instructions enumerated in the claims. One of those instructions in claim 15 is an instruction to “further parse the encrypted payment message to obtain a token that has been generated by the buyer.” One of ordinary skill would have been reasonably apprised that to meet this recitation of the claim it was necessary to execute instructions in the processor to parse a payment message to obtain a buyer generated token. There is no mixture of a system or apparatus claim with a method step.

(Appeal Br. 8).

We agree with Appellants that it is clear from these claims that the claimed “buyer generated token” is the product of both buyer input and the program instructions which govern the control of a computer system—an apparatus.

ii. We will sustain the rejection of claims 22 and 25 and hence, claims 22–27, under 35 U.S.C. § 112(b) as failing to set forth the subject matter which the inventor or a joint inventor, or for pre-AIA, the Applicants, regard as their invention based on the recitation of “means for” that invokes 35 USC § 112, sixth paragraph (now § 112(f)).

The Examiner found, “the written description fails to clearly link or associate the disclosed structure to the claimed function such that one of

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ordinary skill in the art would recognize what structure performs the claimed function.” (Final. Act. 6).

Appellants maintain, “the Specification clearly discloses, e.g., at paragraph 0024, a portal 120 that ‘includes one or more computer servers.’ The Specification further describes the portal 120, including various modules such as a parsing module 125 performing various functions.” (Appeal Br. 9).

We disagree with Appellants.

When the means-plus-function limitation in a claim is a *computer-enabled* means-plus-function limitation, one must set forth in the specification sufficient description of an *algorithm* associated with the function recited in the claim in order to avoid a finding that an Applicants have failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112 (now §112(b)).

It is certainly true that the sufficiency of the disclosure of algorithmic structure must be judged in light of what one of ordinary skill in the art would understand the disclosure to impart. *See, e.g., Intel Corp. v. VIA Techs.*, 319 F.3d 1357, 1367 (Fed. Cir. 2003) (knowledge of a person of ordinary skill in the art can be used to make clear how to implement a disclosed algorithm); *Atmel Corp.*, 198 F.3d at 1379 (“[T]he ‘one skilled in the art’ analysis should apply in determining whether sufficient structure has been disclosed to support a means-plus-function limitation.”). That principle, however, has no application here, because in this case there was no algorithm at all disclosed in the specification. The question thus, is not whether the algorithm that was disclosed was described with sufficient specificity, but whether an algorithm was disclosed at all.

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Aristocrat Techs. Australia Party. Ltd. vs. Int'l Game Tech., 521 F.3d 1328, 1337 (Fed. Cir. 2008).

When there is insufficient description of an algorithm in the Specification to support a computer-enabled means-plus-function limitation in a claim, the disclosure will be considered inadequate to explain to one of ordinary skill in the art what is meant by the claim language.

For computer-implemented means-plus-function claims where the disclosed structure is a computer programmed to implement an algorithm, “the disclosed structure is not the general purpose computer, but rather the special purpose computer programmed to perform the disclosed algorithm.” *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1349 (Fed.Cir.1999). Thus the patent must disclose, at least to the satisfaction of one of ordinary skill in the art, enough of an algorithm to provide the necessary structure under § 112, ¶ 6. This court permits a patentee to express that algorithm in any understandable terms including as a mathematical formula, in prose, *see In re Freeman*, 573 F.2d 1237, 1245–46 (CCPA 1978), or as a flow chart, or in any other manner that provides sufficient structure. The district court correctly determined that the structure recited in the '505 specification does not even meet the minimal disclosure necessary to make the claims definite. Simply reciting “software” without providing some detail about the means to accomplish the function is not enough. *See Aristocrat Techs. Austl. Pty v. Int'l Game Tech.*, 521 F.3d 1328, ---- (Fed.Cir.2008) (“For a patentee to claim a means for performing a particular function and then to disclose only a general purpose computer as the structure designed to perform that function amounts to pure functional claiming. Because general purpose computers can be programmed to perform very different tasks in very different ways, simply disclosing a computer as the structure designated to perform a particular

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function does not limit the scope of the claim to ‘the corresponding structure, material, or acts’ that perform the function, as required by section 112 paragraph 6.”). This court does not impose a lofty standard in its indefiniteness cases. *See, e.g., Med. Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1214 (Fed. Cir. 2003). But in this case, the claims are already quite vague. Without any corresponding structure, one of skill simply cannot perceive the bounds of the invention.

Finisar Corp. v. DirectTV Group, Inc., 523 F.3d 1323, 1340–41 (Fed. Cir. 2008).

When a Specification discloses *no* algorithm corresponding to a computer-enabled means-plus-function limitation in a claim, an Applicant has necessarily failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112 (now § 112(b)). *See also Aristocrat*, 521 F.3d 1328, 1333 (Fed. Cir. 2008) (quoting *Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1253 (Fed. Cir. 2005) (“[t]he corresponding structure for a § 112 ¶ 6 claim for a computer-implemented function is the algorithm disclosed in the specification.” [Harris] 417 F.3d at 1249.”) (some brackets added); *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1367 (Fed. Cir. 2008) (“[A] means-plus-function claim element for which the only disclosed structure is a general purpose computer is invalid if the specification fails to disclose an algorithm for performing the claimed function.”). *See also Blackboard, Inc. v. Desire2Learn Inc.*, 574 F.3d 1371 (Fed. Cir. 2009) (finding Blackboard’s means-plus-function claims indefinite because the patent describes an undefined component, *i.e.*, a black box, that performs the recited function

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but does not disclose how the component performs the function). *See further Ex parte Catlin*, 90 USPQ2d 1603, 1605 (BPAI 2009) (precedential) (during prosecution, computer-enabled means-plus-function claims will be held unpatentable under 35 U.S.C. § 112, second paragraph, as being indefinite if a Specification fails to disclose any algorithm corresponding to the recited function in the claims).

Our review of the Specification and the sections cited by Appellants in support the reveals only a general reference to a portal 120 at paragraph 24 and modules 130, 135, 140, and a network 115 with attendant computers. Modules are nebulous entities and absent a more specific description of how these modules work to accomplish the recited functions, we find them insufficient to adequately describe the associated structure sufficient to satisfy the 112, sixth paragraph (now § 112(f) requirements. Even taking the flowchart of Figure 7 into account, the steps of this flowchart merely repeat those steps of the claims without giving further description into programming instructions of how the claimed function is performed by a computer.

35 U.S.C. § 103(a) REJECTION

We will not affirm the rejection of claims 1, 3–7, 15, and 17–27 under 35 U.S.C. § 103(a).

Appellants argue, “Ostrovsky discloses at most that ‘[e]mail messages may be signed with a secret code or electronic signature for authentication purposes.’ (Ostrovsky, paragraph 0086.) Appellants do not concede that Ostrovsky’s ‘secret code’ reads on the recited ‘token’ in any way.”

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(Appeal Br. 9).

In the Answer, the Examiner found,

Ostrovsky teaches sending a secure payment e-mail [0039; 0086] (signed using an electronic signature); a token (card number) [Fig. 12; 0084; 0085]. Because the e-mail in Ostrovsky may be signed with a secret code, to one of ordinary skill in the art, this means to encrypt the e-mail. Ostrovsky teaches in [0017] that communications are encrypted with an electronic signature to protect “confidentiality and security”. Schneier, Applied Cryptography, Second Edition Protocols, Algorithms and Source Code in C, 1996, states “encrypt a document using your private key, and you have a secure digital signature”.

(Answer 7–8).

We agree with Appellants. Independent claims 1, 15, and 22 require the following in one form or another:

encrypted payment message to obtain *a token* that has been generated by the buyer and included in the payment message, wherein the *token identifies* payment information including at least *a number* and an expiration date *for a payment card*.

(Emphasis added).

The Examiner found that the card number of Ostrovsky, disclosed in paragraph 85 and Figure 12, is the “token.” (Answer 7). The Specification defines a token stating, “[a] token is a unique or substantially unique identifier for ghost card information, e.g., the card account number, expiration date, etc., and may be used to secure the ghost card information.” Specification ¶ 39. Thus, the token must be something other than the card account number in order to uniquely identify the account number. We

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cannot therefore accept the Examiner’s construction that the card number is one and the same as the claimed token.

Therefore, we will not sustain the rejection of independent claims 1, 15 and 22 under 35 U.S.C. § 103(a). Because claims 3–7, 18–21, and 23–27 depend from one of claims 1, 15 and 22, we likewise do not sustain the rejection of these claims.

35 U.S.C. § 101 REJECTION

We will sustain the rejection of claims 1, 3–7, 15, and 17–27 under 35 U.S.C. § 101.

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “‘inventive concept’”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp., Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 72–73 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept.

Although, the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case's claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The steps in claim 1 result in: “encrypting and submitting the payment information to a third party settlement processor on behalf of the merchant; and reporting results of the transaction to at least one of the merchant and the buyer.”

The Specification further states,

One present system requires a customer cardholder wishing to make a payment to its supplier or vendor (to the extent there is any difference between them, merchants, suppliers and vendors alike are referred to herein as suppliers) to notify its issuing bank of its desire to do so. Notice may be then be provided to the supplier, which must then enter card data, an amount of the payment, date of payment, invoice number(s), etc., to which the payment applies, and other payment-related data that may be required, into a point of sale terminal, processing software, or other card acceptance system that has been provided to the supplier by its merchant bank in order to submit card transactions for processing and ultimate funding. For a ghost card or a one-time use card, an e-mail notification may be sent to the supplier identifying invoices to be paid, the amount of each, and the overall payment amount to be applied to the card.

Specification ¶ 3. The Specification also describes:

In short, the present disclosure includes mechanisms by

which a buyer-initiated one time use or ghost transaction may be processed on behalf of a merchant. That is, a transaction may be proxied, or emulated, on behalf of a supplier in a manner that yields the same result for a supplier as a transaction in which the buyer initiates a transaction directly to the merchant (i.e., supplier), but with significant efficiencies for the supplier and greatly reduced risk for all parties (e.g., the card issuer, the buyer, and the supplier).

Specification ¶ 19.

Thus, all this evidence shows that claim 1 is directed to a secured third party settlement process using an encrypted payment message with a payment token identifying at least a number and an expiration date for a payment card. It follows from prior Supreme Court cases, and *Gottschalk v. Benson*, 409 U.S. 63 (1972) in particular, that the claims at issue here are directed to an abstract idea. A secured third party settlement process is a fundamental economic practice of a transaction because ensuring security of settlement is necessary to protect the payment card data involved in the transaction. The patent-ineligible end of the 35 U.S.C. § 101 spectrum includes fundamental economic practices. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2355–1257. Thus, a secured third party settlement process is an “abstract idea” beyond the scope of § 101.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of an intermediated settlement in *Alice* and the concept of a secured third party settlement process, at issue here. Both are squarely

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within the realm of “abstract ideas” as the Court has used that term. That the claims do not preempt all forms of the abstraction or may be limited to a payment card, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1360–61 (Fed. Cir. 2015).

Further, claims involving only data collection, analysis, such as parsing an encrypted message, are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that claims reciting only “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016).

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional

featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to take in data, compute a result, and return the result to a user amounts to electronic data query and retrieval—some of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants’ claims simply recite the concept of a secured third party settlement process using a token in an encrypted payment message. The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than instructions to a secured third party settlement process using a token in an encrypted payment

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message. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

As to the structural claims, they are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2360 (alterations in original).

We have reviewed all the arguments (Appeal Br. 6–7) that Appellants have submitted concerning the patent eligibility of the claims before us which stand rejected under 35 U.S.C. § 101. We find that our analysis above substantially covers the substance of all the arguments which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellants argue,

The Office has not met that burden in this case. Here, the Office Action (page 4) simply states that the claims “are directed towards the concept of making a payment, settling the transaction and reporting the results to parties involved using a buyer defined algorithm.” The Office does not even address the specific recitations of the independent claims to explain how they allegedly fall within this abstract idea, much less does the Office provide any analysis or evidence to support its conclusion.

(App. Br. 6).

We disagree with Appellants.

The Federal Circuit has stated:

all that is required of the office to meet its prima facie burden of production is to set forth the statutory basis of the rejection and the reference or references relied upon in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. As the statute itself instructs, the examiner must ‘notify the applicant,’ ‘stating the reasons for such rejection,’ ‘together with such information and references as may be useful in judging the propriety of continuing prosecution of his application.’ 35 U.S.C. § 132.

In re Jung, 637 F.3d 1356 at 1363 (Fed. Cir. 2011). Here, the Examiner has done exactly that—the final action states, “Claims 1, 3–7, 15, and 17–27 is/are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.” (Final Act. 4). The final action further goes on to identify, “claims is/are directed towards the concept of making a payment, settling the transaction and reporting the results to parties involved using a buyer defined algorithm.” *Id.* Thus, we find no error with the Examiner’s prima facie case.

Appellants argue, “independent claim 1 recites in part ‘parsing the encrypted payment message to obtain a token that has been generated by the buyer and included in the payment message, wherein the token identifies payment information.’” (Appeal Br. 6). We disagree with Appellants, because each of these items has its base in human thought/activity, which is not subject eligible under 35 U.S.C. § 101.³

³ Section 101 of Title 35 U.S.C. sets out the subject matter that can be

The question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). In this case, claim 1 as a whole is focused on “encrypting and submitting the payment information to a third party settlement processor on behalf of the merchant.” That the claims recite an encrypted message does not make them patent eligible because they do not recite any specific means constituting an improvement in the technical field or technology of encryption. *See id.* Significantly, the claims do not provide details as to any non-conventional software for enhancing the financing process. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”); *see also Elec. Power Grp.*, 830 F.3d at 1354 (explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions”).

patented: 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.

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CONCLUSIONS OF LAW

We conclude the Examiner did not err in rejecting claims 1, 3–7, 15, and 17–27 under 35 U.S.C. § 101.

We conclude the Examiner did err in rejecting claims 1, 3–7, 15, and 17–27 under 35 U.S.C. § 112(a).

We conclude the Examiner did err in rejecting claims 15 and 17–21 under 35 U.S.C. § 112(b); and did not err in rejecting claims 22–27 under 35 U.S.C. § 112(b).

We conclude the Examiner did err in rejecting claims 1, 3–7, 15, and 17–27 under 35 U.S.C. § 103(a)

DECISION

The decision of the Examiner to reject claims 1, 3–7, 15, and 17–27 is affirmed.

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

AFFIRMED