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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* JENS LEHMANN, VEDRAN LERENC,  
and DAVID SOMMER

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Appeal 2016-004627  
Application 13/722,342  
Technology Center 3600

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Before STEVEN D.A. McCARTHY, JUSTIN BUSCH, and  
JASON M. REPKO, *Administrative Patent Judges*.

BUSCH, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–5, 7–11, 13–17, and 19–22. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### CLAIMED SUBJECT MATTER

The claims relate generally to carpooling. Spec. ¶¶ 1–2. Specifically, the claims relate to receiving “ride intents” (i.e., a “set of parameters specified by a user for a ride”) from users; calculating differences between one ride intent and other ride intents or ride segments; and determining whether to add a ride intent to a multi-segment ride. *Id.* ¶¶ 16–17, 24–26, Fig. 5. Certain embodiments may allow a user to specify a ride intent by using electronic calendar entries. *Id.* ¶ 18, Fig. 3. Claim 1 is reproduced below:

1. A processor-implemented method comprising:
  - receiving, at a user device, a ride intent;
  - transmitting, to a first processor, the ride intent from the user device;
  - calculating, by the first processor, a time difference between a last temporal segment belonging to a multi-segment ride and the ride intent, wherein the multi-segment ride includes the last temporal segment and at least one other temporal segment, wherein each temporal segment of the multi-segment ride corresponds to different, non-overlapping, beginning and end times of a ride, wherein the at least one other temporal segment corresponds to a time occurring before the beginning of the last temporal segment, wherein the last temporal segment defines a set of ride preferences of a user of the user device and the ride intent defines another set of ride preferences of the same user of the user device, a start location of the ride intent and an end location of the last temporal segment are different, a first time interval corresponding to the ride intent and a second time interval corresponding to the last temporal segment are non-overlapping, and parameters of at least one of the last temporal segment and the ride intent are specified through electronic calendar entries on the user device;
  - comparing, by a second processor, the time difference to a first threshold;

upon determining that the time difference is less than or equal to the first threshold, marking the ride intent as a new segment of the multi-segment ride for the user of the user device;

comparing, by the second processor, the multi-segment ride of the user to at least one other multi-segment ride of at least one other user; and

upon determining that a second threshold of the ride preferences of the user and ride preferences of at the least one other user match, notifying the user at the user device and scheduling a shared multi-segment ride between the user and the at least one other user, wherein the shared multi-segment ride corresponds to matched temporal segments of the multi-segment ride and the at least one other multi-segment ride, wherein each temporal segment of the shared multi-segment ride corresponds to different, non-overlapping, beginning and end times of a shared ride,

wherein the first processor and the second processor are one of: same processor, different processors, situated in the same computer, and situated in different computers.

## REJECTIONS

Claims 1–5, 7–11, 13–17, and 19–22 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2–3.

Claims 1–5, 7–11, 13–17, and 19–22 stand rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Final Act. 3–5.

Claims 2, 4, 5, 7, 8, 10, 11, 13, 14, 16, 17, and 19–22<sup>1</sup> stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Meyer

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<sup>1</sup> The statement of rejection does not identify claims 20–22 in this ground. Nevertheless, the Examiner provides a mapping and explanation of the rejection of claims 20–22 in view of the combination of Meyer and Kamar. Final Act. 14–16.

Appeal 2016-004627  
Application 13/722,342

(US 2011/0054956 A1; Mar. 3, 2011) and Kamar (US 2010/0332242 A1; Dec. 30, 2010). Final Act. 5–17.

Claims 1, 3, 9, and 15 stand rejected under 35 U.S.C. § 103(a) as being obvious in view of Meyer, Jarvinen (US 2009/0005963 A1; Jan. 1, 2009), and Kamar. Final Act. 17–23.

## ANALYSIS

### REJECTION OF CLAIMS UNDER 35 U.S.C. § 101

#### *Introduction and Framework*

The Examiner rejects the claims under 35 U.S.C. § 101 because the claims as a whole are directed to an abstract idea and do not contain “significantly more than the abstract idea” so as to transform the claimed abstract idea into a patent-eligible application. Final Act. 2–3; Ans. 4–7.

The Patent Act defines patent-eligible subject matter broadly: “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.” 35 U.S.C. § 101. There is no dispute in this Appeal that the pending claims are directed to one of these categories. *See* App. Br. 8; Ans. 4.

In *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 70 (2012), and *Alice Corp. v. CLS Bank International*, 134 S. Ct. 2347, 2354 (2014), the Supreme Court explained that § 101 “contains an important implicit exception” for laws of nature, natural phenomena, and abstract ideas. *See Diamond v. Diehr*, 450 U.S. 175, 185 (1981). In *Mayo* and *Alice*, the Court set forth a two-step analytical framework for evaluating patent-eligible subject matter: (1) “determine whether the claims at issue are

directed to” a patent-ineligible concept, such as an abstract idea; and, if so, (2) “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements” add enough to transform the “nature of the claim” into “significantly more” than a patent-ineligible concept. *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79); see *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Step one in the *Mayo/Alice* framework involves looking at the “focus” of the claims at issue and their “character as a whole.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). Step two involves the search for an “inventive concept.” *Alice*, 134 S. Ct. at 2355; *Elec. Power Grp.*, 830 F.3d at 1353. For an inventive concept, “more is required than ‘well-understood, routine, conventional activity already engaged in’” by the relevant community. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016) (quoting *Mayo*, 566 U.S. at 79–80).

#### *Step One of Alice Framework*

Turning to step one of the *Alice* framework, we are unpersuaded that the Examiner erred in concluding the claims are directed to an abstract idea. Final Act. 2; Ans. 4. In particular, the Examiner finds the claims are directed to receiving, managing, comparing, matching, and scheduling ride segments, which are steps that could be performed mentally by a human and are methods of organizing human activities that incorporate mathematical formulas or relationships. Ans. 4. Notably, the Examiner’s characterization is consistent with Appellants’ description of the problem and solution. See App. Br. 8–9. In particular, Appellants explain that the claims are directed

to “receiving and transmitting ride intent information associated with electronic calendar entries” and “the scheduling of multi-segment shared rides.” App. Br. 9; *see also* Spec. ¶¶ 7–8; Reply Br. 2.

Appellants contend these claimed features cannot be performed in one’s mind because the claims are tied to electronic devices and electronic calendar entries. App. Br. 9; Reply Br. 2. Appellants further assert the claims’ treatment of distinct electronic entries is a technological problem arising in computer networks and rooted in computer technology because computer systems are required to transmit, receive, and manage electronic calendar entries. App. Br. 9; Reply Br. 2.<sup>2</sup>

Appellants’ claims, however, do not address a problem rooted in technology. These claims are not like those in *Enfish*, where the Federal Circuit found the claims eligible because they were focused on a specific software-based improvement to database techniques. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). Nor are these claims like those found eligible when “the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). The claims in *DDR*

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<sup>2</sup> Appellants also argue the use of electronic calendar entries renders the claimed subject matter eligible because the claims recite specific types of information. App. Br. 11 (citing *Smartflash LLC v. Apple, Inc.*, No. 6:13CV447-JRG-KNM, 2015 WL 661174 (E.D. Tex. Feb. 13, 2015)); Reply Br. 2. After the briefs in this appeal had been filed, the Court of Appeals for the Federal Circuit reversed the district court and held that the claims at issue in that case recited ineligible subject matter under 35 U.S.C. § 101. *Smartflash LLC v. Apple Inc.*, 680 F. App’x 977 (Fed. Cir. 2017).

required an inventive device or technique for displaying information. *DDR*, 773 F.3d at 1257.

Unlike *DDR*, *Enfish*, or the district court *Trading Technologies* case Appellants reference, determining whether to combine ride segments based on ride preferences is not a problem specifically arising in the realm of computers.<sup>3</sup> Instead, the claims' character, as a whole, lies in longstanding conduct that exists apart from computers—i.e., determining whether two potential ride segments are compatible for carpooling. For instance, Appellants point to the use of a “processing device” that interfaces with other user devices to calculate, transform, and process data from electronic calendar entries; receive and transmit ride information; and schedule carpooling rides as evidence of eligibility. App. Br. 9; Reply Br. 2. But this type of computer involvement does not show that the claimed invention is “an improvement in computers as tools,” like those claims found patent-

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<sup>3</sup> Appellants reference *Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-C-4811 (E.D. Ill. Apr. 15, 2015), but provide no citation. Initially, we note that the unreported findings from a district court are not binding in the instant proceeding. Nevertheless, we have considered cases involving related patents and do not find those cases support Appellants' position. *See e.g.*, *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001 (Fed. Cir. Jan. 18, 2017) (non-precedential); *Trading Techs. Int'l, Inc. v. CQG, Inc.*, No. 05-cv-4811, 2015 WL 774655, (N.D. Ill. Feb. 24, 2015). Even with respect to the claims involved in *Trading Technologies*, the instant claims are more similar to claims the district court stated would be directed to an abstract idea. *Compare Trading Techs.*, 675 F. App'x 1001, 1004–05 (finding specific structure and function of a graphical user interface constitutes eligible subject matter) with *Trading Techs.*, 2015 WL 774655, at \*4 (noting “[i]f the claims simply provided for ‘setting, displaying, and selecting’ data information, CQG would be correct in its assessment that the claims are directed to an abstract idea”).

eligible. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). Rather, the claims invoke computers merely as a tool aiding a process focused on an abstract idea. *See* Ans. 4.

The claims are more similar to those claims the Federal Circuit has found to be directed to an abstract idea. In determining whether claims are directed to an abstract idea, the Federal Circuit has considered whether the claims cover a method that human beings can perform without a computer. *See Mortgage Grader, Inc. v. First Choice Loan Servs.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (explaining “[t]he series of steps covered by the asserted claims . . . could all be performed by humans without a computer” in concluding that the claims are directed to an abstract idea). Appellants’ claims do not recite a specific computer-based algorithm for making determinations, like those processes found patent-eligible. *See McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding that claims involving a specific structure of the rules for automated lip-synchronization of 3-D characters were patent-eligible). Instead, the claims broadly and abstractly recite a series of determinations that a human can make by reviewing the usage data and relevant records. *See* Ans. 3 (discussing mental processes).

The claims further recite processes or methods implemented by processors that receive ride segment data, compare that data to existing data to recognize whether the new data should be added to the existing carpool ride, notify the user, and schedule (i.e., store) the additional ride segment. Likewise, the Federal Circuit has also recognized that “[t]he concept of data collection, recognition, and storage is undisputedly well-known,” and “humans have always performed these functions.” *Content Extraction &*

*Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014), *cited in* Ans. 4. We agree with the Examiner's findings because the claimed concept is similar to the above-discussed concepts found to be abstract by the Federal Circuit.

Appellants also argue the claims are not directed to abstract ideas because they do not pre-empt other methods or systems of carpooling or ride-sharing. App. Br. 10. It is true that the Supreme Court has characterized pre-emption as a driving concern for patent eligibility. *See Alice*, 134 S. Ct. at 2354. But the Examiner is correct, Ans. 6, that characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. "The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability" and "[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (*citing Alice*, 134 S. Ct. at 2354). However, "[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Ariosa*, 788 F.3d at 1379; *Cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362-63 (Fed. Cir. 2015), *cert. denied*, 136 S. Ct. 701, 193 L. Ed. 2d 522 (2015) ("[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.").

Accordingly, we are unpersuaded the Examiner erred in concluding the claims are directed to an abstract idea.

*Step Two of Alice Framework*

Because the claims are “directed to an abstract idea,” we turn to step two of *Alice* to determine whether the limitations, when considered both “individually and ‘as an ordered combination’” contain an “inventive concept” sufficient to transform the claimed “abstract idea” into a patent-eligible application. *Alice*, 134 S. Ct. at 2355–58.

Appellants do not clearly articulate whether they assert the claims recite significantly more than the abstract idea itself. *See* App. Br. 8–11 (stating only that “the claims are not directed to a judicial exception to statutory subject matter”); Reply Br. 3–4. Nevertheless, to the extent Appellants’ arguments related to the use of a processor communicating with multiple user devices and manipulating data using electronic calendar entries are considered an assertion that the claims recite significantly more than the abstract idea itself, we address those arguments herein. *See* App. Br. 9; Reply Br. 3. In Appellants’ view, the claims are like a stock viewer application that solves an Internet-centric problem using computer technology. App. Br. 9–10. Appellants contend the claimed systems and processes “operate in a manner significantly different from carpool scheduling by pen and paper,” but offer no explanation how the claimed systems operate differently, beyond the generically claimed use of computers to store, transmit, and receive data in a conventional manner. App. Br. 9–10. We disagree.

First, we consider the limitations individually. *See Alice*, 134 S. Ct. at 2355–58. The claims recite conventional uses of a processor and generic user devices, such as receiving and transmitting data. The claims further recite calculating information based on the data determining results,

notifying a user, and scheduling rides based on the data. To perform these functions, the claims do not call for non-conventional computer components. Rather, we agree with the Examiner that these functions—collection, analysis, notification, and scheduling—merely require a generic processor, which does not supply an inventive concept. Ans. 5–7; *FairWarning IP, LLC v. Iatric Sys. Inc.*, 839 F.3d 1089, 1095 (Fed. Cir. 2016).

Additionally, the steps acting upon the data are abstractly and broadly recited as “receiving,” “transmitting,” “calculating,” “comparing,” and “determining” functions, instead of a concrete solution for carrying out these identifications and determinations. Thus, the recited identifications and determinations “do not invoke any assertedly inventive programming” to supply an inventive concept. *Elec. Power*, 830 F.3d at 1355. In sum, the limitations, considered individually, do not contain an inventive concept.

Next, we consider the limitations as an ordered combination. Unlike the inventive distribution of function between the local computer and an ISP server in *BASCOM*, the claims here merely recite generic processors and user devices carrying out the abstract idea. *See BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1352 (Fed. Cir. 2016) (discussing the specific location for the filtering system and role of networking accounts in concluding that the claims did not preempt the abstract idea’s use). Essentially, the claim recites an abstract idea with the instruction to apply it on generic computing components.

“[R]elying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs.*, 788 F.3d at 1363. So, even if a computer performs the claimed steps and ultimate scheduling with fewer errors or more quickly than a human, we

agree with the Examiner that using a computer in this conventional way does not supply an inventive concept. Ans. 5–7. Therefore, Appellants have not persuaded us of error in the rejection of the claims under 35 U.S.C. § 101.

REJECTION OF CLAIMS UNDER 35 U.S.C. § 112 (WRITTEN DESCRIPTION)

The Examiner rejects claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement with respect to various limitations recited in the claims. Final Act. 3–5. In particular, the Examiner finds Appellants’ Specification does not have written description support for “a first time interval corresponding to the ride intent and a second time interval corresponding to the last temporal segment are non-overlapping,”

wherein the multi-segment ride includes the last temporal segment and at least one other temporal segment, wherein each temporal segment of the multi-segment ride corresponds to different, non-overlapping, beginning and end times of a ride, wherein the at least one other temporal segment corresponds to a time occurring before the beginning of the last temporal segment (the previous two limitations collectively referred to hereinafter as the “non-overlapping limitations”),

comparing, by the second processor, the multi-segment ride of the user to at least one other multi-segment ride of at least one other user; and

upon determining that a second threshold of the ride preferences of the user and ride preferences of at the least one other user match, notifying the user at the user device and scheduling a shared multi-segment ride between the user and the at least one other user, wherein the shared multi-segment ride corresponds to matched temporal segments of the multi-segment ride and the at least one other multi-segment ride, wherein each temporal segment of the shared multi-segment ride corresponds

to different, non-overlapping, beginning and end times of a shared ride (referred to hereinafter as the “second processor” limitation”), or “ride preferences,” each of which is recited in claim 1. Final Act. 4. The Examiner similarly rejects independent claims 2, 7, 8, 13, 14, and 19 because the Examiner finds each of those claims recites similar limitations. The Examiner also rejects claims 3–5, 9–11, 15–17, and 20–22 as being dependent on the rejected independent claims from which they depend.

New or amended claims which introduce elements or limitations which are not supported by the as-filed disclosure violate the written description requirement. *See, e.g., In re Lukach*, 442 F.2d 967 (CCPA 1971).

[W]hatever the specific articulation, the test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.

*Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (en banc).

“It is not necessary that the application describe the claim limitations exactly.” *In re Wertheim*, 541 F.2d 257, 262 (CCPA 1976). Rather, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. *See, e.g., Vas-Cath, Inc.*, 935 F.2d at 1563–64. When an explicit limitation in a claim is not present in the written description it must be shown that a person of ordinary skill would have understood that the description requires that

limitation. *Hyatt v. Boone*, 146 F.3d 1348, 1353 (Fed. Cir. 1998). If the originally filed disclosure does not provide support for each claim limitation, a new or amended claim must be rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate written description.

*The Non-Overlapping Limitations*

Appellants point to various portions of their Specification indicating how time intervals may be specified. App. Br. 12 (citing Spec. ¶¶ 18, 19, 21, 26). Appellants also point to a specific example in the Specification indicating three ride segments whose time intervals do not overlap that are part of a multi-segment ride as well as a ride intent having a fourth time interval that does not overlap with the last temporal segment (or any temporal segment) of the multi-segment ride. *Id.* (citing Spec. ¶ 27). The extent of the Examiner's explanation of the rejection is that "appellant's citation of empirical examples of segments and ride intents from the specification which happens to have beginning and end times which are different and non-overlapping does not completely prove in any way that the appellants had the possession of" the non-overlapping limitations. Ans. 7.

As discussed above, there is no requirement that Appellants' Specification use the exact same words as recited in the claims. *Wertheim*, 541 F.2d at 262. Appellants have pointed to a clear discussion in their Specification of non-overlapping time intervals and ride intents. Thus, without further explanation from the Examiner regarding why the identified disclosure would not have conveyed possession of the non-overlapping limitations, we are persuaded the Examiner erred in finding the non-overlapping limitations lack written description support.

*The Second Processor Limitation*

The Examiner explains that “there is not enough support for a structure in the original disclosure that can carry out the functions of claim 1, such as specific functions being performed on a first processor whereas others [are] performed on a second processor.” Final Act. 4. Appellants argue the claimed processing system “may be any of a plurality of conventional processing systems, including microprocessors, digital signal processors, and field programmable logic arrays,” and that modifications and variations of the explicitly disclosed embodiments are possible. App. Br. 13–14 (citing Spec. ¶¶ 10, 12, 30); Reply Br. 6. Appellants argue there is no requirement that the claims and Specification use the same terms and the identified disclosures are sufficient to demonstrate possession of performing some functions on one processor and other functions on a second processor. App. Br. 13–14; Reply Br. 6. The Examiner responds that “although a literal/verbatim support is not required under this section, support for separation of specific function was not identified in the cited section of appellant’s specification or anywhere else in the original disclosure.” Ans. 7.

We agree with the Examiner. Appellants are correct that the claims and Specification need not use the exact same language. *Wertheim*, 541 F.2d at 262. Nevertheless, we disagree that Appellants’ Specification conveys to a person of ordinary skill in the art that the inventors were in possession of the recited use of two processors performing different functions. First, we are not persuaded the identified portions of Appellants’ Specification indicate possession of the use of multiple processors. Rather, we understand the disclosure that the processing system (singular) used in

the invention “may be any [one] of a plurality of conventional processing systems,” simply means that there are many known conventional processing systems and the invention may use any one of those many known systems to perform its functions. *See* Spec. ¶¶ 10, 12. Moreover, the generic statement that modifications and variations are possible or that certain implementations may be in software or hardware alone provides no meaningful insight regarding the question of whether the inventors were in possession of the use of one processor for some functions and a second processor for other functions.

Accordingly, we are not persuaded the Examiner erred in rejecting claims 1, 2, 7, 8, and 13, as well as claims 3–5 and 9–11, which depend from one of claims 2 and 8, for failing to provide sufficient written description support for the second processor limitation.<sup>4</sup> Claims 14–17 and 19–22, however, do not recite a first and second processor performing various functions. Therefore, to the extent the Examiner rejects claims 14–17 and

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<sup>4</sup> We note, however, that claims 1, 2, and 7 each recite that “the first processor and the second processor are one of: same processor, different processors . . . .” Additionally, claims 8 and 13 have no antecedent basis for “the second processor.” It appears Appellants inadvertently failed to remove “second” from those claims during a prior amendment. We leave to the Examiner to determine whether independent claims 1, 2, 7, 8, and 13 require clarifying amendments. In particular, we leave the following question to the Examiner: Whether claims 1, 2, and 7 are indefinite because the claims recite that two distinct processors can be the same processor. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* MPEP § 1213.02.

19–22 for failing to provide sufficient written description support for the second processor limitation, we do not sustain that rejection.

*Ride Preferences*

The Examiner finds the claims also lack sufficient written description support for the recited “ride preferences” because that term “may include an enormous number of categories of information and is a genus,” and Appellants’ Specification “does not have sufficient description of a representative number of species.” Final Act. 5 (citing MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2163(II)(A)(3)(a)(ii) (9th ed. Rev. 07.2015, Nov. 2015)). The Examiner further explains that Appellants’ Specification provides examples that “are a narrow representation of route, traveler and/or vehicle characteristics; whereas ride preferences may include various other characteristics in these categories and or other categories such as data related to previous rides, geography, time of the year/season, insurance coverage, ratings from others for the car or driver, etc.” Ans. 7.

Appellants argue their Specification adequately describes a representative number of species sufficient to be representative of the genus. App. Br. 14–15. Appellants assert sufficient description of a representative number of species can be demonstrated by disclosing “relevant, identifying characteristics, i.e., structure or other physical and/or chemical properties, by functional characteristics coupled with a known or disclosed correlation between function and structure, or by a combination of such identifying characteristics, sufficient to show the applicant was in possession of the claimed genus.” Reply Br. 7. Appellants contend “[s]atisfactory disclosure of a ‘representative number’ depends on whether one of skill in the art would recognize that the applicant was in possession of the necessary

common attributes or features possessed by the members of the genus in view of the species disclosed.” App. Br. 15 (citing MPEP § 2163); Reply Br. 7. Specifically, Appellants point to their Specification’s disclosure that parameters of ride preferences “may include values representing a start location, end location, traveling time, role, detour time, and other preferences such as social compatibility preferences (e.g., gender, age, occupation) and vehicle preferences (e.g., type of music played in the vehicle, temperature within the vehicle, size of the vehicle),” and argue these examples adequately represent the genus of ride preferences. App. Br. 15 (quoting Spec. ¶ 16).

Accepting, for purposes of this appeal, the Examiner’s characterization of “ride preferences” as a generic identifier, the Federal Circuit has not “set out any bright-line rules governing, for example, the number of species that must be disclosed to describe a genus claim, as this number necessarily changes with each invention, and it changes with progress in a field.” *Ariad Pharms.*, 598 F.3d at 1351. Although we agree with Appellants that the Specification need not describe each individual species within a genus, Reply Br. 7, we disagree that the disclosed examples in Appellants’ Specification adequately represent a genus. In particular, it is unclear what parameters (or types of parameters) would be excluded from the recited ride preferences based on the Specification’s inclusion of parameters such as age and occupation.<sup>5</sup> Thus, we agree with the Examiner

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<sup>5</sup> We leave to the Examiner to determine whether the metes and bounds of the recited “ride parameters” are sufficiently clear that they meet the requirements of 35 U.S.C. § 112, second paragraph. Although the Board is authorized to reject claims under 37 C.F.R. § 41.50(b), no inference should be drawn when the Board elects not to do so. *See* MPEP § 1213.02.

that a person of ordinary skill in the art would be unable to ascertain from the examples given in Appellants' Specification which other parameters would be within the genus of "ride preferences." Accordingly, we are not persuaded the Examiner erred in rejecting claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 112, first paragraph, for failing to provide sufficient written description support for "ride preferences.

#### REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

The Examiner rejects claims 2, 4, 5, 7, 8, 10, 11, 13, 14, 16, 17, and 19–22 under 35 U.S.C. § 103(a) as being obvious in view of Meyer and Kamar. Final Act. 5–17. The Examiner rejects claims 1, 3, 9, and 15 under 35 U.S.C. § 103(a) as being obvious in view of Meyer, Kamar, and Jarvinen. Final Act. 17–23. The Examiner relies on Jarvinen solely for teaching or suggesting "parameters of at least one of the last temporal segment and the ride intent are specified through electronic calendar entries on the user device." Final Act. 21, 23. The Examiner relies on Kamar for more explicitly and clearly teaching or suggesting "wherein the segment defines a set of ride preferences of a user of the user device and the ride intent defines another set of ride preferences of the same user of the user device" and "wherein after marking the ride intent as the new segment of the multi-segment ride, the multi-segment ride includes at least three segments and each segment of the multi-segment ride defines a respective set of ride preferences of the same user" and for teaching or suggesting "wherein a same driving role is assigned to the user during the each segment of the multi-segment ride and the driving role is one of passenger and driver." Final Act. 9, 13–15. The Examiner relies on Meyer for teaching every other element of each of the pending claims. Of particular relevance, the

Examiner finds Meyer teaches the non-overlapping limitations. *E.g.*, Final Act. 7 (citing Meyer ¶¶ 35, 43, 44, 48, 49); Ans. 3–4. The Examiner also states that “[n]on-overlapping is interpreted as the segments/rides being different in at least one attribute such as start/end time or pickup/dropoff location.” *E.g.*, Final Act. 7 (emphasis omitted); Ans. 4.

Appellants contend only that Meyer fails to teach or suggest the non-overlapping limitations. App. Br. 16–17; Reply Br. 8–9. Accordingly, we discuss only the non-overlapping limitations with respect to the rejection under 35 U.S.C. § 103. In particular, Appellants argue “‘non-overlapping’ unambiguously refers to non-overlapping time intervals (i.e., each temporal segment of the multi-segment ride corresponds to different, non-overlapping, beginning and end times of a ride).” App. Br. 16 (emphases omitted). Appellants argue that, although paragraphs 43 and 44 of Meyer relate to time differences for pick up times, there is no disclosure that the pick up times have different, non-overlapping beginning and end times. App. Br. 16; Reply Br. 8. Appellants further assert Meyer specifically relates to matching reservations having overlapping time intervals, thus teaching away from the non-overlapping limitations. App. Br. 16–17; Reply Br. 8–9. Appellants, however, do not identify any aspect of Meyer supporting such a reading.

We agree with Appellants that the claim limitations themselves require that the time intervals, or the beginning and end times, are non-overlapping. Thus, although the Examiner may be correct that “non-overlapping,” alone, refers to various attributes, the claims require that the time intervals, or the beginning and end times, are non-overlapping. Nevertheless, the Examiner points to various paragraphs in Meyer, including

disclosures regarding exemplary algorithms that may be used to match rides. Final Act. 7 (citing Meyer ¶ 49). Part of the disclosed exemplary algorithm includes matching rides “within a certain approved time frame of either pick-up time or desired arrival time of the requested parties.” Meyer ¶ 49. This disclosure would have at least suggested to a person having ordinary skill in the art that certain ride segments determined to match (and thus result in a multi-segment shared ride) may merely be within a certain time frame of each other—i.e., matching rides may have non-overlapping time intervals or beginning and end times. Appellants have not explained persuasively why at least paragraph 49 of Meyer fails to teach or suggest the non-overlapping limitations.

For the reasons discussed above, we are not persuaded the Examiner erred in finding the combination of Meyer and Kamar, or the combination of Meyer, Kamar, and Jarvinen teaches or suggests the subject matter recited in claims 1–5, 7–11, 13–17, and 19–22. Accordingly, we sustain the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 103(a).

#### SUMMARY

We sustain the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 101. We do not sustain the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 112, first paragraph, for failing to provide adequate written description support for the non-overlapping limitations. We sustain the Examiner’s rejection of claims 1–5, 7–11, and 13 under 35 U.S.C. § 112, first paragraph, for failing to provide adequate written description report for two processors performing different functions. We do not sustain the Examiner’s rejection of claims

14–17 and 19–22 under 35 U.S.C. § 112, first paragraph, for failing to provide adequate written description report for two processors performing different functions because these claims do not recite such limitations. We sustain the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 112, first paragraph, for failing to provide adequate written description support for the recited ride preferences. Finally, we sustain the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22 under 35 U.S.C. § 103(a) as obvious in view of either Meyer and Kamar; or Meyer, Kamar, and Jarvinen.

#### DECISION

We affirm the Examiner’s rejection of claims 1–5, 7–11, 13–17, and 19–22.

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

AFFIRMED