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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte THOMAS NETSCH and STEWART YOUNG

Appeal 2017-000044
Application 13/994,844
Technology Center 3600

Before THU A. DANG, JUSTIN BUSCH, and JASON M. REPKO,
Administrative Patent Judges.

REPKO, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner’s rejection of claims 1–21. App. Br. 38.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ Appellants identify the real party in interest as Koninklijke Philips Electronics N.V. App. Br. 3.

² Throughout this opinion, we refer to the Final Rejection (“Final Act.”) mailed August 25, 2015, the Appeal Brief (“App. Br.”) filed January 14, 2016, the Examiner’s Answer (“Ans.”) mailed August 4, 2016, and the Reply Brief (“Reply Br.”) filed September 23, 2016.

THE INVENTION

Appellants' invention transmits Internet-based electronic health records (EHR). Spec. 4:4–13. In particular, the invention provides security isolation during a data transfer to or from an individual's EHR account or a hospital information system. *Id.* at 4:3–9. The security isolation can be provided for the hospital information system or the EHR account. *Id.* One embodiment uses an "isolation container" to ensure that no direct communication occurs between the medical information system and the EHR account. *Id.* at 11:1–3.

Claim 1 is reproduced below:

1. A system comprising:

a digital processing device having a first communication link with a local medical information system and a second communication link with an Internet-based electronic health record (EHR) account of an individual, the first and second communication links being independent of one another, the digital processing device performing a method including:

authenticating a user as the individual or an authorized agent of the individual,

presenting a first window with content stored at the local medical information system, said content pertaining to the individual,

presenting a second window with content stored at the EHR account of the individual,

receiving from the authenticated user via the second window a selection of content to transfer from the EHR account of the individual to the local medical information system,

transferring via the second communication link the selected content from the EHR account of the individual to an isolation container at the digital processing device, and

transferring via the first communication link the selected content from the isolation container at the digital processing device to the local medical information system.

THE PRIOR ART

The Examiner relies on the following as evidence:

Segal	US 2001/0041991 A1	Nov. 15, 2001
Harnett	US 6,407,752 B1	June 18, 2002
Terek	US 6,480,851 B1	Nov. 12, 2002
Squilla et al.	US 2006/0106646 A1	May 18, 2006
Marshall	US 2008/0133273 A1	June 5, 2008

THE REJECTIONS

Claims 1–21 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 2–3.

Claims 1–4, 8, 9, 11–16, and 18–21 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Segal, Harnett, and Terek. Final Act. 3–10.

Claims 5–7 and 17 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Segal, Harnett, Terek, and Squilla. Final Act. 10–12.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Segal, Harnett, Terek, and Marshall. Final Act. 12–13.

THE REJECTION UNDER 35 U.S.C. § 101

I

The Supreme Court’s two-step framework guides the patent-eligibility analysis under § 101. *See Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2355 (2014). Step one of that analysis is “whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Id.*

Here, the Examiner finds that representative claim 1³ is directed to collecting, storing, and transmitting data, which is abstract under *Alice* step one. Final Act. 2. For the reasons below, we agree.

In determining whether the claims are directed to an abstract idea, we must consider the claims “in their entirety to ascertain whether their character as a whole is directed to excluded subject matter.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015). In this case, claim 1 recites device with communication links. The recited device performs a method that authenticates a user, presents content in windows, and receives and transfers content via the communication links. More specifically, in this method, the device receives a content selection from the authenticated user. The recited device transfers the selected content from an EHR account to the device’s isolation container. The recited device transfers the selected content from the isolation container to a local medical-information system. According to the Specification, the isolation container ensures that no direct communication occurs between the medical-information system and the EHR account. Spec. 11:1–3. That is, for security, the claimed device serves as an “isolating intermediary” between two systems. App. Br. 15.

We agree with the Examiner that this concept resembles those the Federal Circuit has held to be abstract. Final Act. 2. Of particular relevance here are the abstract concepts related to collecting, storing, and transmitting information. *See id.* For example, the Federal Circuit has held that claims directed to collecting information, analyzing it, and displaying certain results

³ Appellants argue claims 1–21 together. *See* App. Br. 10–14. We select claim 1 as representative.

of the collection and analysis were directed to an abstract idea. *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016).

Additionally, claims reciting receiving and filtering emails then transmitting data were held to be directed to an abstract idea. *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1316 (Fed. Cir. 2016).

Like the claims in those cases and similar cases that the Examiner identifies (Final Act. 2), the claimed device collects data from the EHR account and transfers the data to a local medical-information system. To be sure, the device uses an isolation container to store that data before transmitting it. But this hardly distinguishes the claimed device from the abstract ideas in *Electric Power Group* and *Intellectual Ventures I*, which involved additionally analyzing and filtering data before transferring it. That is, the absence of a categorization step, for example, does not render the claims here any less abstract than those ineligible claims, contrary to Appellants' argument. See Reply Br. 3 (discussing *Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App'x 988 (Fed. Cir. 2014) (non-precedential)).

Appellants argue that the claims are distinguishable from such concepts because they are directed to improvements to the computer itself. Reply Br. 3–5. For example, Appellants argue the claims are similar to a robotic-arm assembly and should receive a streamlined analysis. *Id.* at 9–10. We disagree. For example, the claims do not improve “the way a computer stores and retrieves data in memory.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). Rather, the claimed isolating intermediary concept uses the computer as a tool in its ordinary capacity to store and transfer information. Indeed, the device itself is only claimed in broad

functional terms: authenticating users, presenting windows, receiving selections, and transferring content. “An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.” *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016).

On this record, we are unpersuaded that the Examiner erred in concluding that representative claim 1 is directed to an abstract idea under step one of *Alice*.

II

Because the claims are “directed to an abstract idea,” we analyze the claims to determine if 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 under *Alice* step two. *Alice*, 134 S. Ct. at 2355–58.

Claim 1’s device authenticates users, presents windows, receives selections, and transfers content. Appellants argue that the claim involves more than just a generic computer. App. Br. 13. Appellants’ argument, however, is contradicted by the Specification. According to the Specification, “the digital processing device comprises a *general-purpose computer* executing software performing the method.” Spec. 2:20–22 (emphasis added). Furthermore, the Specification explains that “the disclosed EHR management systems and methods may be embodied by *any digital processing device* having suitable display and user input component.” *Id.* at 13:6–9 (emphasis added). Indeed, the claimed method involves no more than authenticating users, presenting windows, receiving selections, and transferring content—i.e., all generic functions of a generic computer.

Accord id. In this way, the limitations involve conventional, routine, and well-known computer components and functions that do not impose meaningful limits on the abstract idea itself. *See Versata Dev. Grp., Inc., v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (explaining that for a machine to add significantly more, it must do more than “function solely as an obvious mechanism for permitting a solution to be achieved more quickly”).

Furthermore, Appellants do not provide, nor do we find, a “non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1350. Here, the claim uses a generic computer in its ordinary capacity for authenticating users, displaying windows, and sending and receiving data.

Appellants argue that the claims have “functional and palpable applications” in patient-treatment information diagnostics. App. Br. 10–12 (discussing the Federal Circuit’s pre-*Alice* decision in *Research Corp. v. Microsoft Corp.*, 627 F.3d 859 (Fed. Cir. 2010)). To be sure, the claim recites a combination of linked data sources: local medical-information system and an EHR account. The recited data, however, merely limits the abstract idea to a particular technical environment, which is not significantly more than the abstract idea itself. *See Alice*, 134 S. Ct. at 2358.

Appellants argue that the claim contains an inventive concept because the Examiner does not reject any one claim as anticipated. App. Br. 12. But “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd v. Comcast Cable Comms., LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017). For example, “a claim for a *new* abstract idea is still an abstract idea.” *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). As

discussed above, the claimed invention involves conventional, routine, and well-known computer components that do not impose meaningful limits on the abstract idea itself.

Appellants further argue that the claims do not pre-empt all uses of the abstract idea. App. Br. 12. “While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). Here, the issue of preemption is resolved by the above-discussed *Alice* framework.

On this record, Appellants have not persuaded us of error in the rejection of representative claim 1 under 35 U.S.C. § 101. Accordingly, we sustain the Examiner’s § 101 rejection of representative claim 1 and claims 2–21, which are not argued separately.

THE REJECTION OVER SEGAL, HARNETT, AND TEREK

The Examiner’s Findings

The Examiner finds that Segal teaches every limitation recited in independent claim 1 except for (1) the recited windows and (2) the isolation container. Final Act. 3–6. In concluding that claim 1 would have been obvious, the Examiner cites Harnett and Terek, respectively, as teaching and suggesting these features. *Id.* at 5–6.

Appellants’ Contentions

Appellants argue that Segal lacks the intermediary device with the recited links. App. Br. 14–17; Reply Br. 11–13. According to Appellants, Segal’s user directly accesses the operations center via the Internet, instead of using an intervening device. App. Br. 16; Reply Br. 12. In Appellants’

view, the prior art lacks the “synergistic combination” of features recited in claim 1. App. Br. 16, 18–19; Reply Br. 11.

Appellants contend that Harnett and Terek also lack the interposed device. App. Br. 17–20; Reply Br. 13–14. In particular, Appellants argue that Harnett lacks the first and second windows corresponding to two different remote systems. App. Br. 19. Additionally, Appellants contend that Terek teaches a password-protected folder, but this folder is not located at the recited interposed device, like the recited isolation container.

Reply Br. 13–14. In Appellants’ view, the Examiner is interpreting the recited isolation container as any data storage anywhere, which is overly broad. Reply Br. 13–14. Lastly, in Appellants’ view, Harnett and Terek are unrelated to medical-data systems. App. Br. 18; Reply Br. 13.

Analysis

Claim 1 recites, in part, “a digital processing device having a first communication link with a local medical information system and a second communication link with an Internet-based electronic health record (EHR) account of an individual.”

Appellants argue Segal’s user directly accesses Segal’s operations center 100 via the Internet, instead of using the recited intervening device. App. Br. 16; Reply Br. 12 (citing Segal Figs. 8a, 8b). But Segal’s Figure 8a, reproduced below, shows that operations center 100 contains several separate devices, including an intervening server. *See* Segal ¶¶ 85, 139.

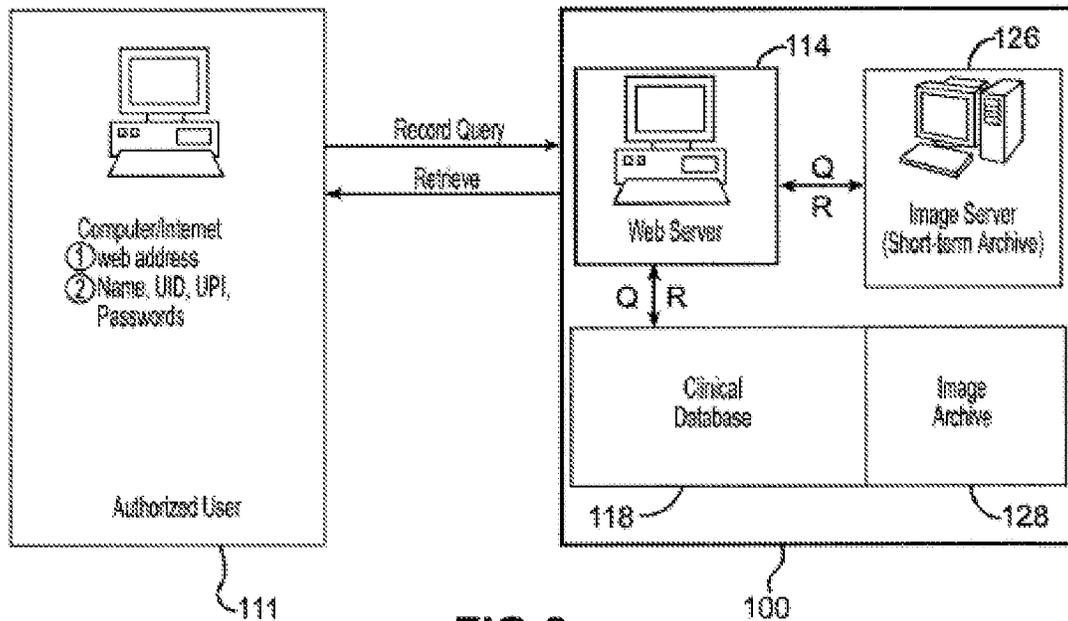


FIG. 8a

In particular, Segal's operations center 100 contains a database (118) and archives (126, 128) for storing the EHR account. *Id.* ¶¶ 48–50, *cited in* Final Act. 3. The user does not directly connect to these databases. *See* Segal ¶ 139 (describing Figure 8a). Rather, webserver 114 responds to a query from the authorized user. *Id.* ¶ 139; *see also id.* ¶ 28, *cited in* Final Act. 3. To fulfill the user's request, webserver 114 then connects to database 118 and image server 126. Segal ¶¶ 28, 139. Although Segal's Figure 8a does not show a device between the operations center and the user, Segal does teach web server with a communication link to the user's EHR account, like the recited digital processing device. *Id.*, Fig. 8a. On this record, we agree with the Examiner that Segal teaches a digital processing device (the web server) having a first communication link with a local medical information system (the authorized user's computer) and a second communication link with an Internet-based EHR account of an individual,

which is stored by Segal’s clinical database, image archive, and image server. *See id.* ¶ 28, *cited in* Final Act. 3.

We are, likewise, unpersuaded by Appellants’ arguments against Harnett and Terek. *See* App. Br. 17–20; Reply Br. 13–14. We agree with the Examiner that these arguments do not consider the Examiner’s proposed combination of teachings. *See* Ans. 7. Here, the Examiner relies on Segal for the linked devices and Harnett and Terek for the recited windows and isolation container, respectively. Final Act. 3–6.

Although Terek’s folder is not located at an interposed device (Reply Br. 13–14), the Examiner proposes adding Terek’s “security container” to Segal’s system to arrive at this limitation. Final Act. 5–6. Similarly, the Examiner proposes adding Harnett’s windows, which show content stored at different locations, to Segal’s system to improve Segal’s interface for receiving and transferring files. *Id.* at 5. These enhancements use prior art elements predictably according to their established functions—i.e., securely storing files and displaying content—which are obvious improvements. *See KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 417 (2007).

Appellants note that Harnett and Terek are unrelated to medical-data systems. App. Br. 18; Reply Br. 13. But Appellants have not shown, for example, that using Terek’s folders and Harnett’s windows to store and display medical data would have been uniquely challenging or otherwise beyond the level of ordinarily skilled artisans. *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007). Nor have Appellants shown that the Examiner’s proposed combination would render the prior art unsuitable for its intended purpose to teach away from such an approach. *See In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). On this

record, we are unpersuaded that the Examiner's reliance on Terek or Harnett is in error.

To the extent Appellants argument is that Terek and Harnett are not analogous art, such argument is similarly unpersuasive. *See* App. Br. 18; Reply Br. 13. A reference is analogous art to the claimed invention if (1) the reference is from the same field of endeavor as the claimed invention, regardless of the problem addressed or (2) the reference is reasonably pertinent to the problem faced by the inventor, even if it is not in the same field of endeavor as the claimed invention. *In re Bigio*, 381 F.3d 1320, 1325 (Fed. Cir. 2004). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *In re Icon Health and Fitness, Inc.*, 496 F.3d 1374, 1379–80 (Fed. Cir. 2007) (quoting *In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992)).

Here, Appellants' invention is generally directed to transferring data between two systems using an intermediate device having an isolation container. Spec. 4:3–9; *accord* App. Br. 15. An aspect of the claimed invention includes displaying the content of the two disparate systems simultaneously, which Harnett addresses. *See* Harnett 5:28–44, Fig. 6, *cited in* Final Act. 5. Another aspect of the claimed invention includes using the isolation container on the device as an intermediate location for the data being transferred. Spec. 4:3–9. As discussed above, Terek's security container is used to provide access to data to only those authorized to access it, which is similar to the purpose that Appellants' the isolation container serves. *See* Terek 3:65–4:13, *cited in* Final Act. 5. Accordingly, Harnett

and Terek are reasonably pertinent to the problems addressed by Appellants' invention.

On this record, we sustain the Examiner's rejection of claim 1.

Claim 15

Appellants' arguments for independent claim 15 are similar to those presented for claim 1. *Compare* App. Br. 25–31, *with* App. Br. 14–20; *see also* Reply Br. 10–14. We find these arguments unpersuasive for the same reasons discussed above in connection with claim 1.

Claims 3 and 16

Claims 3 recites, in part, “the first communication link further includes an intranet conveying information between the Internet and the local medical information system.” Claim 16 recites a similar limitation.⁴

Regarding claims 3 and 16, the Examiner finds Segal teaches that an intranet can be used for communication. Final Act. 6; Ans. 8; *see also* Final Act. 9. The Examiner also finds that Terek teaches intranets for transferring information between computers. Ans. 8.

Appellants argue Segal lacks a communication link that includes an intranet. App. Br. 21, 31–32; Reply Br. 14.

Appellants' arguments, however, do not address the Examiner's findings relating to Segal's paragraphs 12 and 31. *See* Ans. 8. In particular, Segal teaches that doctors can connect with hospitals via an intranet

⁴ Claim 16 contains extraneous punctuation including an unmatched parenthesis and an extra period. App. Br. 44. We leave this issue to the Examiner and Appellants to remedy should there be further prosecution.

connection. Segal ¶ 12, *cited in* Ans. 8. Furthermore, Segal states that the system can be implemented on “any variety of computer network systems.” Segal ¶ 31, *cited in* Ans. 8. Terek further teaches and suggests that intranets can be used in office-wide or enterprise-wide computer networks. Terek 5:65–6:3. On this record, we agree that it would have been obvious to use an intranet connection in the first link to convey information. *See* Final Act. 6; Ans. 8. In this way, the Examiner proposes combining prior art elements according to known methods to yield predictable results, which is obvious. *See KSR*, 550 U.S. at 416.

Accordingly, we sustain the Examiner’s rejection of claims 3 and 16.

Claims 14 and 20

Regarding claims 14 and 20, the Examiner finds that Segal teaches the method steps, except the use of the isolation container. Final Act. 8–9; *see also* Final Act. 9–10 (rejecting claim 20). The Examiner then cites Terek for the teaching and suggestion of using an isolation container. *Id.* at 9.

Appellants argue that Terek does not securely transfer content between two different computers. App. Br. 24–25, 33; Reply Br. 15. Appellants further contend that Terek is unrelated to medical-data systems—e.g., EHR or medical-information systems—much less the transfer of such content. App. Br. 24–25, 33; Reply Br. 15.

Appellants’ arguments are unpersuasive for reasons similar to those discussed in connection with claim 1. In particular, although Terek does not use the container for transferring content, the Examiner proposes incorporating Terek’s container in Segal’s system to arrive at this limitation. Final Act. 8–9. This enhancement uses Terek’s container predictably

according to its established function—i.e., securely storing files (Terek 3:65–4:13)—which is an obvious improvement.

Moreover, Appellants have not shown, for example, that using Terek’s folders to store medical data would have been uniquely challenging or otherwise beyond the level of ordinarily skilled artisans. Here, Terek’s folder could be used to store various content items. *See* Terek 2:16–23. For these reasons, we are unpersuaded by Appellants’ arguments. App. Br. 24–25, 33; Reply Br. 15.

Therefore, we sustain the Examiner’s rejection of claims 14 and 20.

Claims 2, 4, 8, 9, 11–13, 18, 19, and 21

Appellants argue that claims 2, 4, 8, 9, 11–13, 18, 19, and 21 are allowable over the cited references for at least the reason that they depend from the previously argued claims, but this is not the sole reason to allow the claims. App. Br. 20–24, 32–34; Reply Br. 15–16. Appellants, however, do not provide any separate arguments. *See* App. Br. 20–24, 32–34; Reply Br. 15–16. For the reasons discussed in connection with the independent claims, we find these arguments unpersuasive.

THE REJECTION OVER SEGAL, HARNETT, TEREK, AND SQUILLA

Claim 5 recites, in part, “a dedicated kiosk configured to perform the method, *the first communication link does not include the Internet* and the second communication link includes the Internet” (emphasis added). Claim 17 recites a similar limitation. Claim 6 recites, in part, “*the first communication link includes an intranet* conveying information between the

dedicated kiosk and the local medical information system” (emphasis added).

The Examiner finds that Segal, Harnett, and Terek teach all the limitations of claims 5 and 17, except for the recited kiosk. Final Act. 10, 12. For this limitation, the Examiner cites Squilla. *Id.* (citing Squilla ¶¶ 17–19, Figs. 1–9). The Examiner presents a similar rationale in rejecting claim 6. Final Act. 10–11.

Regarding claims 5 and 17, Appellants argue that Squilla lacks a first communication link that does not include the internet and a second communication link that includes the Internet. App. Br. 34–35; Reply Br. 16. Regarding claim 6, Appellants argue that Squilla lacks a first communication link that includes an intranet. App. Br. 35.

Contrary to Appellants’ arguments, Squilla’s kiosk can connect to central server 120 via an intranet. Squilla Fig. 3 (showing a LAN or Internet connection), *cited in* Final Act. 10–11. In this way, Squilla teaches a communication link that includes the intranet, not the Internet. Squilla Fig. 3.

Furthermore, the Examiner finds that Segal teaches a device having first and second communication link. *See* Final Act. 3–5. The Examiner then proposes substituting Squilla’s intranet-connected kiosk for this device in the Segal-Harnett-Terek combination to arrive at the claimed limitation. Final Act. 10. The proposed substitution uses Squilla’s intranet-connected kiosk predictably according to its established function—i.e., securely transferring patient records (Squilla ¶¶ 17–19)—which is an obvious improvement. *See* Final Act. 10–12.

Accordingly, we sustain the Examiner's rejection of claims 5, 6, and 17.

We also sustain the rejection of claim 7, which is not argued separately. *See* App. Br. 35–36; Reply Br. 16.

THE REJECTION OVER SEGAL, HARNETT, TEREK, AND
MARSHALL

Appellants argue that claim 10 is allowable over the cited references for at least the reason that they depend from claim 1, but this is not the sole reason for allowing these claims. App. Br. 37; Reply Br. 17. Appellants, however, do not provide any separate arguments. *See* App. Br. 37; Reply Br. 17. For the reasons discussed in connection with independent claim 1, we find these arguments unpersuasive.

DECISION

We affirm the Examiner's rejection of claims 1–21.

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