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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTIAN P. HEINE,
MAHENDRA P. SRIVASTAVA, JAMES D. BOHN, and
TERESA CELMER[1]

Appeal 2017-000657
Application 13/604,839
Technology Center 3600

Before MARC S. HOFF, BRADLEY W. BAUMEISTER, and JOYCE CRAIG, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–23. App. Br. 8.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants list Robert Bosch Tool Corporation, Robert Bosch GmbH, and Sortimo International GmbH as the real party in interest. Appeal Brief filed January 25, 2016 ("App. Br.") 3.

[2] Rather than repeat the Examiner's positions and Appellants' arguments in their entirety, we refer to the above-mentioned Appeal Brief, as well as the following documents, for their respective details: the Final Action mailed August 26, 2015 ("Final Act."); the Examiner's Answer mailed August 10, 2016 ("Ans."); and the Reply Brief filed October 10, 2016 ("Reply Br.").

STATEMENT OF THE CASE

Appellants describe the present invention as follows:

> A system for ordering items includes a plurality of tagged containers [and] an item being stored in each container. A mobile electronic device reads data in a tag associated with one of the containers and identifies at least one supplier for the item that is within a predetermined distance of the mobile electronic device. The mobile electronic device sends an order request to a server that identifies the at least one type of item in the container and the at least one supplier. The server generates an order for the item with only the one supplier identified in the order request and sends the order to another server operated by the one supplier.

Abstract.

Independent claim 1, reproduced below with added emphasis, illustrates the claimed invention:

> 1. A system for generating orders for an item comprising:
>
> a plurality of containers, each container being configured to hold at least one type of item;
>
> a plurality of tags, each tag in the plurality of tags being affixed to one container in the plurality of containers, each tag being configured to store data corresponding to the at least one type of item stored in the one container in the plurality of containers;
>
> a mobile electronic device having a processor and memory, a software application program including instructions stored in the memory of the mobile electronic device and the processor executes the instructions stored in the memory of the mobile electronic device to:
>
> receive from a sensor in the mobile electronic device data corresponding to the at least one type of item in one of the containers from one tag in the plurality of tags that is associated with the one container;

> generate location data of the mobile electronic device with a signal receiver in the mobile electronic device;
>
> *identify a plurality of suppliers that supply the at least one type of item with reference to the data corresponding to the at least one type of item;*
>
> *identify one supplier from the identified plurality of suppliers that is within a predetermined distance of the mobile electronic device with reference to the location data;*
>
> *generate an order request for the at least one type of item, the order request including an identifier of the one identified supplier for the at least one type of item; and*
>
> *transmit the order request with a wireless network device in the mobile electronic device*; and
>
> a server communicatively coupled to the mobile electronic device, the server including a database that stores data corresponding to the plurality of suppliers for each type of item held in the plurality of containers, the server being configured to:
>
> receive the order request generated by the mobile electronic device;
>
> generate an order for the at least one type of item from the one supplier identified in the order request, the order being generated by the server with reference to supplier data corresponding to the one supplier identified in the order request that are stored in the database; and send the order to another server operated by the one identified supplier.

App. Br. 20–21 (Claims Appendix).

Claims 1–23 stand rejected under 35 U.S.C. § 101 as being directed to patent ineligible subject matter. Final Act. 2–4.

Claims 1–3, 5, 7–10, 15, 16, and 18–21 stand rejected under 35 U.S.C. § 102(b) as anticipated by Ritz (US 2002/0019784 A1; published Feb. 14, 2002). Final Act. 5–16.

Claims 4, 6, 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ritz and Zmood (US 2008/0296373 A1; published Dec. 4, 2008). Final Act. 16–18.

Claims 11–13 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ritz and Coastal Tool, "DeWalt DCD940KX 18 Volt XRP Drill-Driver Kit," May 20, 2009 (available at http://web.archive.org/web/20090520074050/http://www.coastaltool.com/a/dewalt/dcd940kx.htm) ("Coastal Tool"). Final Act. 18–19.

Claim 17 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ritz and Portnoy (US 2012/0035760 A1; published Feb. 9, 2012). Final Act. 19–20.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ritz and Ron (US 2010/0137004 A1; published June 3, 2010). Final Act. 20.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Ritz and Yo (US 2005/0182686 A1; published Aug. 18, 2005). Final Act. 21.

We review the appealed rejections for error based upon the issues identified by Appellants, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

PATENT-ELIGIBILITY REJECTION UNDER 35 U.S.C. § 101

Summary

The Examiner determines that the claims are directed to patent ineligible abstract ideas without reciting significantly more. Final Act. 2–4, 23–26. Appellants present multiple arguments for why the claims are not directed to an abstract idea (App. Br. 8–12) and why the claims recite significantly more than an abstract idea (*id.* at 12–15). We address these arguments individually in the Analysis section below.

Principles of Law

A patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). Accordingly, in applying the § 101 exception, the Supreme Court cautioned:

> [W]e must distinguish between patents that claim the "'buildin[g] block[s]'" of human ingenuity and those that integrate the building blocks into something more, thereby "transform[ing]" them into a patent-eligible invention. The former "would risk disproportionately tying up the use of the underlying" ideas, and are therefore ineligible for patent protection. The latter pose no comparable risk of pre-emption, and therefore remain eligible for the monopoly granted under our patent laws.

Alice, 134 S. Ct. at 2354–55 (all brackets in original except first set) (internal citations omitted).

In *Alice*, the Supreme Court has set forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Id.* at 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71–73 (2012)). In the first step of the analysis, we determine whether the claim at issue is "directed to" a judicial exception, such as an abstract idea. *Id.* at 2355. If not, the inquiry ends. *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1346 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claim is determined to be directed to an abstract idea, then we consider under step two whether the claim contains an "inventive concept" sufficient to "transform the nature of the claim into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (quotations and citation omitted).

In considering whether a claim is directed to an abstract idea under step one, we acknowledge, as did the Supreme Court, that "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. We therefore look to whether the claim focuses on a specific means or method that improves the relevant technology or is instead directed to a result or effect that, itself, is the abstract idea and merely invokes generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

In the second step of the *Alice* analysis, if applicable, we must consider whether the claim contains an element or a combination of elements that is sufficient to transform the nature of the claim into a patent-eligible application. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 714 (Fed. Cir. 2014); *Alice*, 134 S. Ct. at 2355.

> In applying step two of the *Alice* analysis, we must "determine whether the claim[] do[es] significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. We look to see whether there are any "additional features" in the claim[] that constitute an "inventive concept," thereby rendering the claim[] eligible for patenting even if [it is] directed to an abstract idea. Those "additional features" must be more than "well-understood, routine, conventional activity."

Intellectual Ventures I LLC v. Erie Indem. Co., 850 F.3d 1315, 1328 (Fed. Cir. 2017) (citations omitted). A claim that "merely require[s] generic computer implementation[] fail[s] to transform [an] abstract idea into a patent-eligible invention." *Alice*, 134 S. Ct. at 2357.

Central to our analysis herein is the fundamental principle that the *Alice* framework must be applied to the claims, as properly construed. As our reviewing court has stated, "The § 101 inquiry must focus on the language of the Asserted Claims themselves." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016); *see also Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (admonishing that "the important inquiry for a § 101 analysis is to look to the claim"); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1346 (Fed. Cir. 2014) (focusing on "whether the *claims* of the asserted patents fall within the excluded category of abstract ideas") (emphasis added)).

These principles are based on long-established jurisprudence that "[i]t is the claims [that] define the metes and bounds of the invention entitled to the protection of the patent system." *In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994) (citing *Zenith Lab. Inc. v. Bristol–Myers Squibb Co.*, 19 F.3d 1418, 1424 (Fed. Cir. 1994)).

Contentions and Analysis

Appellants argue that "the Office Action does not properly establish[] that the pending claims are actually *directed to* the alleged abstract idea." App. Br. 9; *see also id.* at 9–10 (citing *Ex parte Poisson*, 2012-011084, 4–5 (PTAB Feb. 27, 2015) for the proposition that that the Office has the initial burden to establish a prima facie case for a section 101 rejection).

Appellants further argue the Office Action ignores the specific limitations of the claims in concluding that the claims are directed to an abstract idea. App. Br. 9 (citing Final Action 2–4). Appellants contend

> the pending claims are each directed to specific technological improvements to methods and systems for ordering items that include not only highly specifically configured software, but specific interactions between multiple specifically configured and non-generic computer hardware devices (e.g. the mobile electronic device and the server) that provide distinct improvements to the functionality of these systems.

Reply Br. 6 (citing *Enfish* (for the proposition "that improvements to computerized technology (and software in particular) may be considered to be directed to non-abstract ideas")).

We disagree that that the Office Action ignores specific limitations. Claim 1, for example, is directed to plural abstract ideas. These abstract ideas include auditing inventory (receiving data corresponding to at least one item), researching which suppliers of replacement items are locally located (identifying a plurality of suppliers of the item and identifying at least one supplier is within a predetermined distance), and ordering replacement items (generating an order request for the item, transmitting the order request to a central ordering agent, and having the ordering agent generate and send the order).

Auditing inventory reasonably may be characterized as an idea of itself or a mental process, such as forming an observation or an evaluation. *See* MPEP § 2106.04(a)(2) Part (III), especially Section B "Concepts Relating To Organizing Or Analyzing Information In A Way That Can Be Performed Mentally Or Is Analogous To Human Mental Work," as well as the case law cited therein. Researching the existence and location of suppliers also may be reasonably characterized as a mental process, analogous to the pre-Internet activity of a person who looks up sellers of goods in the Yellow-Pages phonebook. *See id.* Directing an ordering agent to place an order, as well as the ordering agent placing an order with a selected supplier reasonably may be characterized as entailing fundamental economic practices, such as sales activities. *See, e.g.,* MPEP § 2106.04(a)(2) Part (I), especially Section A "Concepts Relating to Agreements Between People Or Performance Of Financial Transactions," as well as the case law cited therein. Furthermore, the Examiner has cited these abstract ideas in the rejection. *See, e.g.,* Final Action 2–4.

Our reviewing court has held that combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) ("Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract."); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (patent-ineligible claims were directed to a combination of abstract ideas).

Appellants do not dispute that the above concepts reasonably may be characterized as abstract ideas (*see* App. Br. 9–12), but instead argue that the Examiner has failed to address specific claim elements and limitations:

> the automated systems and methods of claims 1, 8, and 18 provide an automated technological solution that reduces or eliminates the need for human activity to perform the task of generating and transmitting orders for items or components. The claims do not merely recite common mental processes of a human, but instead require specific hardware, such as tags, tag sensors, and a signal receiver that generates location information, in addition to specific automated software processing for the claimed systems and methods to identify suppliers and generate specific orders for different items or components from the identified suppliers in an automated manner.

Id. at 12. Appellants argue these elements are *not* merely directed to a broad abstract idea. *Id.* at 10.

This argument is unpersuasive because Appellants conflate *Alice's* step-one inquiry and step-two inquiry. Based at least on Appellants' acknowledgement that the invention is directed to automating "the task of generating and transmitting orders for items or components" (*id.* at 12), the hardware and software elements noted by Appellants reasonably may be characterized as constituting additional claim elements beyond the underlying abstract idea. The Examiner is correct, then, in not considering these additional elements under step one of the *Alice* framework, and, instead, analyzing these additional elements under step two of the *Alice* framework. That is, these additional elements should be analyzed to determine whether the claims focus on a specific means or method that improves a relevant technology or are instead directed to a result or effect that, itself, is the abstract idea and merely invokes generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

Appellants then argue that the claims also are patent eligible because read as a whole, the claims recite significantly more than an abstract idea pursuant to step two of the *Alice* framework. App. Br. 12–15. For example,

Appellants note again that the claims recite "specific limitations directed to tags associated with containers or tools, a sensor for reading data from the tags in a mobile electronic device, and a signal receiver in the mobile electronic device to identify a location of the mobile electronic device as part of the automated ordering process." *Id.* at 13–14. They argue that these elements "go far beyond a general recitation of a microprocessor and a memory" (*id.* at 14), and they note "the USPTO expressly points out that even having relatively generic computing components such as microprocessors and a memory can amount to significantly more than an abstract idea if the claim is properly read *as a whole.*" *Id.* (citing the USPTO guidelines "July 2015 Update: Subject Matter Eligibility," available at https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf).

Appellants more specifically argue that their claims include significantly more than an abstract idea because "the claims are directed to an improvement that arises from and is rooted in the technological field itself." *Id.* at 15 (citing *DDR Holdings v. Hotels.com*, 773 F.3d 1245, 357 (Fed. Cir. 2014). According to Appellants, the present claims "are clearly directed to solutions for problems that are specifically related to the technological fields of supplying items for work sites and other industrial fields that employ numerous parts that need to be stored, organized, and ordered to maintain supply or similar fields that use tools with multiple components that require periodic replacement. App. Br. 15 (citing claims 1, 8, 18; Spec. ¶¶ 1, 66).

This argument is unpersuasive. Appellants provide insufficient evidence that inventorying and ordering replacement parts constitutes an

improvement to a technical field merely because the inventoried parts, themselves, may be used in work sites or industrial fields. We instead agree with the Examiner (Final Act. 4) that Appellants' invention is better characterized as being directed to automating the abstract ideas of auditing inventory and ordering replacement inventory through the use of generic processes and machinery that are being used to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry. *See Enfish*, 822 F.3d at 1336. Furthermore, the Examiner provides a factual basis in support of the determination that recited components are conventional. *See, e.g.,* Ans. 25 (citing Spec. ¶¶ 19, 20 for the proposition that the recited mobile devices and tags may be selected from a variety of conventional devices and mechanisms).

Appellants do not dispute that conventional devices may be used as the additional claim elements that automate the claimed abstract idea. *See generally* Reply Brief. Appellants instead cite to *SiRF Technology v. International Trade Commission*, 601F.3d 1319 (Fed. Cir. 2010) for the proposition that the present invention is patent eligible because it cannot be implemented merely with pen and paper. Reply Br. 8.

This argument is unpersuasive because the present invention's underlying abstract idea *is* capable of being performed with pen and paper. In fact, prior to the advent of the telegraph or telephone, the acts of auditing inventories of tools or supplies and then ordering replacements were, in fact, performed either mentally or with pen and paper. For example, people historically audited inventory in their head, and they then mailed written letters to suppliers in order to restock worn tools and depleted supplies.

Appellants also argue the claims are patent eligible under step 1 and step 2 because the claims do not "preclude any well-established activity such as making an economic payment for an item" (App. Br. 11) or "attempt to preclude access to an abstract idea" (*id.* at 14). We recognize that the Supreme Court has described "the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption." *See Alice Corp.*, 134 S. Ct. at 2354. However, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. As our reviewing court has explained: "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 Corp.*, 134 S. Ct. at 2354). Although "preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Id.*

For the stated reasons, Appellants do not persuade us of error in the Examiner's determination that the appealed claims are directed to patent-ineligible subject matter.

PRIOR-ART REJECTIONS UNDER 35 U.S.C. §§ 102 & 103

Contentions

Appellants argue that Ritz does not anticipate independent claim 1 because Ritz's scanner/receiver combination, which the Examiner maps to

the claimed mobile electronics device, does not perform variously claimed functions:

> the scanner/receiver combination [100/180] in Ritz does not identify a plurality of suppliers, identify one supplier from the identified plurality of suppliers within a predetermined distance of the mobile electronic device and generate an order request for the at least one type of item including an identifier for the supplier for the at least one type of item. Instead, Ritz expressly teaches that the portal server 200 supplies the vendor information and locations of vendors. *Ritz* at ¶¶ 0055 and 0057. However, claim 1 requires that the mobile electronic device perform these functions, and the teachings of Ritz cannot be interpreted to teach that both the scanner/receiver combination is the mobile electronic device and that the separate portal 200 is the mobile electronic device. Furthermore, claim 1 requires a server that is in communication with the mobile electronic device, so the portal 200 from Ritz cannot be both the server and the mobile electronic device of claim 1.

App. Br. 17.

Appellants characterize the Examiner's position as that Ritz's disclosure can be modified to render the presently claimed invention unpatentable:

> the Office Action is arguing that a proposed modification to the system of claim 1 might change the configuration of the system in claim 1 to be more similar to the prior art and that the pending rejection is valid because the claim limitations do not include an express disclaimer for the proposed modification.

Id. *See also* Reply Br. 9 ("The Answer once again proposes that an alleged rearrangement of components in the teachings of the claims might arrive at the teachings of Ritz, or an additional pro forma argument that some alleged

reconfiguration of the elements in Ritz produces a system with some similarities to the pending claims.")

Appellants further argue that the other claims are not anticipated by Ritz or rendered obvious for similar reasons. App. Br. 18–19.

Contrary to Appellants' assertions (App. Br. 17; Reply Br. 9), the rejection is not premised on the theory that Ritz's disclosed system must be modified in some manner in order to render the present claims unpatentable. The Examiner instead takes the position that when the disputed claim language is read in a manner consistent with Appellants' Specification, the language may be interpreted in a sufficiently broad, but reasonable manner so as to read on Ritz's system without any modifications. *See, e.g.*, Ans. 10–12.

Specifically, the Examiner determines that the disputed claim language does not require that the claimed mobile electronic device, *alone and unaided*, identify a plurality of suppliers or identify one supplier that is within a predetermined distance. Ans. 11. According to the Examiner, the claim language, interpreted consistently with Appellants' Specification, reads on systems wherein the mobile electronic device, *when assisted by other components*, performs the recited functions:

> A statement that an element performs an action, taken on its own without any additional qualifiers as is the case presently, can be plainly interpreted to mean that the element is relying on additional elements [to] assist in the performing [of] the action, just as the statement "the Examiner writes an office action" or "Examiner used her phone to find a coffee shop" does not preclude the notion that the examiner utilized word processing

> software and the phone queried a satellite mapping server to find said coffee shop.

Id.; *see also id.* at 11–12 (citing Spec. ¶¶ 30, 34).

Findings of Fact

The record supports the following Findings of Fact (hereinafter "Fact") by a preponderance of the evidence:

1. Paragraph 30 of Appellants' Specification reads as follows with added emphasis:

> In the inventory management server 108, the message service 112 is communicatively coupled to both the mobile electronic device 104 and to one or more suppliers 160 through a data network, such as the Internet. The message service 112 receives order request messages from the mobile electronic device 104 that include identifying information for consumables, tools, or tool components, and optionally a list of approved suppliers for the order. The message service 112 sends confirmation messages to the mobile electronic device 104 indicating the success or failure of an order request. *The mobile electronic device 104 also sends supplier location queries to the message service 112 and the message service 112 returns suppliers that are located within a predetermined distance of the mobile electronic device.* The message service 112 also generates orders and sends order messages to a plurality of suppliers 160 in response to receiving order request messages from the mobile electronic device 104.

2. Paragraph 33 of Appellants' Specification reads as follows:

> The supplier [database] DB 124 stores data corresponding to the multiple suppliers 160. The supplier[] DB 124 includes one or more tables or appropriate data structures for identifying the supplier locations 125 and supplier interface data 126 that enables the message service 112 to communicate with online inventory and ordering systems for each of the suppliers 160. The supplier DB 124 also includes location data 125 corresponding to the suppliers 160. The location data include

> geolocation data (e.g. latitude/longitude of supplier locations) and/or street addresses of the suppliers 160. In terms of location data for a supplier, a single supplier can simply be a single store at a single location. Other suppliers, however, include multiple stores at multiple locations. For example, a large national hardware store chain stored in the supplier DB 124 can include hundreds or thousands of locations. For purposes of location identification, the individual locations of the hardware store chain are identified first by both the overall identity of the supplier and individually with each store location being a separate supplier.

3. Paragraph 34 of Appellants' Specification reads as follows:

> In the server 108, the message service 112 sends geographic information in the supply database to the mobile electronic device 104 in response to a supplier location query. In one configuration, the query includes location data corresponding to the identified location of the mobile electronic device 104 and a request for supplier locations within a predetermined distance of the mobile electronic device. The query can further include a list of supplier identifiers to filter the results. For example, if Chain A and Chain B each have two locations within 15 miles of the mobile electronic device, but the query specifies that only Chain A locations should be returned to the mobile electronic device, then the message service 112 returns data from the supplier DB 124 for only the two Chain A locations. Additionally, the message service 112 omits a location of Chain A that is located 20 miles from the mobile electronic device from the query results that are returned to the mobile electronic device 104.

Analysis

The Examiner has set forth a rational basis for determining that the disputed limitations do not necessarily have to be performed by the mobile electronic device alone, but instead may be performed by the mobile electronic device *in combination with other system components*. Ans. 10–12. For example, claim 1 merely recites that the mobile electronic device

identify a plurality of suppliers. But Appellants' Specification indicates that, in fact, it is the mobile electronic device 104 *in combination with message service 112* that identifies the plurality of suppliers. Fact 1, *cited in* Ans. 11. Similarly, Appellants' Specification indicates that the mobile electronic device 104 works in combination with message service 112 and supplier DB 124 to identify one supplier from the identified plurality of suppliers that is within a predetermined distance. Fact 3, *cited in* Ans. 12; *see also* Fact 2.

By inaccurately arguing that the rejection is based upon the theory that the system of either the claim or Ritz must be modified to render the claim unpatentable (App. Br. 16–18; Reply Br. 9–10), Appellants provide insufficient evidence that the Examiner's actual claim interpretation is unreasonably broad.

For these reasons, Appellants have not persuaded us of error in the Examiner's anticipation rejection of independent claim 1 over Ritz. Accordingly, we sustain the Examiner's rejection of that claim, as well as claims 2–3, 5, 7–10, 15, 16, and 18–21, which Appellants do not argue separately. App. Br. 18.

We likewise sustain the Examiner's obviousness rejections of claims 4, 6, 14, 11–13, 17, 22, and 23. Appellants have not particularly pointed out errors in the Examiner's reasoning regarding the teachings of the additionally cited reference, but, instead, merely reiterate the same arguments that are set forth in relation to the independent claims regarding the alleged deficiencies of Ritz. *Id.* at 13–14.

CONCLUSIONS

Appellants have not shown that the Examiner erred in rejecting claims 1–23 under 35 U.S.C. § 101.

Appellants have not shown that the Examiner erred in rejecting claims 1–23 under 35 U.S.C. §§ 102 and 103.

DECISION

The Examiner's decision rejecting claims 1–23 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)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED