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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL F. GUZIEL

Appeal 2017-001010
Application 13/269,593¹
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant² seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 6–11, 13–16, and 23–25. We have jurisdiction under 35 U.S.C. § 6(b). A Hearing was held on October 3, 2019.

¹ Appellant identifies Alchemy3, LLC as the real party in interest. (Appeal Br. 2).

² We use the word “Appellant” to refer to “applicant as defined in 37 C.F.R. § 1.42.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Appellant states “[t]he present invention relates to apparatus and methods by which buyers purchase goods or services from vendors, such as players purchasing lottery game tickets.” Spec. ¶ 1.

Claim 6, reproduced below, is representative of the subject matter on appeal.

6. An apparatus for completing a lottery ticket purchase transaction local to a lottery ticket retailer location but remote from a lottery ticket point-of-sale terminal, comprising:

a dedicated communication system between a computer system of a lottery game provider and a plurality of authorized lottery ticket point-of-sale terminals, a respective one of the lottery ticket point-of-sale terminals located at a respective one of a plurality of lottery game retailers, the computer system having a database of a plurality of lottery game tickets each associated with a respective one of a plurality of random draw lottery games offered by the lottery game provider, the computer system configured for entering into the database sales information as to a game ticket purchased by a player through one of the lottery ticket point-of-sale terminals for play in a selected one of the lottery games;

a plurality of short range wireless transceivers, each connected to a respective one of the lottery ticket point-of-sale terminals for establishing a temporary connection between a mobile communications device of a player and the dedicated communications system through a wireless communications protocol;

the mobile communications device configured to display at least one indicia of an available lottery game offered for play by the lottery game provider, each lottery game thereof having a discrete indicia;

means for selecting by the player one of the available lottery games for which a game ticket is to be purchased:

an access link displayed on the mobile communications device selected by the player to effect payment transfer by a payment transfer system that communicates with an account of the player and an account of the lottery game provider for transferring funds from the account of the player to the account of the lottery game provider to pay for the game ticket purchased by the player; and

an electronic lottery game ticket transferred from the database through the lottery ticket point-of-sale terminal to the mobile communications device by communication through the dedicated communication system, whereby the mobile communications device receives a record of the game ticket purchased by the player for play in the selected random draw game.

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Name	Reference	Date
White	US 2007/0117609 A1	May 24, 2007
Smith	US 2007/0124211 A1	May 31, 2007
Safaei	US 2010/0069136 A1	Mar. 18, 2010

The following rejections are before us for review.

Claims 6–11, 13–16, and 23–25 are rejected under 35 U.S.C.

§ 101 because the claimed invention is directed to a judicial exception.

Claims 6–11, 13–16, 23, and 25 are rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Smith in view of White.

Claim 24 is rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Smith, White, and Safaei.

FINDINGS OF FACT

We adopt the Examiner’s findings as set forth on pages 2–5 in the Examiner’s Answer, concerning only the 35 U.S.C. § 101 rejection.

ANALYSIS

35 U.S.C. § 101 REJECTION

We will affirm the rejection of claims 6–11, 13–16, and 23–25 under 35 U.S.C. § 101.

We select claim 6 as the representative claim for this group, and so the remaining claims stand or fall with claim 6. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2015).

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what

concept the claim is “directed to.” *See id.* at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in

the abstract is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., Diehr*, 450 U.S. at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (internal quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See Guidance.

The U.S. Court of Appeals for the Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36.

In so doing, as indicated above, we apply a “directed to” two prong test: 1) evaluate whether the claim recites a judicial exception, and 2) if the claim recites a judicial exception, evaluate whether the claim “appl[ies], rel[ies] on, or use[s] the judicial exception in a

manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance at 53; *see also* MPEP §§ 2106.05(a)–(c), (e)–(h).

The Specification states:

Since the mid-1980s introduction of ‘Pay-at-the-Pump’ self-service payment methods at filling stations, lottery organizations have experienced increasing difficulty in getting prospective consumers or players into filling station establishments for consumer exposure to lottery ticket sales opportunity. The impulse lottery ticket purchase has been removed by this convenience of payment for fuel by a driver located relatively remote from the cashier in the filling station but nevertheless local to the particular filling station. Thus, the customer is local to the filling station but within that context is remote from the cashier. In response, lottery organizations have used non-traditional advertising methods (particularly, display advertising and signage placed at or on fuel pump stands) in an effort to reverse the decline in potential sales exposure. Similar difficulties are present at establishments that include lottery ticket sales and also provide for non-in-store transactions, such as drive-through pharmacies, exterior vending devices for DVD sales or rentals which devices are increasingly located at convenience stores and other retail establishments.

Spec. ¶ 2.

The preamble states the claim is “for completing a lottery ticket purchase transaction local to a lottery ticket retailer location but remote from a lottery ticket point-of-sale terminal.” Claim 6.

Understood in light of the Specification, claim 6 recites, in pertinent part:

display[ing] at least one indicia of an available lottery game offered for play by the lottery game provider, each lottery game thereof having a discrete indicia; . . . selecting by the player one of the available lottery games for which a game ticket is to be purchased: . . . select[ing] by the player to effect . . . an account of the lottery game provider for transferring funds from the account of the player to the account of the lottery game provider to pay for the game ticket purchased by the player; and a[] . . . lottery game ticket transferred from the database through the lottery ticket point-of-sale terminal . . . by communication . . . , whereby the mobile communications device receives a record of the game ticket purchased by the player for play in the selected random draw game.

Accordingly, the Examiner found that the claims are “directed to lottery game purchase.” (Answer 4).

We agree with the Examiner that claim 6 is directed to lottery game purchase because the nub of the claim recites in pertinent part, “display[ing] at least one indicia of an available lottery game offered for play by the lottery game provider” and “selecting by the player one of the available lottery games for which a game ticket is to be purchased.” An offer for sale of a lottery ticket and the purchase thereof is a contractual relationship. The offer to play is made by the provider. The offer is made for a given ticket. The acceptance is the purchase by the customer. The consideration is the purchase price of the ticket. These are the basic elements of a contract and/or transaction, the engine of commerce. Agreements in the form of a contract are considered commercial or legal interactions which are a certain method of organizing human activity. The patent-ineligible end of the spectrum includes certain methods of organizing human

activity. Guidance, 84 Fed. Reg. at 52, *Alice*, 573 U.S. at 218–20.

Turning to the second prong of the “directed to” test, claim 6 only generically requires “a computer system,” “point of sale terminals,” “range wireless transceivers,” “ticket point-of-sale terminals,” and “mobile communications device.” These components are described in the Specification at a high level of generality. *See* Spec. ¶¶ 30–43, Fig. 1. We fail to see how the generic recitations of these most basic computer components and/or of a system so integrates the judicial exception as to “impose[] a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Guidance at 53. We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing.

Thus, we find that the claims recite the judicial exception of a certain method of organizing human activity that is not integrated into a practical application.

That the claims do not preempt all forms of the abstraction or may be limited to lottery ticket sales, does not make them any less abstract. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“And that 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.”).

Turning to the second step of the *Alice* analysis, because we find that the claims are directed to abstract ideas/judicial exceptions, the claims must include an “inventive concept” in order to be patent-

eligible, i.e., there must be an element or combination of elements sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. *See Alice*, 573 U.S. at 217–18 (quoting *Mayo Collaborative Servs.*, 566 U.S. at 72–73).

Concerning this step the Examiner found the following:

The additional elements taken alone or in combination do not perform anything more than conventional computer implementation. There is no indication that the combination elements improves the functioning of a computer or improves any other technology.

Thus, considering the elements and combinations of elements, these claims as a whole, do not amount to significantly more than the abstract idea itself. This is because the claims merely amount to applying the abstract idea on a computer using the computer elements.

Answer 5. We agree with the Examiner. “[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to retrieve, select, access, display, transfer, and apply decision criteria to data as a result amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016); *see also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower

construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming.”). In short, each step does no more than require a generic computer to perform generic computer functions. The claims do not, for example, purport to improve the functioning of the computer itself. In addition, as we stated above, the claims do not affect an improvement in any other technology or technical field. The Specification spells out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of information access under different scenarios (*see, e.g.*, Spec. ¶¶ 30–43). Thus, the claims at issue amount to nothing significantly more than instructions to apply the abstract idea using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

Considered as an ordered combination, the computer components of Appellant’s claims add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis (retrieve, select, access, display, transfer, and apply decision criteria to data) and storing is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir.

2017) (holding that sequence of data retrieval, analysis, modification, generation, display, and transmission was abstract), *Two-Way Media Ltd. v. Comcast Cable Commc'ns, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (holding sequence of processing, routing, controlling, and monitoring was abstract). The ordering of the steps is, therefore, ordinary and conventional.

We have reviewed all the arguments Appellant has submitted concerning the patent eligibility of the claims before us that stand rejected under 35 U.S.C. § 101. (Reply Br. 1–16). We find that our analysis above substantially covers the substance of all the arguments, which have been made. But, for purposes of completeness, we will address various arguments in order to make individual rebuttals of same.

Appellant argues:

Under *Alice* and *Mayo* analysis, the claimed invention is not merely the abstract idea of a purchase of lottery game tickets, but rather, the claims include an inventive concept that ensures the invention amounts to “significantly more” in that the claims “looked at as a whole” include meaningful limitations that affect another technology or technological field.

(Reply Br. 12).

Although we agree with Appellant that the claims must be read, as a whole, we nevertheless find, on balance, that claim 6 is directed to a lottery game purchase for the reasons specified above with respect to our “directed to” findings. As found *supra*, claim 6 only includes the following generically recited device limitations: “a computer system,” “point of sale terminals,” “range wireless

transceivers,” “ticket point-of-sale terminals,” and “mobile communications device.” What remains in the claim after disregarding these device limitations, are abstractions, i.e., “display[ing] at least one indicia of an available lottery game offered for play by the lottery game provider” and “selecting by the player one of the available lottery games for which a game ticket is to be purchased.” “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) (emphasis omitted) (citing *Mayo*, 566 U.S. at 90). To the extent Appellant is arguing that these are additional elements constituting an inventive concept, such features cannot constitute the “inventive concept.” *Berkheimer v. HP Inc.*, 890 F.3d 1369, 1374 (Fed. Cir. 2018) (Moore, J., concurring) (“It is clear from *Mayo* that the ‘inventive concept’ cannot be the abstract idea itself, and *Berkheimer* . . . leave[s] untouched the numerous cases from this court which have held claims ineligible because the only alleged ‘inventive concept’ is the abstract idea.”); *see also BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018) (“It has been clear since *Alice* that a claimed invention’s use of the ineligible concept to which it is directed cannot supply the inventive concept that renders the invention ‘significantly more’ than that ineligible concept.”).

Citing to *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), Appellant argues, “the applicants’ specification details the problem addressed by the invention in the

technical fields of convenience store retail industry and lottery ticket purchase transactions.” (Reply Br. 13).

We disagree with Appellant. The question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO*, 837 F.3d at 1314. In this case, claim 6 as a whole is focused on satisfying certain contingencies for a “lottery ticket purchase.”

Here, Appellant argues that the problems resolved are the result of “[l]ottery games and sales of tickets for lottery games [being] a tightly controlled statutory-regulated technology.” (Reply Br. 13–14). Appellant further goes onto describe that: “If for some reason, players do not come into the store, the store operator loses revenue and the lottery provider loses an opportunity for a game ticket transaction,” *id.* at 14; “The impulse lottery ticket purchase has been removed by this convenience of payment for fuel by a driver located relatively remote from the cashier but nevertheless local to the particular convenience store retailer.” *Id.* But, such problems are not focused on a specific means or method that improves the relevant technology, but rather focus on certain actions of managing personal behavior.

Appellant next argues:

The claimed invention, viewed as an ordered combination, and notwithstanding that an element viewed separately is contended to be abstract, provides meaningful limitations that together form an unconventional, patentable combination by which consumers are retained and encouraged for generating

repeat and continued business from the provider of consumer goods within the retail technology.

(Reply Br. 16).

We disagree with Appellant. In our view, the evidence weighs in favor of the Examiners' determination that when

the claim as a whole is analyzed to determine whether any element, or combination of elements, is sufficient to ensure that the claim amounts to significantly more than the exception. In regard to these claims, these claims recite point of sale terminal, communication system, wireless transceiver, mobile communication device, etc. In each instance, the functions performed by the computer components include communicating data, generating data, linking data, and outputting.

Answer 4–5.

On page 15 of the Reply Brief, Appellant generally re–presents the elements of the claimed dedicated communication system, asserting that they contain “an inventive concept.” But, Appellant offers insufficient evidence as to why reference to these items is meaningful beyond the face of the language itself other than being the way that data are carried within the network. There is no further discussion in the Specification of the particular technology for performing this claimed step. *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 (Fed. Cir. 2016); *see also Enfish*, 822 F.3d at 1336 (focusing on whether the claim is “an improvement to [the] computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity”). Absent evidence to the contrary, we view the “dedicated

communication system” limitations to be only an indication of the environment in which the abstract idea is practiced.

MPEP 2106.05(h) concern[s] generally linking use of a judicial exception to a particular technological environment or field of use, including a discussion of the exemplars provided herein, which are based on *Bilski*, 561 U.S. at 612, and *Flook*, 437 U.S. at 588–90. Thus, the mere application of an abstract method of organizing human activity in a particular field is not sufficient to integrate the judicial exception into a practical application.

Guidance at 55 n.32, *see also Alice*, 573 U.S. at 223.

Although a dedicated communication system and its attendant devices are in some sense technological, its use in operating system functionality can be said to be so notoriously settled that merely invoking it is no more than abstract conceptual advice to use well known technology for its intended purpose. *See In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 612–13 (Fed. Cir. 2016). (Using a generic telephone for its intended purpose was a well-established “basic concept” sufficient to fall under *Alice* step 1.).

For the reasons identified above, we determine there are no deficiencies in the Examiner’s prima facie case of patent ineligibility of the rejected claims. Therefore, we will sustain the Examiner’s § 101 rejection of claims 6–11, 13–16, and 23–25.

35 U.S.C. § 103(a) REJECTION

The Examiner rejects independent claims 6 and 25 under 35 U.S.C. § 103(a) based on Smith in view of White. In so doing, the Examiner finds that “Smith does not disclose the feature wherein a

dedicated communication system between a computer system of a lottery game provider and a plurality of authorized lottery ticket point-of-sale terminals.” (Final Act. 3). In turn, the Examiner relies on White to disclose this feature finding,

it would have been obvious for one of ordinary skill in the art to have modified the method of Smith wherein an access link to a payment transfer system that communicates with an account of the customer and an account of the lottery provider . . . as taught by White in order to complete lottery transaction. Incorporating such features would assist the mobile transaction in the same manner.

(Final Act. 5).

Appellant argues,

[i]n the system disclosed by White, ‘[t]housands of retailers are replaced by software running on the server at the service provider's premises’ (page 2, left column, lines 16 - 17) ‘which creates a convenient alternative to the retailer chain model of lottery game play...’ (lines 23 - 25). (Emphasis added). White accordingly describes an on-line internet game system separate from, and a replacement for, the existing lottery game provider/retailer structure for sales of game tickets to game players.

(Appeal Br. 8) (emphasis omitted, second alteration in original).

We agree with Appellant that White teaches away from the teachings of the vendor point of sale related claims on appeal and of Smith. In particular, White discloses, “[t]housands of retailers are replaced by software running on the server at a service provider’s premises,” and

[t]he system not only makes it convenient for players to play and buy lottery tickets while being anywhere in the access area

of a wireless communication network but also creates a convenient alternative to the retailer chain model of lottery game play, thus shortening and simplifying the process chain of the game.

White ¶10. Here, the disclosure in White of replacing “[t]housands of retailers” with its wireless mobile phone based software explicitly discourages the existence of the former. A reference will teach away if it suggests that the line of development flowing from the reference’s disclosure is unlikely to be productive of the result sought by the applicant. *See United States v. Adams*, 383 U.S. 39, 52 (1966) (“known disadvantages in old devices which would naturally discourage the search for new inventions may be taken into account in determining obviousness”). Accordingly, we do not sustain the rejection made under 35 U.S.C. § 103(a) using the combination of Smith and White.

Because claims 7–11 and 23 depend directly or in directly from claim 6, and claims 13–16 depend from claim 25, and because we cannot sustain the Examiner’s obviousness rejection of claims 6 and 25, the Examiner’s obviousness rejection of claims 7–11, 13–16, 23 and 24³ likewise cannot be sustained.

³ Nothing in the rejection of claim 24 using the additional reference to Safaei changes the outcome of the rejection of claims 6 and 25 under 35 U.S.C. § 103(a) set forth above.

CONCLUSION

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, the Examiner's decision is affirmed.

See 37 C.F.R. § 41.50(a)(1).

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
6-11, 13-16, 23-25	101	Eligibility	6-11, 13-16, 23-25	
6-11, 13-16, 23, 25	103(a)	Smith, White,		6-11, 13- 16, 23, 25
24	103(a)	Smith, White, Safaei		24
Overall Outcome			6-11, 13-16, 23-25	

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

AFFIRMED