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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 KENNETH D. TUCHMAN, BRUCE A. SHARPE,
and HENRY D. TRUONG

_____

Appeal 2017-001520
Application 13/185,309
Technology Center 3600

_____

Before JOHN A. EVANS, STEVEN M. AMUNDSON, and
JASON M. REPKO, *Administrative Patent Judges*.

EVANS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants[1] seek our review under 35 U.S.C. § 134(a) from the Examiner's

final rejection of Claims 1–14 and 23–32. Br. 1.

     We have jurisdiction under 35 U.S.C. § 6(b).

     We AFFIRM.[2]

_____

[1] Appellants state the real party in interest is TeleTech Holdings, Inc. Br. 3.

[2] Rather than reiterate the arguments of Appellants and the Examiner, we
refer to the Appeal Brief (filed May 25, 2016, "Br."), the Examiner's
Answer (mailed September 21, 2016, "Ans."), the Final Office Action

STATEMENT OF THE CASE

The claims relate to a method of messaging within a social community. *See* Abstract.

INVENTION

Claims 1, 11, and 29 are independent. An understanding of the invention can be derived from a reading of Claim 1, which is reproduced below:

> 1.   A computer-implemented method for routing messages amongst users, the method comprising:
>
> maintaining, at a first computer server associated with a support center, a user database having a plurality of user accounts associated with a plurality of users who have registered a plurality of products with the support center, wherein the first computer server is to provide support services to the users concerning the products on behalf of a plurality of vendors that provide the products;
>
> accessing, by an analysis module executed by a processor of the first computer server, a first user account of the user database that is associated with a first of the plurality of users to identify a first product, wherein the first product was purchased by the first user from a first of the plurality of vendors, and wherein the first product has been previously registered with the first computer server by the first user;
>
> accessing by the analysis module a second user account of the user database that is associated with a second of the plurality of users to identify a second product, wherein the second product was purchased by the second user from a second of the plurality of vendors, and wherein the second

(mailed November 25, 2015, "Final Act."), and the Specification (filed July 18, 2011, "Spec.") for their respective details.

product has been previously registered with the first computer server by the second user;

accessing by the analysis module a product database maintained by the first computer server to determine whether the first product and the second product are related products based on product information stored in the product database;

in response to determining that the first product and the second product are related products, accessing, by a social posting engine hosted by the first computer server, the first user account and the second user account respectively to determine whether the first user and the second user are members of a first social community, wherein the first social community is hosted by a second computer server that is communicatively coupled to the first computer server via a first an [sic] application programming interface (API) of the first computer server, wherein the first social community is hosted by a third party that is independent from the support center over a network;

in response to determining that the first user and the second user are members of the first social community, transmitting, by the social posting engine via a second API of the first computer server over the network, a first message to a first mobile application running within a first mobile device associated with the first user to invite the first user to connect with the second user via the first social community without requiring the first user directly accessing the first social community, wherein the first message includes information identifying the first product; and

transmitting, by the social posting engine via the second API of the first computer server, a second message to a second mobile application running within a second mobile device associated with the second user to invite the second user to connect with the first user via the first social community without requiring the second user directly accessing the first social community, wherein the second message includes information identifying the second product.

References and Rejections

Krapf, *et al.*,	US 2003/0074661 A1	Apr. 17, 2003
Wen, *et al.*,	US 2003/0229678 A1	Dec. 11, 2003
Tawakol, *et al.*,	US 2009/0228397 A1	Sept. 10, 2009
Peters, *et al.*,	US 8,943,145 B1	Filed Feb. 8, 2010
Kelly, *et al.*,	US 8,296,380 B1	Filed Apr. 1, 2010
Vernal, *et al.*,	US 2010/0132049 A1	May 27, 2010
Biolchini, *et al.*,	US 2012/0023124 A1	Filed July 20, 2010
Novak, *et al.*,	US 2011/0306426 A1	Filed June 10, 2010
Trevithick, *et al.*,	US 2010/0274645 A1	Oct. 28, 2010
Rathod	US 2011/0191417 A1	Filed Nov. 24, 2010
Shah, *et al.*,	US 2012/0209918 A1	Filed Feb. 15, 2011
Omoigui	US 2012/0191716 A1	Filed June 24, 2011

The claims stand rejected as follows:

1. Claims 1–14 and 23–32 stand rejected under 35 U.S.C. § 112 ¶ 2, as being indefinite. Final Act. 2–3.

2. Claims 1–14 and 23–32 stand rejected under 35 U.S.C. § 101, as being directed to a judicial exception. Final Act. 3–6.

3. Claims 1, 11, and 29 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, and Vernal. Final Act. 7–20.

4. Claims 2, 12, and 30 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, Biolchini, and Kelly. Final Act. 20–27.

5. Claims 31 and 32 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, Biolchini, Kelly, Shah, and Peters. Final Act. 27–30.

6. Claims 3 and 13 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, and Omoigui. Final Act. 31–33.

7. Claims 4–7, 14, and 23–25 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, Omoigui, and Trevithick. Final Act. 33–39.

8. Claims 8, 9, 26, and 27 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, Omoigui, Trevithick, Krapf, and Tawakol. Final Act. 39–41.

9. Claims 10 and 28 stand rejected under 35 U.S.C. § 103(a), as unpatentable over Novak, Rathod, Vernal, Omoigui, Trevithick, Krapf, Tawakol, and Wen. Final Act. 42–43.

ANALYSIS

We have reviewed the rejections of Claims 1–14 and 23–32 in light of Appellants' arguments that the Examiner erred. We have considered in this Decision only those arguments Appellants actually raised in the Brief. Any other arguments which Appellants could have made but chose not to make in the Brief are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We are not persuaded that Appellants identify reversible error.

Upon consideration of the arguments presented in the Appeal Brief, we do not agree with Appellants that the claims are patentable under 35 U.S.C. §§ 112, 101, and/or 103. With respect to the rejections, we adopt

as our own the findings and reasons set forth in the rejection from which this
appeal is taken and in the Examiner's Answer, to the extent consistent with
our analysis below. We provide the following explanation to highlight and
address specific arguments and findings primarily for emphasis. We
consider Appellants' arguments *seriatim*, as they are presented in the Appeal
Brief, pages 18–153.

CLAIMS 1–14 AND 23–32: INDEFINITENESS.

Appellants argue independent Claims 1, 11, and 29 as a group and
designate claim 1 as representative. Br. 18. Thus, we decide the appeal of
the § 112 rejection on the basis of representative Claim 1, and refer to the
rejected claims collectively herein as "the claims." *See* 37 C.F.R.
§ 41.37(c)(1)(iv); *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

Independent Claims 1, 11, and 29 recite, *inter alia*, "wherein the first
computer server is to provide support services to the users concerning the
products on behalf of a plurality of vendors that provide the products." The
Examiner finds these are intended use recitations because it is unclear what
impact the recitations may have on the remaining limitations. Final Act. 2.
Specifically for Claim 1, the Examiner finds it unclear how the disputed
recitation affects the step of "maintaining . . . a user database having a
plurality of user accounts associated with a plurality of users." *Id.*

Appellants quote *Ex parte Chalon*[3] for the proposition that "[t]he test
for definiteness under 35 U.S.C. § 112, second paragraph, is whether 'those

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[3] *Ex parte Chalon*, Appeal 2009-005318, slip op. 7 (BPAI Nov. 6, 2009)
(quoting *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565,
1576 (Fed. Cir. 1986)).

skilled in the art would understand what is claimed when the claim is read in light of the specification.'" Br. 20. Appellants argue that one of ordinary skill in the art would understand the claims "because claim 1 sets forth—via precise, clear, correct, and unambiguous claim limitations—a first computer server, which is associated with a support center, that maintains a user database and that provides support services for multiple products on behalf of one or more vendors that provide the products." *Id.* at 20–21.

The Examiner finds the claim must "inform those skilled in the art about the scope of the invention with reasonable certainty."[4] Ans. 4 (italics omitted). The disputed recitation (italicized) forms a portion of a larger "maintaining" limitation:

> maintaining, at a first computer server associated with a support
> center, a user database having a plurality of user accounts
> associated with a plurality of users who have registered a
> plurality of products with the support center, *wherein the first*
> *computer server is to provide support services to the users*
> *concerning the products on behalf of a plurality of vendors that*
> *provide the products.*

Claim 1. The Examiner determines the claims do not describe what the "support services" might be or how such services would have an effect on, or require certain actions to be included in the remainder of the "maintaining" limitation. Ans. 4–5.

Appellants do not reply to the Examiner and do not persuade us that the Examiner has erred. Appellants do not separately argue the dependent claims. *See* Br. 21.

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[4] Citing nonspecifically to *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014).

CLAIMS 1, 11, AND 29: INELIGIBLE SUBJECT MATTER.

Appellants argue independent Claims 1, 11, and 29 as a group and designate Claim 1 as representative. Br. 21. Thus, we decide the appeal of the § 101 rejection on the basis of representative Claim 1, and refer to the rejected claims collectively herein as "the claims." *See* 37 C.F.R. § 41.37(c)(1)(iv); *King*, 801 F.2d at 1325.

Prima facie case.

Appellants contend the Examiner failed to established a prima facie case of patent-ineligible subject matter under 35 U.S.C. §101 because the Examiner fails to "specifically point out the factors that are relied upon in making the determination." Br. 24 (quoting MPEP § 2106(II)(B)(2)).

We disagree. The Federal Circuit has explained repeatedly that "the prima facie case is merely a procedural device that enables an appropriate shift of the burden of production." *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The Examiner carries the burden of establishing a prima facie case when a rejection satisfies 35 U.S.C. § 132 by setting forth the rejection in a sufficiently articulate and informative manner. *In re Jung*, 637 F.3d 1356, 1363 (Fed. Cir. 2011). If the Examiner "adequately explain[s] the shortcomings . . . the burden shifts to the applicant to rebut the prima facie case with evidence and/or argument." *Hyatt*, 492 F.3d at 1370.

The Final Office Action adequately explains the § 101 rejection. *See* Final Act. 3–6. The Examiner's statements satisfy § 132(a) because they apply the *Mayo/Alice* analytical framework and apprise Appellants of the reasons for the § 101 rejection under that framework. Appellants have not

responded by alleging a failure to understand the rejection. To the contrary, Appellants clearly identify an abstract idea as found by the Examiner. *See, e.g.*, Br. 25 ("the Examiner has stated that claim 1 'generally indicates' the concept of 'connecting and routing messages amongst users'"). Appellants argue the "Examiner simply concluded that this alleged concept is an abstract idea and therefore analyzed it under the second step of the *Alice* analysis." *Id.* For these reasons, we are not persuaded the Examiner failed to make a prima facie case of patent ineligibility under § 101.

Examination Guidance.

Appellants contend the Examiner's findings are deficient because the Examiner fails to conform to various USPTO Examination Guidance documents. *See, e.g., inter alia*, Br. 36–37, 41–50. Appellants admit the "Interim Eligibility Guidance does not constitute substantive rulemaking and does not have the force and effect of law." Br. 45.

Appellants are correct in realizing examination guidance does not have the force and effect of law:

> This Interim Eligibility Guidance has been developed as a matter of internal Office management and is not intended to create any right or benefit, substantive or procedural, enforceable by any party against the Office. Rejections will continue to be based upon the substantive law, and it is these rejections that are appealable. Failure of Office personnel to follow this Interim Eligibility Guidance is not, in itself, a proper basis for either an appeal or a petition.

USPTO, 2014 Interim Guidance on Patent Subject Matter Eligibility, 79 Fed. Reg. 74618, 74619 (December 16, 2014).

The Supreme Court has instructed us to use a two-step framework to "distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). Appellants have acknowledged the Examiner has analyzed the claims under the *Alice* framework. Br. 25 (the "Examiner simply concluded that this alleged concept is an abstract idea and therefore analyzed it under the second step of the *Alice* analysis"). The Examiner explicitly analyses the claims under the *Alice* two-step approach. *See* Final Act. 3–6 (labeling the steps "Step 2A" and "Step 2B").

Claim Construction.

Appellants contend "the Examiner has failed to properly construe each of claims 1, 11, and 29, *as a whole*, under the broadest reasonable interpretation standard before attempting to apply the two-step *Alice* test for patentability." Br. 35 (boldface omitted) (citing *Ex parte Kane*, Appeal 2012-000901, slip op. at 4 (PTAB Oct. 10, 2014) ("Before we can determine whether the claims are directed to an abstract idea and, thus, patent-ineligible, the broadest reasonable construction of the claims must first be determined." (citing *State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368, 1370 (Fed. Cir. 1998) ("whether the . . . patent is invalid for failure to claim statutory subject matter under 35 U.S.C. § 101 is a matter of both claim construction and statutory construction")))).

In *Kane*, the Board reversed the rejection under § 101 because the examiner found that to overcome the rejection "the fund transfer should be done by the computer or machine not via network or device," but the Board

decided a detailed claim construction was required to explain why the claimed process would pass § 101 muster if performed by a "computer or machine," but not where performed "via a device linked to an electronic network," as claimed. *Kane*, slip op. at 5. Appellants argue the present Examiner failed to properly construe the claimed "product information." Br. 35. However, Appellants fail to show how a "proper" construction of that term might alter an analysis under § 101 in the present case. *See* Br. 35–36.

Mayo-Alice Step 1.

As noted above, the Supreme Court has instructed us to use a two-step framework to "distinguish[] patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." Alice, 134 S. Ct. at 2355. At the first step, we determine whether the claims at issue are "directed to" a patent-ineligible concept. Id.

The Examiner determines Claim 1 "generally describes the concept of managing relationships and social activities such as . . . connecting users via third party social communit[ies] and routing [and] transmitting messages amongst users" and, thus, is directed to the abstract idea known as "Certain Methods of Organizing Human Activity." Final Act. 3 (boldface omitted). The Examiner further determines that steps 1 through 7 of the claimed method recite accessing various databases, determining relationships, and transmitting messages. *Id.* at 3–4. The Examiner concludes these method steps are directed to the abstract idea of collecting and comparing known information. *Id.* at 4.

Appellants contend each of independent Claims 1, 11, and 29 is not abstract and discuss the claims in terms of the Federal Circuit's holding in *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016):

> First, as identified by the Federal Circuit in *Enfish*, each of claims 1, 11, and 29 is directed to a support/service center that compares a pair of purchased/registered products to determine whether they are related products based on product information stored in a specialized product database, where "product information" set forth in claim 1 is directed to at least one of "(e.g., barcode, UPC code, or serial number) ... [or] product identifier (e.g., machine-readable code), ... obtained and compiled by the service center in response to a machine-readable code received during the registration [of a product]." See, e.g., claim 1 and originally filed specification, paragraphs [0053] and [0061].

Br. 38 (boldface omitted). However, we find Appellants thus admit the claims are directed to comparing known information by explicitly stating that "each of claims 1, 11, and 29 is directed to a support/service center that compares a pair of purchased/registered products to determine whether they are related products based on product information stored in a specialized product database." *Id.*

The Examiner's Answer responds to Appellants' contentions. *See* Ans. 6–9. The Examiner determines the claims collect and compare known information and analogizes the claims to those of *Classen*.5 Ans. 8.

Appellants do not file a reply and do not persuade us the claims are not directed to an abstract idea.

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5 *Classen Immunotherapies Inc. v. Biogen IDEC*, 659 F.3d 1057 (Fed. Cir. 2011).

Mayo-Alice Step 2.

Where, as here, the claims are "directed to" a patent-ineligible concept, we then "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." Alice, 134 S. Ct. at 2355 (quoting *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 79, 78 (2012)). This analysis has been characterized as the search for an "inventive concept"— something sufficient to ensure that the claim amounts to "significantly more" than the abstract idea itself. Id. (quoting *Mayo*, 566 U.S. at 72–73).

The Examiner determines the claimed method generically recites steps of "accessing," determining," "maintaining," and "transmitting" information and whether viewed individually or as a whole the claimed method merely applies abstract ideas to a generic computer. Final Act. 5. "Whether a combination of claim limitations supplies an inventive concept that renders a claim 'significantly more' than an abstract idea to which it is directed is a question of law." *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1290 (Fed. Cir. 2018).

Appellants contend the claims recite "significantly more" than an abstract idea because the claims are "specialized for the function of 'providing life cycle support services for a product' and are not similar to performing repetitive calculations." Br. 56 (boldface omitted). Appellants argue that similar to the case of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), the claims address an internet-centric challenge in a manner that is inextricably tied to a computer. Br. 57.

The Examiner finds the computer functions of receiving and

transmitting data over the internet are "well-understood, routine, and conventional functions," which thus are not significantly more than the abstract idea. Ans. 9–10 (citing *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716–17 (Fed. Cir. 2014)).

Appellants do not reply to the Answer and fail to persuade us the Examiner has erred in rejecting Claims 1, 11, and 29 under 35 U.S.C. § 101.

Claims 2 and 12: Ineligible Subject Matter.

Appellants argue dependent Claims 2 and 12 as a group and designate Claim 2 as representative. Br. 64.

The Examiner determines Claim 2 and 12 merely add further details of the abstract steps recited in Claims 1 and 11 without including an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. Final Act. 5–6.

Appellants contend that at least one of the limitations set forth in each of Claims 2 and 12 recites significantly more because each of Claims 2 and 12 is directed to solving a business challenge that is particular to communications networks as identified by *DDR Holdings*. Br. 65 (citing 773 F.3d at 1257).

We are not persuaded. Appellants do not cite specific claim language, nor demonstrate how the claims specifically improve a technological function. Rather, Appellants describe the claims at an impermissibly "high level of abstraction," such that they are "untethered from the language of the claims." *Enfish*, 822 F.3d at 1337.

CLAIMS 3 AND 13: INELIGIBLE SUBJECT MATTER.

Appellants argue dependent Claims 3 and 13 as a group and designate Claim 3 as representative. Br. 66.

The Examiner determines Claim 3 and 13 merely add further details of the abstract steps recited in Claims 1 and 11 without including an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment. Final Act. 5–6.

Similarly as for Claims 2 and 12, Appellants contend that at least one of the limitations set forth in each of Claims 3 and 13 recites significantly more because each of Claims 3 and 13 is directed to solving a business challenge that is particular to communications networks as identified by *DDR Holdings*. Br. 67.

We are not persuaded. Appellants do not cite specific claim language, nor demonstrate how the claims specifically improve a technological function. Rather, Appellants describe the claims at an impermissibly "high level of abstraction," such that they are "untethered from the language of the claims." *Enfish*, 822 F.3d at 1337. By way of specific example, Appellants argue that:

> a one-touch application on the mobile device can serve as a central service point to a support center that provides support services to a variety of products or services provided by a variety of vendors that are independent of each other over a communications network using a variety of communications channels.

E.g., Br. 68. However, none of Claims 1–3, 12, or 13 recites "a one-touch application." Appellants' argument is not commensurate in scope with the claims, which do not recite "a one-touch application." See In re Self, 671 F.2d 1344, 1348 (CCPA 1982) ("[A]ppellant's arguments fail from the outset because . . . they are not based on limitations appearing in the claims.").

CLAIMS 4, 6, 14, AND 24: INELIGIBLE SUBJECT MATTER.

Appellants argue dependent Claims 4, 6, 14, and 24 as a group and designate Claim 4 as representative. Br. 68.

Appellants also separately group Claims 5 and 23, 7–10 and 25–28, and 30–32, but present substantially identical arguments for each group. Br. 71–77. Indeed, Appellants' arguments substantially reprise those presented above, which cite *Enfish*. See Br. 69–70.

For the reasons discussed above, we are not persuaded the Examiner errs.

CLAIMS 1, 11, AND 29:

OBVIOUSNESS OVER NOVAK, RATHOD, AND VERNAL.

Appellants argue independent Claims 1, 11, and 29 as a group and designate Claim 1 as representative. Br. 77, 107.

The Examiner finds Novak teaches, inter alia, a method and system for routing messages among users comprising several elements of the claimed method. Final Act. 7–13. The Examiner finds several claimed elements, not taught by Novak are taught by Rathod. Final Act. 15–17. Finally, the Examiner finds those elements not taught by the combination of

Novak and Rathod are taught by Vernal. Final Act. 18–20. The Examiner provides a statement of motivation to synthesize the Novak, Rathod, and Vernal teachings. Id.

Appellants contend that each of Novak, Rathod, and Vernal fails to disclose:

> maintaining, at a first computer server associated with a support center, a user database having a plurality of user accounts associated with a plurality of users who have registered a plurality of products with the support center, wherein the first computer server is to provide support services to the users concerning the products on behalf of a plurality of vendors that provide the products; . . . accessing by the analysis module a product database maintained by the first computer server to determine whether the first product and the second product are related products based on product information stored in the product database; in response to determining that the first product and the second product are related products, accessing, by a social posting engine hosted by the first computer server, the first user account and the second user account respectively to determine whether the first user and the second user are members of a first social community, wherein the first social community is hosted by a second computer server that is communicatively coupled to the first computer server via a first an application programming interface (API) of the first computer server, wherein the first social community is hosted by a third party that is independent from the support center over a network; . . . transmitting, by the social posting engine via a second API of the first computer server over the network, a first message to a first mobile application running within a first mobile device associated with the first user to invite the first user to connect with the second user via the first social community . . . ; transmitting, by the social posting engine via the second API of the first computer server, a second message to a second mobile application running within a second mobile device associated with the second user to invite the second user

to connect with the first user via the first social community
. . . ,[] as set forth in [independent C]laim 1.

Br. 80–81.

Appellants characterize the disclosures of Novak and allege
shortcomings therein. Br. 81–96. Appellants characterize the disclosures of
Rathod and allege shortcomings therein. Br. 96–100. Appellants
characterize the disclosures of Vernal and allege shortcomings therein.
Br. 100–04.

We find that Appellants have failed to present *substantive* arguments
and supporting *evidence* persuasive of Examiner error regarding the
aforementioned disputed limitations. *See In re Lovin*, 652 F.3d 1349, 1357
(Fed. Cir. 2011) ("[W]e hold that the Board reasonably interpreted Rule
41.37 to require more substantive arguments in an appeal brief than a mere
recitation of the claim elements and a naked assertion that the corresponding
elements were not found in the prior art."). For example, Appellants
contend "Novak discloses a gaming environment for a gaming and media
console that provides a multi-player service that hosts a multi-player game
for multiple players," but that "Novak lacks any disclosure of 'a first
computer associated with a support center.'" Br. 83.

Appellants fail to engage the Examiner's case. To find a first
computer server associated with a support center, the Examiner cites the
Abstract, Figure 3, and paragraphs 2 and 3 of Novak. Final Act. 7. The
Examiner finds a single service provider is taught by the combination of the
multiplayer network service and the network service provider. *Id.* (citing
Novak ¶ 45). However, Appellants contend that "[a]t best, Novak discloses
a gaming environment for a gaming and media console that provides a

multi-player service that hosts a multi-player game for multiple players."
Br. 83. We disagree with Appellants.

Figure 3 of Novak is reproduced below.
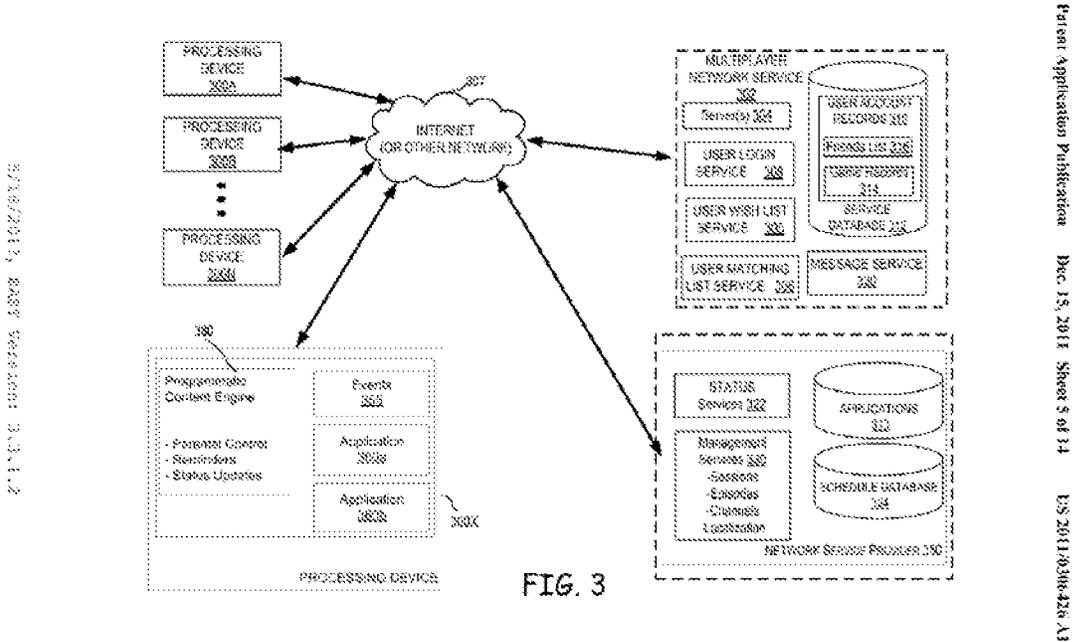
FIG. 3

Novak Figure 3 is a block diagram of an exemplary operating environment for enabling users to participate in a multiplayer game based on user intent.

Novak discloses:

> FIG. **3** is a block diagram of an environment for performing the operations of disclosed technology. In one example, multiple processing devices **300A-300X** are coupled to a network **307** and can communicate with a multiplayer network service **302** having one or more server(s) **304** via network **307.** The processing devices **300A-300X** may include a gaming and media console, a personal computer, or one or more mobile devices such as, for example, a cell phone, a web-enabled smart phone, a personal digital assistant, a palmtop computer or a laptop computer. Also present and coupled to the network is a network service provider **350.** In one embodiment, network

307 comprises the Internet, though other networks such as LAN or WAN are contemplated. The server(s) **304** also includes a communication component capable of receiving information from and transmitting information to processing devices **300A-X** and provides a collection of services that applications running on processing devices **300A-X** may invoke and utilize. For example, the server(s) **304** in the multi player network service **302** may manage a plurality of multiplayer activities concurrently by aggregating events from users executing one or more applications on the processing devices **300A-X.** The multiplayer network service **302** and the network service provider **350** may be combined and offered by a single service provider and/or on a single server.

Novak ¶ 45.

Motivation.

Appellants contend a person of ordinary skill in the art would have lacked motivation to combine the references. Br. 104. Appellants characterize Vernal as related to a social network system and characterize Rathod as relating to a brands social network. *Id.* Appellants argue the network systems of Vernal and Rathod are completely unrelated to the "gaming and media console as disclosed by Novak." *Id.* Appellants' argument overlooks the gaming network disclosed by Novak. Appellants argue the Examiner's proposed combination could not work because of alleged incompatibilities between Novak's gaming console (impliedly a stand-alone device) and the various networks of the remaining references. *See* Br. 104–05. We are not convinced because Appellants' analysis omits Novak's network. *See* Novak, Figure 3.

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CLAIMS 2 AND 12: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, BIOLCHINI, AND KELLY.[6]

Appellants argue Claims 2 and 12 as a group and designate Claim 2 as representative. Br. 108. Appellants contend their foregoing arguments, with respect to Claim 1, have demonstrated the combination of Novak, Rathod, and Vernal fails to disclose "at least one of the claim limitations set forth in claim 2." Br. 109. We disagree in view of our foregoing discussion. Appellants further contend the Examiner found the combination of Novak, Rathod, Vernal, and Biolchini fails to disclose:

> in response to the third message, retrieving by the social posting engine from the fist [sic] user account of the user database first credentials associated with the first user for accessing the first social community . . . [and] retrieving by the social posting engine from the first user account of the user database second credentials associated with the first user for accessing the second social community,[] as set forth in [C]laim 2.

Br. 109. Appellants next summarily conclude:

> Therefore, Appellants respectfully submit that a combination of Novak, Rathod, Vernal, Biolchini, and *Kelly* fails to disclose "in response to the third message, retrieving by the social posting engine from the first user account of the user database first credentials associated with the first user for accessing the first social community; . . . retrieving by the social posting engine from the first user account of the user database second credentials associated with the first user for accessing the second social community; and transmitting by the social posting engine a third post request having the third message and the second credentials to a third computer server

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[6] Claims 2, 12, and 30 stand rejected under 35 U.S.C. § 103(a) over Novak, Rathod, Vernal, Biolchini, and Kelly. Final Act. 20–27. However, Appellants choose an alternative grouping to argue the claims. *See* Br. 108.

> hosting the second social community to allow the second social community to authenticate the first user and to post the third message within the second social community," as set forth in claim 2.

Br. 109 (emphasis added).

We are not persuaded because Appellants' arguments mischaracterize the Examiner's findings. For example, Appellants argue:

> The "social networking communication interface system" and social networking servers 120 and 130 disclosed by Biolchini *cannot* be equated with "in response to the third message, retrieving by the social posting engine from the first user account of the user database first credentials associated with the first user for accessing the first social community; . . . ."

Br. 110 (boldface omitted). Appellants are not persuasive, at least in part, because the Examiner finds:

> Kelly [not Biolchini as alleged by Appellants] teaches **the general concept** of retrieving from the first user account of the user database first credentials associated with the first user for accessing the first social community (first social media system) and retrieving the first user account of the user database second credentials associated with the first user for accessing second social community.

Final Act. 25 (italics omitted).

Appellants allege a lack of motivation to combine the references by advancing an argument substantially similar to that we found not persuasive with respect to that advanced for the independent claims. *Compare* Br. 112, *with* Br. 106.

CLAIMS 3 AND 13: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, AND OMOIGUI.

Appellants argue Claims 3 and 13 as a group and designate Claim 3 as representative. Br. 114. Appellants re-allege their prior arguments with respect to Claim 1. In view of our prior discussion, we are not persuaded.

The Examiner finds Omoigui teaches the general concept of retrieving from the first user account of the user database first credentials associated with the first user for accessing the social community, without prompting the first user for the same credentials. Final Act. 32; Ans. 65 (citing Omoigui ¶ 134).

Appellants contend:

> The "integrated implementation framework and resulting medium for knowledge retrieval, management, delivery and presentation" disclosed by Omoigui *cannot* be equated with "retrieving by the social posting engine from the first user account of the user database first credentials associated with the first user for accessing the first social community, without prompting the first user for the first credentials, ..."

Br. 115–16 (some emphasis omitted) (citing Omoigui, Abstract, ¶ 64).

We are not persuaded by Appellants' mere conclusory statements. Appellants cite to the Abstract and to paragraph 64 of Omoigui, but fail to engage the Examiner's case, which cited paragraph 134.

CLAIMS 4, 6, 14, AND 24: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, OMOIGUI, AND TREVITHICK.

Appellants argue these claims as a group and designate Claim 4 as representative. Br. 118, 123. Appellants re-allege their prior arguments

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with respect to Claims 1 and 3. In view of our prior discussion, we are not persuaded.

Appellants contend:

> The "user directed advertisement network" disclosed by Trevithick *cannot* be equated with "accessing by the social monitoring engine a first set of one or more delivery rules associated with the first user stored in the first user account of the user database to determine whether the third message should be delivered to the first user; . . . ."

Br. 120 (some emphasis omitted).

The Examiner's Answer finds the disputed limitation is taught by the combination of Novak, Rathod, Vernal, Omoigui, and Trevithick, but not by Trevithick alone. Ans. 68–69 (citing Final Act. 33–38). We are not persuaded the Examiner errs. "[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references." *In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

CLAIMS 5 AND 23: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, OMOIGUI, AND TREVITHICK.

Appellants allege the shortcomings of Trevithick. *See* Br. 125–26. The Examiner's Answer finds the disputed limitation is taught by the combination of Novak, Rathod, Vernal, Omoigui, and Trevithick, but not by Trevithick alone. Ans. 72 (citing Final Act. 33–36). We are not persuaded the Examiner errs. "[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references." *Keller*, 642 F.2d at 426; *Merck*, 800 F.2d at 1097.

CLAIMS 7 AND 25: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, OMOIGUI, AND TREVITHICK.

Appellants allege the shortcomings of Trevithick. *See* Br. 129–31.

The Examiner's Answer finds the disputed limitation is taught by the combination of Novak, Rathod, Vernal, Omoigui, and Trevithick, but not by Trevithick alone. Ans. 76 (citing Final Act. 37–38). We are not persuaded the Examiner errs. "[O]ne cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references." *Keller*, 642 F.2d at 426; *Merck*, 800 F.2d at 1097.

CLAIMS 8, 9, 26, AND 27: OBVIOUSNESS OVER NOVAK,

RATHOD, VERNAL, OMOIGUI, TREVITHICK, KRAPF, AND TAWAKOL.

Appellants contend the Examiner has found that a combination of Novak, Rathod, Vernal, Omoigui, Trevithick, and Krapf fails to teach:

> transmitting by the message monitoring module a result of the analysis to the third computer server associated with the first vendor to allow the first vendor determining subsequent actions,[] as set forth in claim 8.

Br. 135 (emphasis omitted) (citing Final Act. 41). Given this understanding of the Examiner's findings, Appellants further contend that neither Krapf, nor Tawakol, completes the teaching. Br. 137.

The Answer finds Appellants mischaracterize the Final Action findings. Ans. 80 (citing Final Act. 40).

Appellants do not file a reply to this or any other portion of the Answer and are not persuasive of Examiner error.

CLAIMS 10 AND 28: OBVIOUSNESS OVER NOVAK, RATHOD, VERNAL,

OMOIGUI, TREVITHICK, KRAPF, TAWAKOL, AND WEN.

Appellants contend the Examiner finds the combination of Novak,

Rathod, Vernal, Omoigui, Trevithick, Krapf, and Tawakol fails to disclose:

> wherein the first product was registered by transmitting a
> machine readable code uniquely identifying the first product
> from the first mobile device to the first computer server,
> wherein the machine-readable code was obtained by scanning
> the first product using a scanner of the first mobile device, and
> wherein the first computer server is configured to compile the
> detailed information of the first product without the first user
> specifically providing detailed information of the first product.

Br. 140 (emphasis omitted) (citing Final Act. 42).

The Examiner disagrees with Appellants' characterization of the Final

Action findings and maintains the combination of references, including

Wen, in fact teaches the disputed limitation. Ans. 84 (citing Final Act. 42–

43). The Examiner finds Appellants only contest the field of invention of

Wen, but ignore the fair teachings of Wen. *Id.*

Appellants do not reply to the Examiner's findings in the Answer and

so fail to persuade us the Examiner has erred.

CLAIMS 30: OBVIOUSNESS OVER NOVAK, RATHOD,

VERNAL, BIOLCHINI, AND KELLY.

Appellants argue Claims 30–32 as a group and designate Claim 30 as

representative.[7] Br. 144.

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[7] Notwithstanding grouping Claims 30–32 together (*see* Br. 144), Appellants
argue claims 31 and 32 under a separate header. *See* Br. 148–53.

Appellants contend the combination of Novak, Rathod, Vernal, Biolchini, and Kelly fails to disclose:

> identifying the first product based on the first post request, wherein the first post request includes information identifying the first product; determining a discussion thread of the first community associated with the first product, wherein members of the discussion thread discuss the first product; and transmitting the second post request to the second computer server to request the third message to be posted within the discussion.

Br. 145. Appellants further contend Kelly's disclosure of "social media based messaging systems" cannot be taken to teach:

> identifying the first product based on the first post request, wherein the first post request includes information identifying the first product; determining a discussion thread of the first community associated with the first product, wherein members of the discussion thread discuss the first product; and transmitting the second post request to the second computer server to request the third message to be posted within the discussion,[] as set forth in [C]laim 30.

Br. 146.

The Answer explains, however, that the Examiner has not cited Kelly to teach the disputed limitations. Ans. 88. Instead, the Examiner cites Biolchini in combination with the other references to address the recited identifying. Final Act. 26 (citing Biolchini Figs. 1–2, ¶¶ 19–20). As for Biolchini, the Examiner finds Appellants only contest the field of invention of Biolchini, but ignore the teachings of Biolchini. Ans. 88. Essentially, Appellants argue the references are not from analogous fields and so are not eligible to be combined. "Two separate tests define the scope of analogous prior art: (1) whether the art is from the same field of endeavor, regardless of

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the problem addressed and, (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. " *In re Klein*, 647 F.3d 1343, 1348 (Fed. Cir. 2011). We find the references are at least, "reasonably pertinent."

Appellants do not reply to the Examiner's findings in the Answer and thus, we are not persuaded the Examiner errs.

CLAIMS 31 AND 32: OBVIOUSNESS OVER NOVAK, RATHOD, VERNAL, BIOLCHINI, KELLY, SHAH, AND PETER.

Appellants contend the cited art fails to teach "monitoring, by a social monitoring engine hosted by the first computer server by communicating with the second computer server, messages posted by the members within the discussion thread." Br. 149–50. Appellants first argue the shortcomings of Shah. *See* Br. 150. Appellants next argue Peters similarly fails to teach the disputed limitation. *See* Br. 151.

The Examiner finds the combination of Shah and Peters, not Shah or Peters alone, teaches the disputed limitation. Ans. 91.

Appellants do not reply to the Examiner's findings in the Answer and so fail to persuade us the Examiner has erred.

DECISION

The rejection of Claims 1–14 and 23–32 under 35 U.S.C. § 112 is AFFIRMED.

The rejection of Claims 1–14 and 23–32 under 35 U.S.C. § 101 is

AFFIRMED.

The rejections of Claims 1–14 and 23–32 under 35 U.S.C. § 103 are 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)(iv). See 37 C.F.R. § 41.50(f).

<u>AFFIRMED</u>