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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte OMAR TAWAKOL, GRANT RIES, MICHAEL BIGBY, and
ALEXANDER HOOSHMAND

Appeal 2017-001621
Application 12/399,796¹
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

PINKERTON, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–28, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ The real party in interest identified by Appellants is Blue Kai, Inc. App. Br. 2. We note that Blue Kai has been acquired by Oracle Corporation. *See* Oracle Press Release (February 24, 2014), <http://www.oracle.com/us/corporate/press/2150812>.

STATEMENT OF THE CASE

Introduction

Appellants' described and claimed invention relates generally to brokering information about users through an auction that controls distribution of the information to a top set of bidders. *See* Spec. 1:13–14.²

Claim 1 is representative and reads as follows (with the disputed limitations *emphasized*):

1. A method for processing data with an exchange device in communication with a plurality of computing devices over a network, wherein the exchange device provides an exchange service that performs actions comprising:

receiving from one or more data sellers an indication of user data to be sold, the user data corresponding to user data generated as a result of one or more website visitors loading one or more websites of the one or more data sellers;

receiving from one or more data buyers campaign information including one or more requested categories of user data, the one or more data buyers providing the campaign information data by logging into the exchange device;

receiving bids for the user data from the one or more data buyers through the exchange device;

generating a range of bid prices that at least establish a minimum price that must be met to win any amount of user data, a buyer with an *n*th highest bid establishing the range minimum;

generating buyer rank data using at least the received bids from the one or more data buyers, the buyer rank data being

² Our Decision refers to the Final Office Action mailed October 29, 2015 (“Final Act.”), Appellants’ Appeal Brief filed May 31, 2016 (“App. Br.”) and Reply Brief filed November 9, 2016 (“Reply Br.”), the Examiner’s Answer mailed September 9, 2016, and the original Specification filed March 6, 2009 (“Spec.”).

stored in a bid table having a series of entries that identify the bids at least as large as the range minimum;

determining an amount of the user data to make available to the one or more data buyers using the bid table such that a top winning bidder is determined to have more of the user data made available than successively ranked bidders, successively ranked bidders are determined to have a percentage less of the same user data made available, and percentages are correlated to the bidder's rank;

allowing data buyers to adjust their bids;

receiving user data from the website visitors as a result of the one or more website visitors loading one or more websites of the one or more data sellers, the websites being configured to trigger execution of a script by a web browser of the website visitors when loaded by a website visitor, the execution of the script causing the web browser to pass user data from the visitor to the exchange device;

matching received user data with the categories requested by the one or more data buyers; and

determining one or more winning data buyers based on the received bids.

App. Br. 49–50 (Claims App.).

Rejections on Appeal³

Claims 1–28 stand rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter.

Claims 1, 3–7, 10–14, 17, 18, 20, 21, 23, and 25–28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Khetrupal et al. (US 2006/0195385 A1; published Aug. 31, 2006) (“Khetrupal”), in view of

³ The Examiner withdrew the rejection under 35 U.S.C. § 112, first paragraph. *See* Ans. 2.

Diana et al. (US 2006/0041500 A1; published Feb. 23, 2006) (“Diana”), and further in view of Razletovskiy (US 2006/0200360 A1; published Sept. 7, 2006) (“Razletovskiy”).

Claims 2, 16, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Khetrapal, in view of Diana, in view of Razletovskiy, and further in view of Longman et al. (US 2005/0114225 A1; published May 26, 2005) (“Longman”).

Claims 8 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Khetrapal, in view of Diana, in view of Razletovskiy, and further in view of Rose et al. (US 2008/0201205 A1; published Aug. 21, 2008) (“Rose”).

Claims 9 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Khetrapal, in view of Diana, in view of Razletovskiy, and further in view of Herman et al. (US 2005/0234811 A1; published Oct. 20, 2005) (“Herman”).

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Khetrapal, in view of Diana, in view of Razletovskiy, and further in view of Schultze (US 7,047,206 B1; issued May 16, 2006) (“Schultze”).

ANALYSIS

Rejection of Claims 1–28 under § 101

Applicable Law

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101

to include an implicit exception: “Laws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (internal quotation marks and citation omitted).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 75–77 (2012), “for distinguishing 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. The first step in the analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. The “directed to” inquiry asks not whether “the claims *involve* a patent-ineligible concept,” but instead whether, “considered in light of the specification, . . . ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (internal citations omitted). In that regard, we determine whether the claims “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, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (citation omitted).

If, at the first stage of the *Alice* analysis, we conclude that the claim is not directed to a patent-ineligible concept, it is considered patent eligible

under § 101 and the inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea “‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment’ or adding ‘insignificant postsolution activity.’” *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (internal citation omitted).

Appellants’ Arguments⁴

Appellants contend the Final Office Action failed to establish a prima facie case that claims 1–28 are directed to patent-ineligible subject matter. *See* App. Br. 32. According to Appellants, in order for the Examiner to establish a prima facie case of patent-ineligibility, the Examiner’s conclusion must be based on the evidence as a whole, as opposed to opinion without supporting evidence in the record, where the Patent Office’s Interim

⁴ Appellants argue claims 1–28 as a group, focusing on claim 1. *See* App. Br. 32–47. We consider claim 1 to be representative of the claimed subject matter on appeal and, therefore, we decide the rejection of claims 1–28 on the basis of representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Guidance mandates that Patent Office personnel review the specification, claims, and any relevant prior art before reaching a conclusion of whether the claimed invention is directed to patent-ineligible subject matter. *See* App. Br. 35. As argued by Appellants, rather than basing the conclusion on the evidence as a whole and pointing to concrete evidence in the record in support of the allegation that the claims are directed to patent-ineligible subject matter, the Office Action merely contains generic and conclusory allegations. *See* App. Br. 36–38; *see also* Reply Br. 13–14.

Appellants further contend the claims are directed toward an exchange device that performs specific actions including generating a range of bid prices and buyer rank data, determining respective amounts of user data made available to buyers having different ranks, matching user data with requested categories, and determining one or more winning buyers. *See* App. Br. 39. As argued by Appellants, such a claimed exchange device cannot reasonably be interpreted as merely processing data. *See id*; *see also* Reply Br. 15–18. Appellants additionally argue the claims are similar to the claims found to be patent-eligible in *DDR Holdings, LLC v. Hotels.com L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), because the claims are directed to technological arts to specifically address technological challenges such as hidden, fragmented, and widespread user data on the Web. *See* App. Br. 39–41. Appellants also argue the claims are similar to the claims found to be patent-eligible in the Patent Trial and Appeal Board’s decision of *Ex Parte Bush*, Appeal No. 2013-001110, because the claims cover more than the mere nominal recitation of a computer (i.e., an exchange device that interconnects with “website visitors” client computing devices, computing

systems of data sellers and computing systems of data buyers). *See* App. Br. 41–43.

Additionally, Appellants contend the claims recite significantly more than the alleged abstract idea and clearly provide an “inventive concept,” as the claims are deeply rooted in computer technology and are inextricably tied with communications between multiple computing devices via network elements. *See* App. Br. 43–46; *see also* Reply Br. 18–20. As argued by Appellants, the claims do not merely recite a generic computer to perform generic computer functions that are well understood, routine, and conventional activities previously known to the industry. *See* App. Br. 46–47. Further, Appellants contend there are no preemption concerns because the claims do not attempt to preempt every application of the claimed exchange device, and instead, recite a specific way to implement exchange services that incorporate elements from multiple computing devices and systems. *See* App. Br. 47.

Prima Facie Case

We are not persuaded by Appellants’ argument that the Final Office Action failed to establish a prima facie case that claims 1–28 are directed to patent-ineligible subject matter. We agree with the Examiner that the rejection follows the *Alice* framework of examining whether the claims are directed to an abstract idea and whether the claims provide “significantly more” than the abstract idea. *See* Ans. 6–7. Further, the Examiner has identified an abstract idea by correlating the claimed invention to examples of other inventions identified by the courts as being abstract ideas (*see* Ans. 8–17) and has determined that the claims do not provide “significantly more” than the abstract idea by considering the claims as a whole and

considering the claim limitations individually and as an ordered combination (*see* Ans. 17–33). Contrary to Appellants’ argument that the Examiner has some heightened burden, the notice requirement is set forth by 35 U.S.C. § 132.

[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in “notify[ing] the applicant ... [by] stating the reasons for [its] rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. That section “is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.” *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990).

In re Jung, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

For the reasons discussed above, we conclude the Examiner’s rejection is not so uninformative that it prevents Appellants from recognizing and seeking to counter the grounds of rejection.

Step One of *Alice*

The Examiner finds the claims are directed to the abstract idea of processing data in order to sell leads. *See* Final Act. 2. The Examiner further finds as follows:

[T]he claimed invention is, indeed, directed to an abstract idea as it is directed towards ***the abstract idea of processing data***. The claimed invention is directed towards performing the well-understood, routine, and conventional activities in the technical field of **processing data**.

...

The claims are considered to be ***a fundamental economic practice***, because they are directed to ***concepts relating to the economy and commerce, such as agreements between people in the form of contracts, legal obligations, and business relations***.

... [C]ases have found concepts relating to agreements between people or performance of financial transactions abstract, such as ... hedging (*Bilski*). ... ***Similarly to Bilski, the claims also relate to performance of financial transactions, in that the claims are selling user data.***

The claims, which are directed to processing data, are also considered to be ***certain methods of organizing human activity*** as the claims include ***concepts relating to interpersonal and intrapersonal activities, such as managing relationships or transactions between people, social activities, and human behavior; satisfying or avoiding a legal obligation; advertising, marketing, and sales activities or behaviors; and managing human mental activity.*** ... Several cases have found concepts relating to managing relationships or transactions between people abstract, such as ... processing loan information (*Dealertrack*) ... ***Like Dealertrack, the instant claims process information.***

...

They are also considered to be ***an idea “of itself” which is used to describe an idea standing alone such as an uninstanced concept, plan or scheme, as well as a mental process (thinking) that “can be performed in the human mind, or by a human using a pen and paper.”*** ... Several cases have found concepts relating to processes of comparing data that can be performed mentally abstract, such as ... comparing new and stored information and using rules to identify options (*SmartGene*). ... ***Like SmartGene, the claimed invention collects information (relating to the data buyers and sellers) and uses rules to identify options (the data winners).***

The claims may also be considered to be directed to ***mathematical relationships/formulas.*** The phrase “mathematical relationships/formulas” is used to describe mathematical concepts such as mathematical algorithms, mathematical relationships, mathematical formulas, and calculations. Several cases have found concepts relating to performing mathematical calculations abstract, such as ... computing a price for the sale of a fixed income asset and

generating a financial analysis output (*Freddie Mac*). . . ***Like Freddie Mac, which computes a price for the sale of an item and generates an output, the instant case determines which bidder is the winning buyer, thereby determining the price for the data.***

Ans. 8, 10–13 (emphasis added).

Considering the focus of claim 1 as a whole, in view of Appellants' Specification, we agree with the Examiner that claim 1 is directed to an abstract idea (i.e., processing data related to an auction of user data). Consistent with the Examiner's findings, we find method claim 1 recites the following steps: (1) "receiving . . . an indication of user data to be sold"; (2) "receiving . . . requested categories of user data"; (3) "receiving bids for the user data"; (4) "generating a range of bid prices"; (5) "generating buyer rank data using . . . the received bids"; (6) "determining an amount of the user data to make available . . . using the [buyer rank data]"; (7) "allowing data buyers to adjust their bids"; (8) "receiving user data"; (9) "matching received user data with the categories requested"; and (10) "determining . . . winning data buyers based on the received bids". App. Br. 49–50 (Claims App.). These various steps define collecting and processing data related to an auction of user data, and matching requested categories of user data with user data based on received bid and buyer rank data that is generated using the received bids. We see no meaningful difference in claim 1 and similar or analogous claims in other cases that our reviewing court has found are directed to an abstract idea. *See Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) ("[t]he concept of data collection, recognition, and storage is undisputedly well-known"); *Electric Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (claims focus on the abstract idea of collecting information,

analyzing it, and displaying certain results of the collection and analysis); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (holding that the claimed invention is directed to the abstract idea of “collecting, displaying, and manipulating data of particular documents”).

We also agree with the Examiner that the steps recited in claim 1 could be “performed mentally” by a human with pen and paper. *See* Ans. 11–12. In that regard, our reviewing court has held that “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, [are] essentially mental processes within the abstract-idea category.” *Electric Power*, 830 F.3d at 1354; *see also* *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016). “[T]he fact that the required calculations could be performed more efficiently via a computer does not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., LLC v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012).⁵

We are also not persuaded by Appellants’ argument that claim 1 is similar to the claims in *DDR Holdings*. *See* App. Br. 39–41. In *DDR Holdings*, the disputed claims solved an Internet-specific problem with an Internet-based solution that was “necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR Holdings*, 773 F.3d at 1257–58. That is not the case here. Instead, consistent with the Examiner’s findings, the claimed invention

⁵ *See also* *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1375 (Fed. Cir. 2011) (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*”).

merely performs various actions in the field of processing data (e.g., receiving user data to be sold, receiving requested categories of data, receiving bids for user data, generating a range of bid prices, generating buyer rank data, determining an amount of data to make available, allowing bid adjustment, matching user data with requested categories, and determining winners of data) that have been previously performed outside of a context of computer technology. *See* Ans. 18–19, 32–33.

Additionally, we are not persuaded by Appellants’ argument that claim 1 is similar to the claims found to be patent-eligible in the Patent Trial and Appeal Board’s decision of *Ex Parte Bush*. *See* App. Br. 41–43. We note that *Ex Parte Bush* has not been made precedential, and thus, is not binding on this panel. Further, consistent with the Examiner’s findings, the claims at issue in *Ex Parte Bush* are directed to techniques for accessing computer resources, and thus, are distinguishable from the claims at issue in this appeal. *See* Ans. 33.

Step Two of *Alice*

Regarding step two of the *Alice* analysis, the Examiner finds the claims do not include additional elements that are sufficient to amount to significantly more than an abstract idea because the additional elements or combination of elements in the claims other than the abstract idea amounts to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that servers to perform generic computer functions that are well understood, routine, and conventional activities previously known to the industry. *See* Final Act. 3–4. The Examiner further finds as follows:

The Examiner asserts that the claimed invention does not *further or improve upon the technology or the technical field* as *merely having a general purpose device to perform the steps of the abstract idea is nothing more than having the general purpose device perform the well-understood, routine, and conventional activities already known in processing data*, which results in the claimed invention not amounting to being significantly more than the judicial exception.

...

Further still, *unlike Enfish where the claims were directed to a specific improvement to the computer's functionality at the time of the invention and where Enfish explicitly defined the specific improvements along with the technical aspects of the improvements to demonstrate the improvements to existing technology, the Examiner asserts that the instant invention does not.*

...

In the case of the instant invention, the Examiner asserts that the specification *lacks any disclosure of evidence to demonstrate that the invention is seeking to improve upon the technology or, more specifically, that the claimed invention is directed towards addressing and improving upon an issue that arose from the technology*, but merely demonstrating that the claimed invention is directed towards the abstract idea and merely applying or utilizing generic computing devices performing their generic functions to carry out the well-understood, routine, and conventional activities in the technical field of **processing data** due to the benefits that computing devices provided, i.e.[,] faster, more efficient, and etc.

Ans. 18–19, 22; *see also* Ans. 24–31.

We agree with the Examiner's findings. Appellants have not provided persuasive evidence or arguments that the recited limitations of claim 1 do anything more than recite automatic data collection and automatic data analysis that is well-understood, routine, and conventional in the field of computer systems. Further, Appellants have not identified any portions of

Appellants' Specification that describe technological changes or improvements to the features of claim 1. Thus, we agree with the Examiner that the argued limitations do not add "significantly more" to the abstract idea because they are no more than "generic computing devices performing . . . generic functions." *See* Ans. 17, 22; *see also Alice*, 134 S. Ct. at 2356–58 ("[T]he mere recitation of a generic computer cannot transform a patent in-eligible abstract idea into a patent-eligible invention. Stating an abstract idea while adding the words 'apply it' is not enough for patent eligibility") (quoting *Mayo*, 566 U.S. at 72 (internal quotation marks omitted)). Furthermore, as the Court explained in *Electric Power*, "merely selecting information, by content or source, for collection, analysis, and display does nothing significant to differentiate a process from ordinary mental processes, whose implicit exclusion from § 101 undergirds the information-based category of abstract ideas." *Electric Power*, 830 F.3d at 1355.

Preemption

We also are not persuaded by Appellants' arguments that claim 1 does not seek to tie up or otherwise preempt an abstract idea. *See* App. Br. 47. "While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility. . . . Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot." *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs. Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("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”).

Accordingly, for the reasons discussed above, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101. For the same reasons, we sustain the rejection of independent claims 14, 18, and 21, and dependent claims 2–13, 15–17, 19–20, and 22–28, which are not separately argued, under 35 U.S.C. § 101.

Rejection of Claims 1–28 under § 103(a)

Appellants contend the combination of cited references fails to teach or suggest

determining an amount of the user data to make available to the one or more data buyers using the bid table such that a top winning bidder is determined to have more of the user data made available than successively ranked bidders, successively ranked bidders are determined to have a percentage less of the same user data made available, and percentages are correlated to the bidder’s rank,

as recited in claim 1, and similarly recited in independent claims 14, 18, and 21.⁶ *See* App. Br. 22; *see also* Reply Br. 3–10. More specifically, Appellants argue Diana merely describes that a higher bidder or bidder group has the highest probability of getting a lead, but that the next highest bidder below might get the lead, even though the next highest bidder is not at the top of the bidding heap in that particular. *See* App. Br. 23. Thus, according to Appellants, Diana merely describes determining a percentage

⁶ Appellants provide additional arguments regarding claim 13, but we do not reach these additional arguments because claim 13 depends upon claim 1, and the issue raised by Appellants’ argument regarding claim 1 is also dispositive of the rejection of claim 13.

of a bidder's probability of getting a lead, which does not teach or suggest determining a percentage of user data (i.e., amount of user data) made available to bidders having different ranks. *See* App. Br. 23–24.

We are persuaded by this argument. We agree with Appellants that Diana's determining a percentage of a bidder's probability of getting a lead based on the bidder's bidding rank is distinct from, and does not teach or suggest, the recited step of determining a percentage of user data made available to a bidder based on the bidder's bidding rank. Further, the Examiner has not shown that any of the other cited prior art references cure this deficiency of Diana.

Accordingly, on this record, we do not sustain the Examiner's rejection of claims 1, 14, 18, and 21 for obviousness under 35 U.S.C. § 103(a). We also do not sustain the Examiner's rejection of claims 2–13, 15–17, 19–20, and 22–28, which depend from one of claims 1, 14, 18, and 21.

DECISION

We affirm the Examiner's rejection of claims 1–28 under 35 U.S.C. § 101.

We reverse the Examiner's rejection of claims 1–28 under 35 U.S.C. § 103(a).

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

AFFIRMED