UNITED STATES PATENT AND TRADEMARK OFFICE

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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 BLAKE GROVES

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Appeal 2017-001832
Application 13/621,006
Technology Center 3600

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Before HUBERT C. LORIN, KENNETH G. SCHOPFER, and
AMEE A. SHAH, *Administrative Patent Judges.*

SHAH, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

The Appellant[2] appeals under 35 U.S.C. § 134(a) from the Examiner's
decision rejecting claims 1 and 69–88. We have jurisdiction under
35 U.S.C. § 6(b).

We AFFIRM.

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[1] Throughout this Decision, we refer to the Appellant's Appeal Brief
("Appeal Br.," filed June 2, 2016), Reply Brief ("Reply Br.," filed Nov. 15,
2016), and Specification ("Spec.," filed Sept. 15, 2012, amended May 31,
2013), and to the Examiner's Answer ("Ans.," mailed Sept. 15, 2016), and
Non-Final Office Action ("Office Act.," mailed Oct. 2, 2015).
[2] According to the Appellant, the real party in interest is Facebook, Inc.
Appeal Br. 2.

STATEMENT OF THE CASE

The Appellant's invention "relates generally to electronic calendar events and certain implementations relate more particularly to inviting an entity to a calendar event using electronic messages." Spec. 1, ll. 7–9.

Claims 1 and 82 are the independent claims on appeal. Claim 1 (Appeal Br. 22 (Claims App.)) is exemplary of the subject matter on appeal and is reproduced below (lettered bracketing added for reference).

> 1. A method comprising:
>
> [(a)] providing, for display on a client device associated with a user, an electronic calendar interface that comprises one or more user-generated calendar events and a plurality of areas that each correspond to a time parameter defining a date and a time;
>
> [(b)] providing, for display on the client device, an electronic contact list interface that comprises one or more user-identified contacts;
>
> [(c)] determining, using at least one processor, that an identifier associated with a contact displayed in the electronic contact list interface has been dragged and dropped onto an area from the plurality of areas of the electronic calendar interface;
>
> [(d)] identifying a time parameter that corresponds to the area from the plurality of areas of the electronic calendar interface; and
>
> [(e)] in response to determining that the identifier has been dragged and dropped onto the area from the plurality of areas of the electronic calendar interface, and based on the identified time parameter, creating, using the at least one processor, a new calendar event associated with the contact and the identified time parameter.

REJECTIONS

Claims 1 and 69–88 stand rejected under 35 U.S.C. § 101 as being a judicial exception.

Claims 1, 69–73, 78–84, 87, and 88 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Haims et al (US 2003/0105820 A1, pub. June 5, 2003) (hereinafter "Haims"), Rohall et al. (US 2003/0163537 A1, pub. Aug. 28, 2003) (hereinafter "Rohall"), and Gunasekar et al. (US 2005/0034079 A1, pub. Feb. 10, 2005) (hereinafter "Gunasekar").

Claims 74–77, 85, and 86 stand rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Haims, Rohall, Gunasekar, and Li et al. (US 5,515,492, iss. May 7, 1996) (hereinafter "Li").

ANALYSIS

Patent-Ineligible Subject Matter – § 101[3]

The Appellant argues claims 1 and 69–88 as a group. *See* Appeal Br. 14, 17, 20. We select claim 1 as representative of the group with claims 69–88 standing or falling therewith. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, a patent may be obtained for "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." The Supreme Court has "long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass'n for*

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[3] The rejections are addressed in the order presented in the Office Action.

Molecular Pathology v. Myriad Genetics, Inc., 569 U.S. 576, 588–89 (2013)).

The Supreme Court in *Alice* reiterated the two-step framework, set forth previously in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 78–79 (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 that analysis is to "determine whether the claims at issue are *directed to* one of those patent-ineligible concepts." *Id.* (emphasis added) (citing *Mayo*, 566 U.S. at 79). If so, the second step is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether the additional elements "'transform the nature of the claim' into a patent-eligible application." *Id.* (quoting *Mayo*, 566 U.S. at 78–79).

Alice/Mayo Step One

Under the first step of the *Alice/Mayo* framework, the Examiner determines that claim 1 is directed to "the abstract idea of organizing future human activities, i.e. scheduling events associated with time parameters." Office Act. 10; *see also id.* at 5; Ans. 18. Conversely, the Appellant contends that claim 1 is directed to "a method of creating a new calendar event within an electronic calendar in response to a single user interaction-dragging and dropping a contact identifier into an electronic calendar interface." Appeal Br. 17.

The step-one analysis requires us to consider the claims "in their entirety to ascertain whether their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.,*

790 F.3d 1343, 1346 (Fed. Cir. 2015). The question is whether the claim as a whole "focus[es] on a specific means or method that improves the relevant technology" or is "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).

Here, the Specification discusses that "[s]cheduling an event may demand the attention of all the people that are to attend the event." Spec. 9, ll. 8–9. Such scheduling may require each person to "determine his or her availability to attend the event and, if necessary, determine and communicate changes that need to be made to the event such that attendance is possible." *Id.* at 9, ll. 9–11. The Specification provides that "[u]se of an IM system may allow an invitor to receive prompt responses to their invitation, while providing some level of assurance to the inviter that the invitee perceives their invitation without undue delay" (*id.* at 9, ll. 15–17), that "[b]y receiving invitations over the IM system, the invitees may be notified without delay of invitations, enabling them to respond immediately. Moreover, invitees may promptly communicate and resolve conflicts" (*id.* at 10, ll. 27–29), that "by sending invitations over the IM system, the invitor may provide notification of an event without delay" (*id.* at 10, ll. 30–31), and that "[d]ragging and dropping may automatically specify certain details of the event, eliminating the need to enter those details, and thereby saving time" (*id.* at 11, ll. 15–16).

Claim 1 provides for a method comprising (a) providing an electronic calendar interface with event data and areas corresponding to a time parameter/data, (b) providing a contact list interface with contact data, (c) determining an identifier has been dragged and dropped from the contact list

interface onto an area in the calendar interface, (d) identifying a time parameter corresponding to that area, and (e) in response to the determining and identifying, creating a new calendar event data. *See* Appeal Br. 22 (Claims App.).

The Specification does not provide details for steps (c), (d), and (e) of determining, identifying, and creating. Based on the portions of the Specification relied on by the Appellant for step (c) of determining a contact has been dropped and dragged (Appeal Br. 3 (citing Spec. 4, ll. 3–5; 10, ll. 2–4, 7–9; 11, ll. 15–16, Figs. 12A–12M)), the determining is the act of dragging and dropping. These relied-upon portions discuss that a participant selection may be received in response to a user dragging and dropping a representation into the calendar interface (Spec. 4, ll. 3–5), that one or more names may be dragged and dropped from a buddy list over a representation of a calendar event or over a blank period of time (*id.* at 10, lines 2–4, 7–9), and that "[d]ragging and dropping may automatically specify certain details of the event, eliminating the need to enter those details, and thereby saving time" (*id.* at 11, ll. 15–16). Figures 12A through 12M depict "exemplary interfaces displayed during collaborative scheduling of calendar events." *Id.* at 9, ll. 5–6. But, none of these cited portions discusses or provides details on how, i.e. by what algorithm or technically, the determination is made that a contact has been dragged and dropped.

Similarly, based on the portions of the Specification relied on by the Appellant for step (d) of identifying a time parameter (Appeal Br. 3 (citing Spec. 3, ll. 24–30, Fig. 12A–12M), the identifying comprises the user selecting a time parameter by dragging and dropping the participant into the calendar. The claim does not recite who or what performs the step of

identifying a time parameter. The Specification, at page 3, lines 24–30,
provides that a participant selection is received in response to a user
dragging a calendar event from the calendar interface to a position on a
buddy list interface corresponding to a participant, and that "at least one time
parameter for the event may be recognized by providing a calendar event
input interface listing the participant as an invitee in response to the
dragging of the time block." Spec. 3, ll. 24–30. As discussed above,
Figures 12A through 12M depict "exemplary interfaces displayed during
collaborative scheduling of calendar events." *Id.* at 9, ll. 5–6. But, these
portions provide no further discussion or details on how, i.e. by what
algorithm or technically, the identification of a time parameter is made.

Based on the portions of the Specification relied on by the Appellant
for step (e) of creating a new calendar event (Appeal Br. 3 (citing Spec. 10,
ll. 2–4, 7–9; 11, ll. 10–12, 15–18, Figs. 12A–12M)), the creating comprises
entering data of at least one participant and a time. The Specification, at
page 10, discusses that one or more names may be dragged and dropped
from a buddy list over a representation of a calendar event or over a blank
period of time. Spec. 10, ll. 2–4, 7–9. At page 11, the Specification
provides that "[i]nvitees may be selected for an existing calendar event in an
analogous manner to selecting invitees to a newly inspired event, for
example, by copying/pasting or dragging/dropping the existing event" (*id.* at
11, ll. 10–12), and that "[d]ragging and dropping may automatically specify
certain details of the event, eliminating the need to enter those details, and
thereby saving time" (*id.* at 11, ll. 15–16). Figures 12A through 12M depict
"exemplary interfaces displayed during collaborative scheduling of calendar
events." *Id.* at 9, ll. 5–6. But, none of these cited portions discusses or

provides details on how, i.e. by what algorithm or technically, the calendar event is created.

The Specification further provides that the client device used in the method, i.e., client system 110, is "a general-purpose computer capable of responding to and executing instructions in a defined manner, a personal computer, a special-purpose computer, a workstation, a server, a device, a component, or other equipment or some combination thereof capable of responding to and executing instructions." Spec. 27, ll. 23–27, Fig. 1. The network used is a "series of portals interconnected through a coherent system," i.e., a generic network such as a WAN, LAN, PSTN, ISDN, xDSL, "or any other wired and wireless network." *Id.* at 28, ll. 13–19. The processor used, i.e., host server 130, is "a general-purpose computer capable of responding to and executing instructions in a defined manner, a personal computer, a special-purpose computer, a workstation, a server, a device, a component, or other equipment or some combination thereof capable of responding to and executing instructions." *Id.* at 28, ll. 20–24.

In light of Specification's description of the problem and solution, the purported advance over the prior art by the claimed invention is a way to schedule an event in a more timely manner with fewer conflicts. In that context, considering the claim in light of the Specification and on its "character as a whole" (*Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016)), we agree with the Examiner that claim 1 is directed to scheduling calendar events associated with time parameters, a method of organizing human activity. The claim here is akin to ones our reviewing court has deemed abstract in *Electric Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (gathering and analyzing information

by steps people go through in their minds, or by mathematical algorithms, of a specific content and displaying the results), *Mortgage Grader, Inc. v. First Choice Loan Servs.*, 811 F.3d 1314, 1324 (Fed. Cir. 2016) (explaining "[t]he series of steps covered by the asserted claims . . . could all be performed by humans without a computer" in concluding that the claims are directed to an abstract idea), and *Content Extraction and Transmission LLC v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (collecting, recognizing, and storing data is an abstract idea). The claim is also akin to claims deemed abstract in *P & RO Sols. Grp., Inc. v. CiM Maint., Inc.*, 273 F. Supp. 3d 699, 708 (E.D. Tex. 2017) (claims using drag and drop for scheduling are "directed to the abstract idea of scheduling business activities using a computer and computer network."). Here, the claim involves nothing more than providing, determining, and identifying data, and creating data based on the analysis, without any particular inventive technology or description of how to achieve the results in a non-abstract way— an abstract idea. *See Elec. Power*, 830 F.3d at 1354. As such, we find unpersuasive the Appellant's arguments that the Examiner oversimplifies the language of the claim (*see* Appeal Br. 15; Reply Br. 4–5) and that "[c]reating a new calendar event in response to a drag and drop event goes well beyond the collection, analysis, and display of information discussed with reference to *Electric Power Group*" (Reply Br. 6).

We also find unpersuasive the Appellant's argument that claim is patent eligible because it "recite[s] a concrete solution to electronic calendaring, not the high level abstract idea articulated by the Examiner." Appeal Br. 15. That the steps of the claim "can only be performed within the digital environment of electronic calendaring" (Appeal Br. 16), does not

preclude the claims from being directed to an abstract idea at least because the Court has instructed that the significance of these elements is determined in step two of the *Mayo/Alice* framework. The claims in *Alice*, for example, were not devoid of technical elements, but were determined to be directed to an abstract idea. *Cf. In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) ("[N]ot every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry").

<u>*Alice/Mayo* Step Two</u>

The second step of the *Mayo/Alice* framework 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.'" *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo*, 566 U.S. at 72–73).

Under the second step, we agree with and find supported the Examiner's determination that the elements of claim 1, individually or as an ordered combination, do not amount to significantly more than the above-identified abstract idea. *See* Office Act. 6, 11; Ans. 20–21. We are not persuaded of Examiner error by the Appellant's arguments that assert the opposite. *See* Appeal Br. 18–20. We note, as discussed above, that the Specification conveys that the computer-related components recited in the claims (e.g., the client device and processor) are routine and conventional computer components such as general-purpose computers. *See* Spec. 27, ll. 23–27; 28, ll. 13–24; Fig. 1.

We find unpersuasive the Appellant's argument that the claim is analogous to those of *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), because the claim "recite[s] an ordered

combination that is 'necessarily rooted in computer technology' by quickly creating new events within an electronic calendar in response to a single user interaction." Appeal Br. 18–19; Reply Br. 6–7. In *DDR Holdings*, the Federal Circuit determined that the claims addressed the problem of retaining website visitors who, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be transported instantly away from a host's website after clicking on an advertisement and activating a hyperlink. *DDR Holdings*, 773 F.3d at 1257. The Federal Circuit, thus, held that the claims were directed to statutory subject matter because they claim a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.* The court cautioned that "not all claims purporting to address Internet-centric challenges are eligible for patent." *Id.* at 1258. And the court contrasted the claims to those at issue in *Ultramercial*, in that, in *DDR Holdings*, the computer network was not operating in its "normal[] expected manner" and the claims did not "recite an invention that is . . . merely the routine or conventional use of the Internet." *Id.* at 1258–59.

In contrast, there is no indication here that the claimed invention claims a solution "necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *Id.* at 1257. The Appellant does not identify the specific problem the invention is overcoming. However, as discussed above, the Specification provides that the claim addresses the problem of delayed invitations and time spent to resolve conflicts. *See* Spec. 9, ll. 15–17; 10, ll. 27–31; 11, ll. 15–16. Although the content is computer-centric and the field of the invention is the Internet, i.e., an electronic calendar (*see* Appeal Br. 17, 19;

Reply Br. 7), and thus, the claim is tied to a computer and the Internet, the problems of prompt invitations and the time-consuming nature of resolving scheduling conflicts are ones that existed prior to the Internet. *See Ultramercial*, 772 F.3d at 716–17. The purported solution comprises generic computers operating in their normal, ordinary capacities to provide, determine, identify, and create data. *See* Spec. 27, ll. 23–27; 28, ll. 13–24; *see also* Office Act. 5. The claim recites an invention that is merely the routine or conventional use of the Internet and computers to perform an abstract business practice. *DDR Holdings*, 773 F.3d at 1258–59.

We find unpersuasive the Appellant's arguments that "the disclosed invention improves upon existing technology for '[s]cheduling an electronic calendar event' by proposing an ordered combination leading to the creation of a new electronic calendar event. (Specification at page 1, line 11.)." Appeal Br. 19. The steps of providing, determining, identifying, dragging and dropping, and creating data are well-understood, routine, and conventional functions of a generic computer. *See, e.g., Elec. Power*, 830 F.3d at 1354–55 (gathering, sending, monitoring, analyzing, selecting, and presenting information does not transform the abstract process into a patent-eligible invention), *Content Extraction*, 776 F.3d at 1348 (recognizing and storing information are a well-understood, routine, and conventional activities of a computer), *and P & RO*, 273 F. Supp. 3d at 710 (dragging and dropping is a generic function of a computer).

Further, as noted above, the Specification provides no details on how the steps of determining an identifier has been dragged and dropped, identifying a time parameter, and creating an event are performed; rather, the functions are claimed generically. *See Affinity Labs*, 838 F.3d at 1271; *see*

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also Affinity Lab of Texas v, DIRECTV, LLC, 838 F.3d 1253, 1262 (Fed. Cir. 2016) ("More generally, 'simply appending conventional steps specified at a high level of generality' to an abstract idea does not make the idea patentable.") (quoting *Mayo*, 132 S.Ct. at 1300). There is no further specification of particular technology or algorithms for performing the steps. *See TDE Petroleum Data Sols., Inc., v. AKM Enter., Inc.*, 657 F. App'x 991, 993 (Fed. Cir. 2016), *cert. denied*, 137 S. Ct. 1230 (2017) ("As we discussed at greater length in *Electric Power*, the claims of the '812 patent recite the *what* of the invention, but none of the *how* that is necessary to turn the abstract idea into a patent-eligible application.") (citing *Elec. Power Grp.*, 830 F.3d at 1353); *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015) ("As the district court observed, claim 1 contains no restriction on how the result is accomplished."). There is no improvement to the technology of the computers or any indication that the dragging and dropping is anything other than a well-known, routine, and conventional function.

Based on the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 1 and of claims 69–88, which fall with claim 1.

Obviousness — § 103(a)

We agree with the Appellant's contention that the Examiner does not adequately show that the prior art teaches creating a new calendar event in response to determining a dragged and dropped identifier onto an area of a calendar interface and an identified time corresponding to that area, as recited in limitations (c), (d), and (e) of independent claim 1 and similarly recited in independent claim 82. *See* Appeal Br. 11–14; Reply Br. 2–4.

The Examiner appears to rely on the combination of Haims, Rohall, and Gunaseker for these limitations. *See* Office Act. 12–16. Specifically, the Examiner finds that Haims teaches initiating an invitation and creating a meeting request when a user right-clicks in the contact list area of a user interface. *Id.* at 12 (citing Haims ¶¶ 94, 110). The Examiner finds that Rohall teaches determining an identifier has been dragged and dropped onto an area of the calendar interface (*id.* at 13 (citing Rohall ¶¶ 110, 131), identifying a time parameter corresponding to that area (*id.* at 14 (citing Rohall ¶¶ 112, 114), and creating a calendar event associated with the dragged and dropped contact and identified time parameter (*id.* (citing Rohall ¶ 131)). The Examiner determines that it would have been obvious to one of ordinary skill in the art to have substituted Rohall's drag and drop invitation for Haims's right-click. *Id.* at 15. The Examiner acknowledges that "Haims and Rohall are silent on if the calendar events are 'new'" (*id.* at 15). The Examiner finds that Gunaseker teaches creating "the claimed limitation of 'a new calendar event associated with the contact.'" *Id.* at 15–16 (citing Gunaseker ¶ 110)) and determines that:

> It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the invention of Haims and Rohall the a new calendar event associated with the contact as taught by Gunaseker since the claimed invention is merely a substitution of old and well known elements, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Id. at 16.

Haims discloses a method of facilitating online communications among multiple participants including generating and distributing meeting requests from submitted information. Haims Abtract, ¶ 94. A user can

initiate an invitation by right-clicking in the user's "contact list" section of a user interface and selecting an "INVITE" function. *Id.* ¶ 110. This triggers a transmission of a request to create a meeting. *Id.* The meeting is created and the user sends the invitation to invited users via messages. *Id.* ¶¶ 110, 112.

Rohall discloses a method of using and manipulating a generated thread in a meeting invitation. *See* Rohall ¶ 131. A user's selection of a meeting announcement in an email cause a calendar bar to be displayed. *Id.* If a user desires to invite another participant to the meeting, the user can drag and drop the meeting thread to another participant contact reference, such as a name in an address book, address in an email, or party in a video conference or text chat. *Id.* The data structure representing the entire meeting thread is then transmitted to the recipient's inbox. *Id.*

Gunaseker discloses a method for "supporting multi-media conferencing." Gunaseker, Abstract. A user wishing to set up a new conference having many of the attributes of an existing or concluded conference can drag and drop the existing/concluded conference's data object into the attendee area of the scheduling interface for the new conference. *Id.* ¶ 110. The attributes of the data object, including attendees, time, date, etc., can be edited before submitting the scheduling request to the scheduling application. *Id.*

As the Appellant states, Rohall teaches "dragging and dropping a data structure to transmit an existing meeting thread to an additional participant." Appeal Br. 11. We agree with the Appellant that the "'meeting thread' for an email exchange is neither an identifier associated with a contact nor an identified time parameter within an electronic calendar interface on which

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the identifier was dropped." *Id.* at 11–12. Essentially, Rohall teaches dragging and dropping a meeting onto a participant. Similarly, Gunaseker teaches dragging and dropping the conference data onto an attendee. However, the claims require that an identifier associated with a contact is dragged and dropped onto a calendar, creating a meeting. The Examiner does not adequately explain how Rohall and/or Gunaseker teaches that the participant is dragged and dropped onto the meeting such that a meeting is created. And, the Examiner has not adequately explained how Haims's right-clicking in the contact list to create an invitation is combined with Rohall's and/or Gunaseker's dragging and dropping of the meeting onto a participant/attendee to create a meeting meets the claimed limitation of creating a meeting based on the dragging and dropping of a participant/ attendee onto a time area of a calendar.

Based on the foregoing, we do not sustain the Examiner's rejection under 35 U.S.C. § 103(a) of independent claims 1 and 82. We also do not sustain the rejections of dependent claims 69–81 and 83–88, which rely on the same inadequate findings.

DECISION

The Examiner's rejection of claims 1 and 69–88 under 35 U.S.C. § 101 is AFFIRMED.

The Examiner's rejections of claims 1 and 69–88 under 35 U.S.C. § 103(a) are REVERSED.

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