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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte COREY BLAINE MULTER and
ROBERT L. CONWAY

Appeal 2017-002353
Application 11/463,779¹
Technology Center 3600

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, Administrative Patent Judges.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Corey Blaine Multer, et al. (Appellants) seeks our review under 35 U.S.C. § 134(a) of the Final Rejection of claims 1–26 and 43. We have jurisdiction under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

¹ The Appellants identify New York Life Insurance Company of New York as the real party in interest. App. Br. 2.

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A computerized method of providing an annuity including a flexible income feature, the method comprising:

receiving annuitant data by a computing device coupled to a communications network, the annuitant data representative of information useful for issuing an annuity that provides future income payments comprising a first level of income payments during a predetermined first time period, the future income payments resettable by a reset option to a second level of income payments during a second time period following the predetermined first time period, the second level of income payments is greater than the first level of income payments and is paid based on an occurrence of at least one of a plurality of contingent events after the predetermined first time period, wherein the plurality of contingent events include at least an interest rate increase of an interest bearing vehicle over a given benchmark rate after the predetermined first time period;

electronically computing, via the computing device, an annuity premium based on the first level of income payments and a cost to hedge for at least one of the plurality of contingent events;

receiving, via the computing device, electronic indication of a payment of at least a portion of the computed premium;

issuing the annuity; and

communicating, via the computing device, instructions to electronically allocate the payment of the at least portion of the computed premium into investment vehicles and the hedge based on the computation.

App. Br. 32 (Claims Appendix).

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Schirripa	US 6,275,807 B1	Aug. 14, 2001
Arena	US 2002/0184129 A1	Dec. 5, 2002
Dellinger	US 7,089,201 B1	Aug. 8, 2006

Tregarthen, Jon E., *Double the Benefit with a Split Annuity* 92, 9 LIFE ASSOCIATION NEWS pg. 124 (Sept. 1997); ABI/INFORM Global (“Tregarthen”).

“Official Notice is taken that it is well known in the art that options can be placed on stocks and bonds, It is well known that stock and bond options are used to protect against interest change drops and to take advantage of interest rate increases.” Final Rej. 28. (“Official Notice”).

Minnesota Life - MultiOption variable deferred annuities, *MultiOption® Variable Annuities: Helping you accumulate the dollars you need for a financially secure retirement*, (July 15, 2008), www.minnesotalife.com. (“Min”).

Brown et al., *Choosing the Right Form of Settlement (with forms)* Vol. 4, Iss. 5 THE PRACTICAL LITIGATOR, Philadelphia pg. 63 (Sept. 1993), (“Brown”).

The following rejections are before us for review:

Claims 1–26 and 43 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

Claim 43 rejected under 35 U.S.C. § 112(d) or pre-AIA 35 U.S.C. § 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends.

Claims 1–3, 5, 9, and 43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger.

Claims 4, 6, and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, and Schirripa.

Claims 8, 10, and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, Schirripa, and Official Notice.

Claims 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger.

Claims 14–19, 20, 23, and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schirripa and Tregarthen.

Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Arena.

Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Min.

Claims 25 and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Brown.

ISSUES

Did the Examiner err in rejecting claims 1–26 and 43 under 35 U.S.C. § 101 as being directed to judicially-expected subject matter?

Claim 43 rejected under 35 U.S.C. § 112(d) or pre-AIA 35 U.S.C. § 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends?

Did the Examiner err in rejecting claims 1–3, 5, 9, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger?

Did the Examiner err in rejecting claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, and Schirripa?

Did the Examiner err in rejecting claims 8, 10, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, Schirripa, and Official Notice?

Did the Examiner err in rejecting claims 13 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger?

Did the Examiner err in rejecting claims 14–19, 20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa and Tregarthen?

Did the Examiner err in rejecting claim 21 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Arena?

Did the Examiner err in rejecting claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Min?

Did the Examiner err in rejecting claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Brown?

ANALYSIS

The rejection of claims 1–26 and 43 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

The Appellants argued these claims as a group. *See* App. Br. 26–31. We select claim 1 as the representative claim for this group, and the remaining claims 2–26 and 43 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent-eligibility under 35 U.S.C. § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, the Examiner determined that

[c]laims 1-26 and 42-43 is/are directed towards providing an annuity product by receiving economic data, wherein calculations are made to determine premiums for an annuity based on the economic data received and economic goals of the annuity. Providing an annuity is a fundamental economic practice and thus, the claims include an abstract idea.

Final Rej. 9.

Step two is “a 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 (*quoting Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 US 66, 73 (2012)).

In that regard, the Examiner determined that

[t]he claim(s) does/do not include additional elements that are sufficient to amount to significantly more than the abstract idea/judicial exception because he claims do not include limitations that are "significantly more" than the abstract idea because the claims do not include 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. Note that the limitations, in the instant claims, are done by the generically recited

computer device and process. The limitations are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry.

Final Rej. 9–10.

Accordingly, the Examiner concluded that the claimed subject matter was judicially-excepted from patent-eligibility.

The Appellants challenge the Examiner’s conclusion for various reasons.

The Appellants argue that “[i]ndependent claims 1, 13 and 14 are directed toward computer implemented methods that use novel data processing techniques to improve a series of computer operations.” App. Br. 26. This is not a persuasive argument.

We do not see and the Appellants do not adequately explain the “novel data processing techniques to improve a series of computer operations” that the claims are argued to be directed to.

Representative claim 1 sets forth a “computerized method of providing an annuity including a flexible income feature.” The method as claimed calls for “receiving” a first type of information, “electronically computing” a second type of information, “receiving” an “electronic indication” of a third type of information, “issuing an annuity”, and “communicating” a fourth type of information, involving a “computing device.” On its face, there is nothing in “receiving”, “electronically computing”, “receiving”, “issuing an annuity”, and “communicating” that represents “novel data processing techniques to improve a series of computer operations” as the Appellants argue.

The Appellants appear to focus on the types of information that the claimed “computerized method” is processing, such as the step of “electronically computing, via the computing device, *an annuity premium based on the first level of income payments and a cost to hedge for at least one of the plurality of contingent events.*” Apparently this in combination with the other information-processing steps yield “an improvement in electronic data and payment processing, an improvement routed in computer technology.” App. Br. 26.

However, information collection and analysis, including when limited to particular content, is within the realm of abstract ideas. *See, e.g., Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014); and *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011). *See SAP America, Inc. v. Investpic, LLC*, 898 F.3d 1161, 1167 (Fed. Cir. 2018) (Contrary to InvestPic's suggestion, it does not matter to this conclusion whether the information here is information about real investments. As many cases make clear, even if a process of collecting and analyzing information is “limited to particular content” or a particular “source,” that limitation does not make the collection and analysis other than abstract.” (Quoting *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (citing cases).). *See also Affinity Labs of Tex., LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (“tailoring of content based on information about the user—such as where the user lives or what time of day the user views the content—is an abstract idea that is as old as providing different newspaper inserts for different

neighborhoods”) (*citing Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1369 (Fed. Cir. 2015)); *Cf. Praxair Distribution, Inc. v. Mallinckrodt Hospital Products IP Ltd.*, 890 F.3d 1024, 1032 (Fed. Cir. 2018). “Claim limitations directed to the content of information and lacking a requisite functional relationship are not entitled to patentable weight because such information is not patent eligible subject matter under 35 U.S.C. § 101.”

Furthermore, nothing in the Specification suggests that the invention is focused on improvements in computer functionality. The Specification states that “[a] few computerized systems have been adopted in the art with respect to annuities” 5:13–14. “The systems and methods described therein do not, however, address and/or overcome the shortcomings associated with annuity income features, liquidity options, and legacy benefits.” 5:17–19.

This invention relates to methods and systems that provide, among other things, annuities with flexible income features and income level reset and liquidity options without some or all of the shortcomings associated with annuity income features, fixed income, and liquidity options appearing in the art and legacy benefits without some or all of the shortcomings associated with existing annuity legacy benefits.

5:21–6:2. “This invention relates generally to retirement planning.” 1:16. “The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see*

also Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016), quoted in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016). In that regard, according to the Specification, the focus of the claimed advance over the prior art is on an improved scheme for retirement planning, not on an improvement in computer technology.

The Appellants argue that “the Examiner ignores several key terms that distinguish the claims from those merely claim an abstract idea and that limit the claims to a specific technological environment.” Notwithstanding the Appellants do not explain what “specific technological environment” the Appellants are referring to, assuming it is retirement planning, that has little impact on the patent-eligibility analysis. *See Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1258 (Fed. Cir. 2016).) (citing *Alice*, 134 S. Ct. at 2358; *Mayo*, 132 S. Ct. at 1294) (“Limiting the field of use of the abstract idea to a particular existing technological environment does not render any claims less abstract.”) *See also Return Mail, Inc. v. United States Postal Service, United States*, 2017 WL 3687450, *13 (Fed. Cir. 2017) (quoting *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 613 (Fed. Cir. 2016)) (“‘limit[ing] the abstract idea to a particular environment,’ here a mail processing system with generic computing technology, ‘does not make the claims any less abstract for the step 1 analysis.’”)

The Appellants argue that “[t]he Examiner has not shown that the presently claimed invention is a fundamental economic practice.” App. Br. 27. Actually, the Examiner did. *See* Final Rej. 9 (“Providing an annuity is a fundamental economic practice and thus, the claims include an abstract idea.”)

The Appellants argue that the claims amount to significantly more than the abstract idea because, *inter alia*, “the claims specify how a computing device receives and outputs electronic financial data in a networked computing environment to yield a desired result - a result that overrides routine and conventional activities.” App. Br. 28. The claims do indeed specify *what* the “computing device” is being asked to process – and that is different types of information in furtherance of a retirement planning scheme. App. Br. 28–29 correctly lists those types of information the claimed computerized method processes. But, as we have already explained, the patent-eligibility determination does not turn on the type of information being processed. But the claims do not specify *how* the “computing device” is to process the different types of information. The claim asked no more of the “computing device” than what a generic computer is commonly expected to do; that is, “receiving”, “electronically computing”, “receiving”, and “communicating” (claim 1).

The Appellants argue that

the claims herein solve a problem rooted in technology, i.e., communicating, via the computing device, instructions to electronically allocate the payment of the at least portion of the computed premium into investment vehicles and the hedge based on the computation. The solution presented herein further solves the inherent problem with regard to real-time handling of contingent events that external to a given system and are based on data tracked by financial information servers. These solutions are accomplished by structuring and formatting information received by a computing server and programming the computing server to react to the received information. This technical improvement allows institutional servers and trading systems to communicate with each other in a way that was not previously possible.

App. Br. 30. But there is nothing in the claims about, for example, “real-time handling of contingent events that external to a given system and are based on data tracked by financial information servers.” The argument is not commensurate in scope with what is claimed.

The difficulty here is that claim 1 has been drafted so that as a whole it provides a result-oriented solution but without the computer-centric details for accomplishing it. The Appellants argue over such details, such as “real-time handling” and “structuring and formatting information” (App. Br. 30) in an effort to show the claimed subject matter is “rooted in computer technology.” But the claim does not now reflect those details. *Cf. Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”) and *Elec. Power Grp.*, 830 F.3d at 1354 (explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions”).

We have considered all of the Appellants’ remaining arguments (including those made in the Reply Brief) and find them unpersuasive. Accordingly, because we are not persuaded as to error in the determinations that representative claim 1, and claims 2–26 and 43 which stand or fall with claim 1, are directed to an abstract idea and do not present an “inventive concept,” we sustain the Examiner’s conclusion that they are directed to patent-ineligible subject matter for being judicially-excepted from 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 Fed.Appx. 991, 997 (Fed.

Cir. 2016)(“We have considered all of LendingTree's remaining arguments and have found them unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an ‘inventive concept,’ we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101.”); *see also, e.g., OIP Technologies, Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1364 (Fed. Cir. 2015) and *FairWarning IP, LLC v. Iatric Systems, Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016).

The rejection of claim 43 under 35 U.S.C. 112(d) or pre-AIA 35 U.S.C. § 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends.

The Examiner’s position is:

Claim 43 depends upon claim 1, Claim 1 cites the limitation "electronically computing, via the computing device, an annuity premium based on the first level of income payments and a cost to hedge for at least one of the plurality of contingent events"

Claim 43 cites computing an annuity premium based on variables which include first level income payments and a cost to hedge at least one event. As the formula of claim 43 is non-patentable subject matter, the formula is non-limiting. Therefore, claim 43 fails to further limit claim 1.

Final Rej. 8.

We disagree with that position. Claim 43 further limits the annuity premium computation step of claim 1 to further comprise calculating via the recited equation. Whether the equation independent from the remaining claimed subject matter to which it is bound is or is not patentable subject matter is irrelevant to the question raised under 35 U.S.C. § 112, 4th paragraph for claim 43 as a whole.

The rejection is not sustained.

The rejection of claims 1–3, 5, 9, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger.

The Appellants argue that

[t]he cited references do not teach or suggest the elements of Independent claims 1 and 13 that recite, inter alia, “. . . future income payments comprising a first level of income payments during a predetermined first time period, the future income payments resettable by a reset option to a second level of income payments during a second time period following the predetermined first time period”

App. Br. 5.

The Examiner found said limitation disclosed in Tregarthen on page 124, columns 1–2.

We agree with the Appellants that said limitation is not disclosed on page 124, columns 1-2, of Tregarthen. As the Appellants explain:

The Tregarthen reference does not discuss "resetting a single annuity to a split annuity," but rather, discusses rolling over proceeds from an old annuity of one company, to two annuities with another company to create a split annuity. (Tregarthen, p. 124, col. 1, 11. 39-41). Rolling over money is wholly distinct from the presently claimed "future income payments resettable by a reset option." That is, Tregarthen discusses a transfer of money from one company's product into another company's products. Indeed, Tregarthen does not teach or suggest an annuity that provides future income payments comprising a first level of income payments during a predetermined first time period where the future income payments are resettable by a reset option to a second level of income payments, as presently claimed.

App. Br. 6.

For the reasons given in the Appeal Brief, a prima facie case of obviousness has not been made out in the first instance and, accordingly, the rejection of independent claim 1 and claims 2, 3, 5, 9, and 43 which depend from it, is not sustained.

The rejection of claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, and Schirripa.

The rejection of claims 8, 10, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, Schirripa, and Official Notice.

These claims which depend from independent claim 1 whose rejection we do not sustain for the reasons above, and whose rejections rely on the position taken with respect to the independent claim (Final Rej. 24 and 27) are not sustained for the same reasons.

The rejection of claims 13 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger.

Independent claim 13 contains a similar limitation to that of claim 1 discussed above. The rejections rely on the same Tregarthen passage (Final Rej. 30) that we find does not disclose said limitation. Accordingly, we do not sustain the rejection of claim 13 for the same reason we do not sustain the rejection of claim 1.

The rejection of claims 14–19, 20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa and Tregarthen.

Claim 14 contains a similar limitation to that of claim 1 discussed above. Specifically, claim 14 calls for

issuing, via the computing device, an annuity providing for the first level of income payments before the predetermined income change date and resets, by a reset option, to the second level of income payments that is paid based on the occurrence of the predetermined income change date and at least one of the plurality of contingent events.

The Examiner concedes this is not disclosed in Schirripa but finds it disclosed in Tregarthen “in at least pg. 124 Col 2 lines 2-3, pg. 126 lines 12-19.” Final Rej. 41.

But, as with claim 1, said disclosure goes to a roll over; that is, as the Appellants put it, “rolling over proceeds from an old annuity of one company, to two annuities with another company to create a split annuity.” App. Br. 20. *See* Tregarthen, page 124: “We rolled over flaccid annuity money from one company to two annuities with another company, that will guarantee that the ‘split’ will pay \$493 per month for seven years and that the deferred amount will grow back to the original starting amount of \$100,000 at the end of the seven years.” Claim 14 calls for “resets, by a reset option,” not a roll over.

For the reasons given in the Appeal Brief, a prima facie case of obviousness has not been made out in the first instance and, accordingly, the rejection of independent claim 14 and claims 15–19, 20, 23, and 24 which depend from it, is not sustained.

The rejection of claim 21 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Arena.

The rejection of claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Min.

The rejection of claim 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Brown.

These claims which depend from the independent claim 14 whose rejection we do not sustain for the reasons above, and whose rejections rely on the position taken with respect to the independent claim (Final Rej. 49–52) are not sustained for the same reasons.

CONCLUSIONS

The rejection of claims 1–26 and 43 under 35 U.S.C. § 101 as being directed to non-statutory subject matter is affirmed.

The rejection of claim 43 under 35 U.S.C. § 112(d) or pre-AIA 35 U.S.C. 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends is reversed.

The rejection of claims 1–3, 5, 9, and 43 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger is reversed.

The rejection of claims 4, 6, and 7 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, and Schirripa is reversed.

The rejection of claims 8, 10, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen, Dellinger, Schirripa, and Official Notice is reversed.

The rejection of claims 13 under 35 U.S.C. § 103(a) as being unpatentable over Tregarthen and Dellinger is reversed.

The rejection of claims 14–19, 20, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa and Tregarthen is reversed.

The rejection of claim 21 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Arena is reversed.

The rejection of claim 22 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Min is reversed.

The rejection of claim 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Schirripa, Tregarthen, and Brown is reversed.

DECISION

The decision of the Examiner to reject claims 1–26 and 43 is affirmed.

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

AFFIRMED