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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL WALSH,  
RICHARD L. SANDOR,  
and JEFFREY K. O’HARA

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Appeal 2017–002747  
Application 12/824,769  
Technology Center 3600

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Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and  
BRUCE T. WIEDER, *Administrative Patent Judges*.  
FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE<sup>1</sup>

Michael Walsh, Richard L. Sandor, and Jeffrey K. O’Hara (Appellants)  
seek review under 35 U.S.C. § 134 of a final rejection of claims 1–23, 26,

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<sup>1</sup> Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.,” filed September 9, 2016) and Reply Brief (“Reply Br.,” filed December 6, 2016), and the Examiner’s Answer (“Ans.,” mailed November 3, 2016), and Final Action (“Final Act.,” mailed April 19, 2016).

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and 27, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellants invented a way to effectively address climate change by requiring increased energy efficiency, while offering its participating entities substantial commercial opportunities. Specification 4.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A computer-implemented method for promoting more efficient energy use, the computer-implemented method comprising:

[1] creating, by at least one computer in a computing system comprising a registry database, an electronic trading platform, and the at least one computer, a reduction schedule

that sets predetermined limits on energy use as a function of production activity for each of at least one entity,

the reduction schedule covering at least one time period,

the production activity comprising at least one of a production of goods, a provision of services and a generation of revenues,

the registry database, the electronic trading platform and at the least one computer being in communication via a communications network;

[2] measuring, by at least one device, for each entity of the at least one entity,

an actual energy use and an actual production activity during the at least one time period;

[3] determining, by the at least one computer based on information provided by the at least one device, for each entity, an actual energy efficiency ratio,

the actual energy efficiency ratio being a ratio of the measured actual energy use to the measured actual production activity;

[4] creating, by the at least one computer, a plurality of electronic transferable energy efficiency credits,

where each energy efficiency credit represents an amount of energy;

[5] allocating, by the at least one computer, at least a portion of the energy efficiency credits to each of the at least one entity,

by transmitting a signal over the communications network to the registry database to cause the registry database to update a value representing at least the portion of the energy efficiency credits in respective accounts on the registry database for each of the at least one entity;

[6] comparing, by the at least one computer, for each entity, the actual energy efficiency ratio to the reduction schedule;

[7] determining, by the at least one computer, for each entity, whether the actual energy efficiency ratio is within the predetermined limits set by the reduction schedule,

based on the comparison of the actual energy efficiency ratio to the reduction schedule;

[8] issuing, by the at least one computer, at least a portion of the allocated energy efficiency credits to one or more entities among the at least one entity,

by transmitting a signal over the communications network to the registry database to cause the registry database to transfer at least the portion of the allocated energy efficiency credits into the respective accounts of the one or more entities

when the respective actual energy efficiency ratio is within the predetermined limits set by the reduction schedule;

[9] issuing, by the at least one computer, a requirement for remaining entities among the at least one entity to purchase one or more energy efficiency credits on the electronic trading platform

when the respective actual energy efficiency ratio is outside of the predetermined limits set by the reduction schedule;

and

[10] transmitting, by the at least one computer, over the communications network, compliance information to at least one remote entity computing device associated with the at least one entity,

said compliance information comprising at least one of the reduction schedule, the actual energy efficiency ratio, the issued portion of the allocated energy efficiency credits and the requirement to purchase the one or more energy efficiency credits,

wherein the transmission of the compliance information by the at least one computer activates a graphical user interface of the at least one remote entity computing device to cause the graphical user interface to display the compliance information in at least one window of the graphical user interface.

The Examiner relies upon the following prior art:

Sandor US 2005/0246190 A1 Nov. 3, 2005

Sandor US 2007/0192221 A1 Aug. 16, 2007

Claims 1–23, 26, and 27 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

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Claims 1–23, 26, and 27 stand rejected under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure.

Claims 1–23, 26, and 27 stand rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention.

Claims 1–9, 11–23, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Sandor’221.

Claim 10 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Sandor’221 and Sandor’190.

## ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of written description turn primarily on whether the Specification supports the amendments to the independent claims.

The issues of indefiniteness turn primarily on the amendments to the claims.

The issues of obviousness turn primarily on whether the art applied describes or renders predictable the computation recited in the claims.

## FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

### *Facts Related to the Prior Art*

#### *Sandor '221*

01. Sandor'221 is directed to an emissions reduction trading system. Sandor'221 para. 20.
02. Sandor'221 describes determining the present value of a futures contract for a commodity. The method includes selecting an expiration date for the futures contract, calculating a customized interest rate factor based on interest rates surveyed from a plurality of lending institutions, and applying the customized interest rate factor to the futures contract price to determine the present value. In some embodiments, the commodity is carbon dioxide and the futures contract includes carbon financial instruments. A carbon market index that includes for futures contracts in present value is preferably determined by the method. Sandor'221 para. 21.
03. Sandor'221 describes development of new, higher-efficiency production facilities offering a means of fulfilling demand for products while producing less greenhouse gas (GHG) emissions per unit of production. Sandor'221 para. 190.

## ANALYSIS

*Claims 1–23, 26, and 27 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more*

Method claim 1 recites creating a reduction schedule, measuring energy use and actual production, determining an actual energy efficiency ratio, creating and allocating energy efficiency credits, comparing the actual energy efficiency ratio to the reduction schedule, determining whether the actual energy efficiency ratio is within criteria, issuing the energy efficiency credits, and transmitting and displaying compliance information. Thus, claim 1 recites receiving, analyzing, modifying, displaying, and transmitting data. None of the limitations recite implementation details for any of these steps, but instead recite functional results to be achieved by any and all possible means. Data reception, analysis and modification, and transmission and display are all generic, conventional data processing operations to the point they are themselves concepts awaiting implementation details. The sequence of data reception-analysis-modification-transmission-display is equally generic and conventional. The ordering of the steps is therefore ordinary and conventional. The remaining claims merely describe parameters for the calculations and process, with no implementation details.

### The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, [] determine whether the claims at issue are directed to one of those patent-ineligible concepts. [] If so, we then ask, “[w]hat else is there in the claims before us? [] To answer that question, [] 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. [The Court] described step two of this analysis as 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 Corp., Pty. Ltd. v CLS Bank Intl*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claims at issue are directed to a patent-ineligible concept. The Examiner finds the claims directed to the idea of using a cap and trade system to reduce the risk posed from increased emissions (fundamental economic practice), which includes an energy reduction ratio, which is a mathematical relationship, both of which define a judicial exception. Final Act. 3.

Although the Court in *Alice* made a determination as to what the claims were directed to, we find that this case’s claims themselves and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 1 recites that it is a method for promoting more efficient energy use. The steps in claim 1 result in displaying and transmitting energy use compliance information. The Specification recites that the invention relates to

establishing a measure of efficiency ("energy efficiency ratio") comprising a ratio of a measure of energy use to a measure of production; setting limits on the value of the energy efficiency

ratio ("reduction schedule") for a series of compliance time periods; establishing a transferable credit ("energy efficiency credit") representing an amount of energy and a tradable instrument ("energy financial instrument") representing a number of energy efficiency credits; issuing a plurality of energy efficiency credits to participating entities; establishing a computer-implemented trading system to facilitate the sale and purchase of energy financial instruments; and requiring the participating entities to comply with the reduction schedule.

Specification 1: Field of the Invention. Thus, all this evidence shows that claim 1 is directed to computing, displaying, and transmitting energy use information for the purpose of efficient promoting energy use, i.e. promoting efficient resource usage. This is consistent with the Examiner's finding.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v Kappos*, 561 U.S. 593 (2010)) in particular, that the claims at issue here are directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of promoting efficient resource usage is a fundamental economic practice long prevalent in our system of commerce. The use of promoting efficient resource usage is also a building block of ingenuity in resource management. Thus, promoting efficient resource usage, like hedging, is an "abstract idea" beyond the scope of §101. *See Alice Corp. Pty. Ltd.* at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the "abstract ideas" category in this case. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of promoting efficient resource usage at issue here. Both are squarely within the realm of

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“abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.* at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, display, and transmission and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 1 is directed to the abstract idea of receiving, analyzing, displaying, and transmitting data.

The remaining claims merely describe parameters for the calculations and process. We conclude that the claims at issue are directed to a patent-ineligible concept.

The introduction of a computer into the claims does not alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is

not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our §101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

*Alice Corp. Pty. Ltd.*, 134 S.Ct. at 2358 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Id.* at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to receive, analyze, modify, transmit, and display data amounts to electronic data query and retrieval—one of the most basic functions of a computer. The limitation of measuring actual energy use and actual production is a generic data measurement step. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. Again, see *Elec. Power Grp. v. Alstom S.A.*, *supra*. Also see *In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, 1316 (Fed.Cir.2011)(“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be

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achieved by any general purpose computer without special programming”). In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “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.” *SAP America Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. The sequence of data reception-analysis-modification-transmission-display is equally generic and conventional or otherwise held to be abstract. *See Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014) (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017)(sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

Viewed as a whole, Appellants’ method claims simply recite the concept of promoting efficient resource usage as performed by a generic computer. To be sure, the claims recite doing so by advising one to create a reduction schedule, measure actual data and compare that to the schedule to produce other measurement data, create and allocate credits according the results of

the analysis, issue credits and credit requirements, and let one know the results. But this is no more than abstract conceptual advice on the parameters for such promoting efficient resource usage and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

The method claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. The Specification spells out different generic equipment<sup>2</sup> and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of promoting efficient resource usage under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of promoting efficient resource usage using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.* at 2360.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in

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<sup>2</sup> The Specification describes the system as computers connected to a network. Spec. 21:27–28.

ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

*Alice Corp. Pty. Ltd.* at 2360.

As to Appellants’ Appeal Brief argument, we adopt the Examiner’s determinations and analysis from Final Action 2–16 and Answer 3–19 and reach similar legal conclusions. We only add that the evidence Appellants request (App. Br. 17–18) for the notoriety of promoting efficient resource usage is at least found in the historicity of the 1973 oil embargo effects. We now turn to the Reply Brief.

We are not persuaded by Appellants’ argument that the claims are analogous to those in *McRO*. Reply Br. 2–3. The analysis is much the same as in *SAP America*.

Contrary to InvestPic’s contention, the claims here are critically different from those we determined to be patent eligible in *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016). The claims in *McRO* were directed to the creation of something physical—namely, the display of “lip synchronization and facial expressions” of animated characters on screens for viewing by human eyes. *Id.* at 1313. The claimed improvement was to how the physical display operated (to produce better quality images), unlike (what is present here) a claimed improvement in a mathematical technique with no improved display mechanism. The claims in *McRO* thus were not abstract in the sense that is dispositive here. And those claims also avoided being “abstract” in another sense reflected repeatedly in our cases (based on a contrast not with “physical” but with “concrete”): they had the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it. *McRO*, 837 F.3d at 1314; see *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299, 1305–06 (Fed. Cir. 2018); *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016); *Affinity Labs of Texas, LLC v.*

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*DIRECTV, LLC*, 838 F.3d 1253, 1265 (Fed. Cir. 2016); *see also Two-Way Media*, 874 F.3d at 1337; *Secured Mail Solutions LLC v. Universal Wilde, Inc.*, 873 F.3d 905, 909 (Fed. Cir. 2017); *RecogniCorp*, 855 F.3d at 1326; *Symantec*, 838 F.3d at 1316.

*SAP America v. Investpic*, 898 F.3d 1161, 1167–1168 (Fed Cir 2018). The *SAP* claims were directed to statistical methods for the analysis of financial data. The instant claims perform statistical analysis of energy usage and production to generate financial data. As in *SAP*, the instant claims are a claimed improvement in a statistical technique, that also passes data back and forth, with no improved display or transmission mechanism and they lack the specificity required to transform a claim from one claiming only a result to one claiming a way of achieving it.

We are not persuaded by Appellants' argument that the claims are analogous to those in *Enfish*, 822 F.3d 1327, 1337 (Fed. Cir. 2016). Reply Br. 3–4. The claims differ from those found patent eligible in *Enfish*, where the claims were “specifically directed to a *self-referential* table for a computer database.” *Enfish*, 822 F.3d at 1337. The claims thus were “directed to a specific improvement to the way computers operate” rather than an abstract idea implemented on a computer. *Id.* at 1336. Here, by contrast, the claims are not directed to an improvement in the way computers operate. Though the claims purport to accelerate the process of analyzing data and shuttling credits for energy usage, our reviewing court has held that speed and accuracy increases stemming from the ordinary capabilities of a general purpose computer “do[] not materially alter the patent eligibility of the claimed subject matter.” *Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir.

2012). Instead, the claims are more analogous to those in *FairWarning*, 839 F.3d 1089 (Fed. Cir. 2016), wherein claims reciting “a few possible rules to analyze audit log data” were found directed to an abstract idea because they asked “the same questions (though perhaps phrased with different words) that humans in analogous situations detecting fraud have asked for decades.” 839 F.3d at 1094, 1095. Although Appellants also contend the claims “promote entity participation and compliance” (Reply Br. 4), such behavioral promotion is itself an abstraction, and is not recited in the claims in any event.

We are not persuaded by Appellants’ argument that the claims contain an inventive concept that is also found in the specific ordered combination of the limitations, similar to the Federal Circuit's findings in *BASCOM* (*BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). Reply Br. 4–6. Initially, we remind Appellants that *BASCOM* did not find claims eligible on the substance, but rather that the Appellees did not provide sufficient evidence to support a 12(b)(6) motion to dismiss in which facts are presumed in the non-movant’s favor.

The key fact in *BASCOM* was the presence of a structural change in “installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.” *BASCOM*, 827 F.3d at 1350. The instant claims have no analogous structural benefit.

Appellants contend that their combination of an indexed registry database, an energy efficiency ratio, and a mechanism that individually

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updates the accounts of each entity using credits based on the energy efficiency ratio are inventive because they are novel and useful. But a novel abstract idea remains an abstract idea. “A claim for a new abstract idea is still an abstract idea. The search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.” *Synopsys, Inc. v. Mentor Graphics Corporation*, 839 F.3d 1138, 1151 (Fed. Cir. 2016). And many abstract ideas are highly useful, as for example, “a stitch in time saves nine” and “an ounce of prevention is worth a pound of cure” are the basis for the highly useful billion dollar preventative maintenance industry. Novelty and utility are not determinative. At bottom, there is nothing structural or technological in the recited manner of analyzing data and shuttling credits data. Such a manner remains abstract conceptual advice for how to do so. As to the improvement by indexing argued both here and in the prior argument associated with *Enfiish*, aside from the simple fact that indexing is part of generic databases, as the Examiner determines, the claims do not recite indexing. Ans. 4.

We are not persuaded by Appellants' argument that “Appellants' claims do not automate a known process or implement an abstract idea on a general purpose computer.” Reply Br. 6–9. Appellants cite several cases, including those already argued, but do not apply those cases to new arguments.

*Claims 1–23, 26, and 27 rejected under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure*

This is a new matter rejection. The Examiner finds

For claims 1, 26, 27, applicant recites the limitation "wherein the transmission of the compliance information by the at least one computer activates a graphical user interface of the at least one remote entity computing device to cause the graphical user interface to display the compliance information in at least one window of the graphical user interface.". This language is found to be new matter that is not supported by the specification as originally filed. In the remarks of the response the applicant cited to pages 8, 10, 12, 26, 22, 31-34, and figures 7 and 8 as providing support for the claimed features of the claims. The examiner has reviewed the relied upon pages of the specification and the figures, and notes that it does not disclose the above limitation. The specification as originally filed makes no mention of any activation occurring of a graphical user interface of a remote entity computer that is caused by a transmission from the claimed computer. This constitutes new matter that has been added to the claims that is not supported by the specification as originally filed. This appears to be a limitation that has been drafted for the purpose of making a comparison to hypothetical example 21 from the PTO guidelines in support of the claims and their eligibility under 101. There is no discussion in the specification of how the activation is to occur, or how it works. The applicant has not set forth how the sending of a transmission will result in the remote entity computer having a graphical user interface activated. In reality, applicant is claiming a genus that covers any and all ways that one could remotely activate a remote entity computer to display data in a graphical user interface, but the applicant has not even disclosed how they are doing it via any species, because this limitation does not appear in the specification as originally filed. The specification does not provide an adequate written description of the invention that is sufficient to convey possession to one of skill in the art.

Final Act. 17–18. We adopt the Examiner’s findings and analysis from Final Action 17–18 and Answer 19–21. In particular, we are not persuaded by Appellants' argument that “one skilled in the art would recognize that all

claimed limitations are fully supported by the Appellants' originally filed Specification and Drawings.” App. Br. 19.

[The written description] test requires an objective inquiry into the four corners of the specification from the perspective of a person of ordinary skill in the art. Based on that inquiry, the specification must describe an invention understandable to that skilled artisan and show that the inventor actually invented the invention claimed.

*Ariad Pharms., Inc. v. Eli Lilly and Co.*, 598 F. 3d 1336, 1351 (Fed. Cir. 2010) (*en banc*).

One shows that one is “in possession” of *the invention* by describing *the invention*, with all its claimed limitations, not that which makes it obvious. . . . One does that by such descriptive means as words, structures, figures, diagrams, formulas, etc., that fully set forth the claimed invention. Although the exact terms need not be used *in haec verba*, . . . , the specification must contain an equivalent description of the claimed subject matter.

*Lockwood v. Am. Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997).

Appellants contend that because the Specification independently describes showing the data and showing an interface, one of ordinary skill would have recognized that the inventors had possession of the combination of those two elements. *Ariad* corrected the confusion that Appellants argument is based on by adding the requirement for showing possession within the four corners of the Specification. Thus, to show possession of the specific joining of two different elements as part of an invention, the Specification must describe or imply such a joining. Appellants show it might have been obvious, but *Lockwood* held that is insufficient.

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*Claims 1–23, 26, and 27 rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention*

This rejection is based on the same written matter limitation as in the written description rejection and is therefore mooted by the affirmance of that rejection.

*Claims 1–9, 11–23, 26, and 27 rejected under 35 U.S.C. § 103(a) as unpatentable over Sandor’221*

We are persuaded by Appellants' argument that “the Examiner's allegation that a ratio based on energy use would somehow be obvious is merely a conclusory statement for which the Examiner has provided no evidence.” App. Br. 21. The Examiner makes a determination premised on Sandor’s description of energy use in terms of production at Sandor’221 para. 190. Ans. 25. This is in error. Sandor’221 instead describes emissions per unit of production.

*Claim 10 rejected under 35 U.S.C. § 103(a) as unpatentable over Sandor’221 and Sandor’190*

The claim depends from the claims in the prior rejection.

#### CONCLUSIONS OF LAW

The rejection of claims 1–23, 26, and 27 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

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The rejection of claims 1–23, 26, and 27 under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure is proper.

The rejection of claims 1–23, 26, and 27 under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention is moot.

The rejection of claims 1–9, 11–23, 26, and 27 under 35 U.S.C. § 103(a) as unpatentable over Sandor'221 is improper.

The rejection of claim 10 under 35 U.S.C. § 103(a) as unpatentable over Sandor'221 and Sandor'190 is improper.

#### DECISION

The rejection of claims 1–23, 26, and 27 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED