



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 12/767,335   | 04/26/2010  | Mark Carlson         | 79900-773809        | 3453             |
| 66945  | 7590        | 09/07/2018           | EXAMINER            |                  |
| KILPATRICK TOWNSEND & STOCKTON LLP/VISA<br>Mailstop: IP Docketing - 22<br>1100 Peachtree Street<br>Suite 2800<br>Atlanta, GA 30309 |             |                      | LIU, I JUNG         |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3697                |                  |
|  |             |                      | NOTIFICATION DATE   | DELIVERY MODE    |
|  |             |                      | 09/07/2018          | ELECTRONIC       |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipefiling@kilpatricktownsend.com  
KTSDocketing2@kilpatrick.foundationip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* MARK CARLSON, PATRICK STAN,  
PATRICK FAITH, AYMAN HAMMAD, and BEN REWIS

---

Appeal 2017-002937  
Application 12/767,335<sup>1</sup>  
Technology Center 3600

---

Before ERIC S. FRAHM, LARRY J. HUME, and JOYCE CRAIG,  
*Administrative Patent Judges.*

HUME, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) of the Examiner's Final Rejection of claims 1–8, 14, 15, 18, and 23–30, which are all claims pending in the application. Appellants have canceled claims 9–13, 16, 17, and 19–22. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

<sup>1</sup> According to Appellants, the real party in interest is Visa International Service Association. App. Br. 2.

STATEMENT OF THE CASE<sup>2</sup>

*The Invention*

Appellants' disclosed embodiments and claimed invention relate to "systems and methods for sending product control alert messages. The alert systems can be implemented using one or more computer apparatuses and databases." Spec. ¶ 5.

*Exemplary Claim*

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. A method comprising:

receiving, by a payment processing network server computer, an authorization request message from a merchant access device, the authorization request message including transaction data for a transaction conducted by a first user against a payment account, the transaction data including a plurality of product identifiers for a plurality of products;

forwarding, by the payment processing network server computer, the transaction data to a notification server computer;

accessing, by the notification server computer, a database comprising product identifiers, the database also including product control data associated with a product identifier for a product, the product control data including a product name identified by the product identifier;

---

<sup>2</sup> Our decision relies upon Appellants' Appeal Brief ("App. Br.," filed Apr. 18, 2016); Reply Brief ("Reply Br.," filed Dec. 12, 2016); Examiner's Answer ("Ans.," mailed Nov. 3, 2016); Final Office Action ("Final Act.," mailed Dec. 8, 2015); and the original Specification ("Spec.," filed Apr. 26, 2010).

generating, by the notification server computer, a product control alert indicator, the product control alert indicator including the product name; and

sending, by the notification server computer, a product control alert message to a user device of an account holder associated with the payment account, the product control alert message including the product control alert indicator including the product name of the product, and other product names for other products in the plurality of products, wherein the product control alert indicator is highlighted in the product control alert message, and wherein the account holder is a second user different from the first user;

forwarding, by the payment processing network server computer, the authorization request message to an issuer computer of the payment account for authorization of the transaction;

receiving, by the payment processing network server computer, an authorization response message from the issuer computer when the transaction is authorized; and

forwarding, by the payment processing network server computer, the authorization response message to the merchant access device to complete the transaction.

### *Rejection on Appeal*

Claims 1–8, 14, 15, 18, and 23–30 stand rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 2.

### CLAIM GROUPING

Based on Appellants' arguments (App. Br. 7–18), we decide the appeal of the patent-ineligible subject matter rejection of claims 1–8, 14, 15, 18, and 23–30 on the basis of representative claim 1.<sup>3</sup>

---

<sup>3</sup> "Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together

## ISSUE

Appellants argue (App. Br. 7–18; Reply Br. 2–8) the Examiner's rejection of claim 1 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is in error. These contentions present us with the following issue:

Under our governing case law concerning 35 U.S.C. § 101, did the Examiner err in concluding claim 1 is directed to a judicial exception, i.e., an abstract idea, specifically, processing payment information, a method of organizing human activity, without significantly more, and thus is patent-ineligible under § 101?

## ANALYSIS

In reaching this decision, we consider all evidence presented and all arguments actually made by Appellants. To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. 37 C.F.R. § 41.37(c)(1)(iv).

We disagree with Appellants' arguments with respect to claim 1 and, unless otherwise noted, we incorporate by reference herein and adopt as our own: (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken; and (2) the reasons and rebuttals set forth in the Examiner's Answer in response to Appellants' arguments. We highlight

---

shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

and address specific findings and arguments regarding claim 1 for emphasis as follows.

*Alice Framework*

Section 101 provides that anyone who "invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof" may obtain a patent. 35 U.S.C. § 101. The Supreme Court has repeatedly emphasized that patent protection should not extend to claims that monopolize "the basic tools of scientific and technological work." *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 71 (2012); *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014). Accordingly, laws of nature, natural phenomena, and abstract ideas are not patent-eligible subject matter. *Id.*

The Supreme Court's two-part *Mayo/Alice* framework guides us in distinguishing between patent claims that impermissibly claim the "building blocks of human ingenuity" and those that "integrate the building blocks into something more." *Alice*, 134 S. Ct. at 2354 (citation omitted). First, we "determine whether the claims at issue are directed to [a] patent-ineligible concept[]." *Id.* at 2355. If so, we "examine the elements of the claim to determine whether it contains an 'inventive concept' sufficient to 'transform' the claimed abstract idea into a patent-eligible application." *Id.* at 2357 (quoting *Mayo*, 566 U.S. at 72, 79). While the two steps of the *Alice* framework are related, the "Supreme Court's formulation makes clear that the first-stage filter is a meaningful one, sometimes ending the § 101 inquiry." *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). We note the Supreme Court "has not established a definitive rule

to determine what constitutes an 'abstract idea'" for the purposes of step one. *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (citing *Alice*, 134 S. Ct. at 2357).

However, our reviewing court has held claims ineligible as directed to an abstract idea when they merely collect electronic information, display information, or embody mental processes that could be performed by humans. *Elec. Power Grp.*, 830 F.3d at 1353–54 (collecting cases). At the same time, "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Mayo*, 566 U.S. at 71. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Alice* 134 S. Ct. at 2355–57. Under this guidance, we must therefore ensure at step one that we articulate what the claims are directed to with enough specificity to ensure the step one inquiry is meaningful. *Id.* at 2354 ("[W]e tread carefully in construing this exclusionary principle lest it swallow all of patent law.").

Under the "abstract idea" step we must evaluate "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, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citation omitted). If the claims are not directed to a patent-ineligible concept, the inquiry ends. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017). If the concept is directed to a patent-ineligible concept, we proceed to the "inventive concept" step. For that second step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the

ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

*Alice Step 1 — Abstract Idea*

Appellant generally contends, "the claims are not directed to an abstract idea, because 'the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of online computing.'" App. Br. 8 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014)).

Appellants' reliance on *DDR* is misplaced as the recited claims do not improve the computer. In *DDR*, the claims at issue involved, *inter alia*, "web pages displays [with] at least one active link associated with a commerce object associated with a buying opportunity of a selected one of a plurality of merchants" (claim 1 of US 7,818,399). The Federal Circuit found the claims in *DDR* to be patent-eligible under step one of the *Mayo/Alice* test because "the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks." *DDR*, 773 F.3d at 1257. Specifically, the Federal Circuit found the claims addressed the "challenge of retaining control over the attention of the customer in the context of the Internet." *Id.* at 1258. We find the rejected claims are dissimilar to *DDR*'s web page with an active link, and the Specification does not support the view that the computer related claim elements are unconventional. *See Spec.* ¶¶ 23–35 and 39–44.

Appellants also argue, "the pending claims are also similar to the subject-matter eligible claims of *DDR Holdings* as they also do not preempt

every application of some abstract idea, and provide a specific way to solve a problem that specifically arises in a particular field of technology." App. Br. 9.

With respect to Appellants' argument regarding lack of preemption that presumably would render the claims non-abstract, we are not persuaded, and agree with the Examiner's response, which we incorporate herein by reference. Ans. 31; *see also buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014) (collecting cases); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013); *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("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.").

Appellants further allege, "[h]ere the Examiner provides no evidence to establish that 'processing payment information' is a 'certain method of organizing human activity,' and/or an 'abstract idea.' As such, the Examiner has failed to establish[] a *prima facie* case of unpatentability under 35 U.S.C. 101." App. Br. 9.

Appellants' argument concerning the absence of evidence supporting the § 101 rejection does not persuade us of Examiner error. "Patent eligibility under § 101 presents an issue of law." *Accenture*, 728 F.3d at 1340. There is no requirement that an examiner cite evidentiary support to conclude that a claim is directed to a patent-ineligible concept, such as an

abstract idea. *See, e.g.*, MPEP 2106.07(a)(III) [R-08.2017] ("The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be a question of law. . . . Thus, the court does not require 'evidence' that a claimed concept is a judicial exception, and generally decides the legal conclusion of eligibility without resolving any factual issues.") (citations omitted). Although evidence may be helpful in certain situations where, for instance, facts are in dispute, we are unpersuaded it is necessary in this case.

The Examiner further concluded the claimed invention

corresponds to concepts identified as abstracts idea by the courts such as "Certain Methods of Organizing Human Activity[:]" creating a contractual relationship (*buySafe*). All of these concepts relate to certain methods of organizing human activity[] such as managing transaction. The concept in claim 1 is not meaningful different than those certain methods of organizing human activity concepts found by the courts to be abstract ideas.

Ans. 20.

Under step one, we agree with the Examiner that the inventions claimed in each of independent claims 1 and 14 are directed to an abstract idea, i.e., comparing and displaying data related to payment transactions, which we also conclude is a method of organizing human activity. *See* Ans. 4–5.

As the Specification discloses:

**[0005]** Embodiments of the present invention disclosed herein include systems and methods for sending product control alert messages. The alert systems can be implemented using one or more computer apparatuses and databases.

[0006] In exemplary embodiments, the product control alert messages may include information specific to the products purchased by a first consumer, and may be sent to a second consumer. Such specific information may include the names of the products, loyalty information based upon the products, etc. Spec. ¶¶ 5–6.<sup>4</sup> We find this type of activity, i.e., comparing information related to payment transactions, for example, includes longstanding conduct that existed well before the advent of computers and the Internet, and could be carried out by a human with pen and paper. *See 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*.").<sup>5</sup>

Our reviewing court has previously held other patent claims ineligible for reciting similar abstract concepts. For example, while the Supreme Court has enhanced the § 101 analysis since *CyberSource* in cases like *Mayo* and *Alice*, the Federal Circuit continues to "treat[ ] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea

---

<sup>4</sup> *See also* Spec. 39 ("Abstract"):

A method for providing characteristic payments data includes: Embodiments of the present invention are directed to a system and method for determining the products involved in a transaction conducted with a subsidiary user of a payment account, and transmitting messages containing product specific information. Systems may be implemented to transmit product identifiers during payment processing. The product specific information may be included in alert messages sent to an account holder.

<sup>5</sup> *CyberSource* further guides that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373.

category." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146–47 (Fed. Cir. 2016) (alteration in original) (quoting *Elec. Power Grp.*, 830 F.3d at 1354).

In addition, our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353–54 (collecting information and "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."). Similarly, "collecting, displaying, and manipulating data" is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017). Further, a process that employs mathematical algorithms to manipulate existing information to generate additional information is abstract. *Digitech Image Techs., LLC v. Elec. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014). Also, more recently, our reviewing court has also concluded that acts of parsing, comparing, storing, and editing data are abstract ideas. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1367 (Fed. Cir. 2018).

Therefore, in agreement with the Examiner, we conclude claim 1 involves nothing more than identifying, collecting, storing, comparing, and

generating data, without any particular inventive technology — an abstract idea. *See Elec. Power Grp.*, 830 F.3d at 1354.<sup>6</sup>

Accordingly, on this record, and under step one of *Alice*, we agree with the Examiner's conclusion the claims are directed to an abstract idea.

*Alice Step 2—Inventive Concept*

If the claims are directed to a patent-ineligible concept, as we conclude above, we proceed to the "inventive concept" step. For that step we must "look with more specificity at what the claim elements add, in order to determine 'whether they identify an "inventive concept" in the application of the ineligible subject matter' to which the claim is directed." *Affinity Labs*, 838 F.3d at 1258 (quoting *Elec. Power Grp.*, 830 F.3d at 1353).

In applying step two of the *Alice* analysis, we must "determine whether the claims do significantly more than simply describe [the] abstract method" and thus transform the abstract idea into patentable subject matter. *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014). We look to see whether there are any "additional features" in the claims that constitute an "inventive concept," thereby rendering the claims eligible for patenting even if they are directed to an abstract idea. *Alice*, 134 S. Ct. at 2357. Those "additional features" must be more than "well-understood, routine, conventional activity." *Mayo*, 566 U.S. at 79.

Evaluating representative claim 1 under step 2 of the *Alice* analysis, we agree with the Examiner that it lacks an inventive concept that

---

<sup>6</sup> Merely automating previously manual processing by using computers does not qualify as an eligibility-rejection-defeating improvement. *Credit Acceptance Corp. v. Westlake Servs.*, 859 F.3d 1044 (Fed. Cir. 2017).

transforms the abstract idea of allocating, aggregating and comparing information related to payment transactions into a patent-eligible application of that abstract idea. *See* Ans. 20.

The Examiner concludes "the additional elements, taken individually and as a combination, do not result in the claim amounting to significantly more than the abstract idea because 'device' and 'computer' are recited at high level of generality and are recited as performing generic computer functions routinely used in computer applications." Ans. 21.<sup>7</sup>

We note the patent eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, "[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact." *Berkheimer*, 881 F.3d at 1368.

---

<sup>7</sup> The Examiner also concludes:

The claim also recites a database, which does not add meaningful limitations to the idea of authorize payment and processing payment, that is, implementation via computers. Thus, taken alone, the additional elements do not amount to significantly more than a judicial exception. Looking at the limitations as an ordered combination adds nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation.

Ans. 21.

As evidence of the conventional nature of the claimed network components and processes, we note Appellant's Specification in paragraphs 23 through 35 and 39 through 44. For example:

**[0030]** The access device **132** may be any suitable device for communicating with the merchant **130** and for interacting with the portable consumer device **120**. The access device **132** can be in any suitable location such as at the same location as the merchant **130**. The access device **132** may be in any suitable form. Some examples of access devices **132** include POS devices, cellular phones, PDAs, personal computers (PCs), tablet PCs, hand-held specialized readers, set-top boxes, electronic cash registers (ECRs), automated teller machines (ATMs), virtual cash registers (VCRs), kiosks, security systems, access systems, Websites, and the like. The access device **132** may use any suitable contact or contactless mode of operation to send or receive data from the portable consumer devices **120** . . . .

**[0034]** The payment processing network **150** may have or operate a server computer and may include a database. The database may include any hardware, software, firmware, or combination of the preceding for storing and facilitating retrieval of information. Also, the database may use any of a variety of data structures, arrangements, and compilations to store and facilitate retrieval of information. The server computer may be coupled to the database and may include any hardware, software, other logic, or combination of the preceding for servicing the requests from one or more client computers. The server computer may use any of a variety of computing structures, arrangements, and compilations for servicing the requests from one or more client computers.

Spec. ¶¶ 30, 34.

We agree with the Examiner that the claim limitations may be broadly but reasonably construed as reciting conventional computer components and

techniques, particularly in light of Appellant's Specification, as cited and quoted above.<sup>8</sup>

With respect to the *Step 2* analysis, we agree with the Examiner because, as in *Alice*, the recitation of either a "method" using a "server computer", an "access device", a "user device," and a "database" (claim 1), or a "system" having a "database", a "network server computer", a "merchant access device", an "issuer computer", and a "notification server computer", (claim 14) is simply not enough to transform the patent-ineligible abstract idea here into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2357 ("[C]laims, which merely require generic computer implementation, fail to transform [an] abstract idea into a patent-eligible invention.").<sup>9</sup>

---

<sup>8</sup> During prosecution, claims must be given their broadest reasonable interpretation when reading claim language in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Under this standard, we interpret claim terms using "the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

<sup>9</sup> Appellant merely alleges, "[t]he claims clearly apply the alleged abstract idea of 'processing payment information' in a very meaningful way through these significant recited features, and thus in no way are able to 'monopolize' the general ability of others to process payment information." App. Br. 13(emphasis omitted). "Embodiments of the invention improve efficiency by utilizing a single authorization request message for two functions; processing a payment and initiating the generation of a product control alert message with product-specific information. Accordingly, embodiments of the invention provide for technical advantages over the prior art, and

Accordingly, based upon the findings above, on this record, we are not persuaded of error in the Examiner's conclusion that the appealed claims are directed to patent-ineligible subject matter. Therefore, we sustain the Examiner's § 101 rejection of independent claim 1, and grouped claims 2–8, 14, 15, 18, and 23–30, not argued separately, and which fall therewith. *See* Claim Grouping, *supra*.

#### REPLY BRIEF

To the extent Appellants *may* advance new arguments in the Reply Brief (Reply Br. 2–8) not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause (*see* 37 C.F.R. § 41.41(b)(2)), which Appellants have not shown.

#### CONCLUSION

The Examiner did not err with respect to the patent-ineligible subject matter of claims 1–8, 14, 15, 18, and 23–30 under 35 U.S.C. § 101, and we sustain the rejection.

---

improve the functioning of the computer itself." App. Br. 14. We are not persuaded, for the reasons discussed *supra*.

Appeal 2017-002937  
Application 12/767,335

DECISION

We affirm the Examiner's decision rejecting claims 1–8, 14, 15, 18, and 23–30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED