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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* JOSPHAT K. KINYUA, MARTIN NZIOKI, and JULIAN N. KYULA

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Appeal 2017-003295
Application 13/840,560[1]
Technology Center 3600

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Before ERIC B. CHEN, MATTHEW R. CLEMENTS, and SCOTT E. BAIN, *Administrative Patent Judges*.

CLEMENTS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–5, 7–14, 16–23, and 25–27. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART.

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[1] Appellants identify the real party in interest as "Mobile Decisioning Holdings Limited." App. Br. 1.

STATEMENT OF THE CASE

The present invention advances credit from a lender to a prepaid service provider, e.g., to a subscriber account of a prepaid cellphone communications provider. Spec. ¶¶ 17–18. Claim 1 is reproduced below (disputed limitation in italics).

> 1. A method for advancing prepaid credit executed by one or more computing devices, the method comprising:
>
> receiving, by at least one of the one or more computing devices, a request for an advance of prepaid credit from a subscriber, wherein the subscriber has a subscriber account with a prepaid service provider;
>
> determining, by at least one of the one or more computing devices, whether the subscriber is eligible for an advance based at least in part on an assessment of historical data relating to the subscriber account;
>
> authorizing, by at least one of the one or more computing devices, a transfer of prepaid credit from a lender account to the subscriber account based at least in part on a determination that the subscriber is eligible for an advance of prepaid credit, wherein the lender account stores prepaid credits accepted by the service provider;
>
> *monitoring, by at least one of the one or more computing devices, the subscriber account on a network of the prepaid service provider to detect any subsequent increase of prepaid credit in the subscriber account; and*
>
> triggering, by at least one of the one or more computing devices, recovery of at least a portion of the prepaid credit previously advanced to the subscriber account based at least in part on detection of a subsequent increase of prepaid credit in the subscriber account.

App. Br. 26 (Claims Appendix).

THE REJECTIONS[2]

Claims 1–5, 7–14, 16–23, and 25–27 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception of statutory subject matter. Final Act. 6–7.

Claims 1, 7, 10, 16, 19, and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Decisioning (MDSA),[3] Van Luchene (US 2007/0087822 A1; published Apr. 19, 2007), and Ahmedzade (EP 2 184 708 A2; published May 12, 2010). Final Act. 8–17.

Claims 2, 11, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Decisioning, Van Luchene, Ahmedzade, and Zain Kenya.[4] Final Act. 17–20.

Claims 3, 5, 12, 14, 21, and 23[5] stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Decisioning, Van Luchene, Ahmedzade, and Bierbaum et al. (US 8,181,867 B1; issued May 22, 2012, hereinafter "Bierbaum"). Final Act. 20–29.

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[2] The Examiner's Answer withdraws rejections of claims 8, 17, and 26 under 35 U.S.C. § 112, second paragraph, and claims 4, 13, and 22 under 35 U.S.C. § 103(a). Ans. 3.

[3] *Our Solutions*, *Emergency Airtime Credit Advances*, Mobile Decisioning denotes itself, by the footer of the corresponding website printout, as available on July 2, 2014, http://web.archive.org/web/20101002105127/; http://www.mdsafrica.com/solutions.html (hereinafter "Mobile Decisioning").

[4] *Zain Kenya introduces airtime credit, call-back servic*es, *CET | News*, Aug. 10, 2010, http://www.telecompaper.com/news/zain-kenya-introduces-airtime-credit-callback-services-. . . ." 1–5 (2010), last visited April 6, 2015 (hereinafter "Zain Kenya").

[5] The rejection of Claims 4, 13, and 22 has been withdrawn. Final Act. 3; *supra* n. 2.

Claims 8, 9, 17, 18, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Mobile Decisioning, Van Luchene, Ahmedzade, Quillian (US 2013/0173464 A1; published July 4, 2013), and Hannon et al. (US 2008/0312968 A1; published Dec. 18, 2008, hereinafter "Hannon"). Final Act. 29–38.

## REJECTION OF CLAIMS 1–27 UNDER 35 U.S.C. § 101

We select claim 1 as representative of claims 2–27 for this rejection. *See* 37 C.F.R. 41.37(c)(1)(iv) (representative claims). For the following reasons, we are unpersuaded of error in this rejection of claim 1.

### *A. Principles of Law*

The Supreme Court has long held that "[l]aws 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 *Assoc. for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The "abstract ideas" category embodies the longstanding rule that an idea, by itself, is not patentable. *Alice Corp.*, 134 S. Ct. at 2354–55 (quoting *Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)).

In *Alice*, the Supreme Court sets forth an analytical "framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts." *Alice Corp.*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* There is no definitive rule to determine what constitutes an "abstract idea." Rather, the Federal Circuit has explained that "both [it] and the Supreme Court have found it sufficient to compare claims at issue to those claims already found to be directed to an abstract idea in previous cases." *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016); *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (Explaining that, in determining whether claims are patent-eligible under 35 U.S.C. § 101, "the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided."). The Federal Circuit also noted that "[E]xaminers are to continue to determine if the claim recites (i.e., sets forth or describes) a concept that is similar to concepts previously found abstract by the courts." *Amdocs*, 841 F.3d at 1294 n.2 (citation omitted.)

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Id.* at 1293 (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S.at 79–80 (2012)). In other words, the second step is to "search for an 'inventive concept'—*i.e.*, an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* at 1293–1294(quoting *Mayo*, 566 U.S. at 72). The prohibition against patenting an abstract idea "'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant postsolution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–611 (2010) (citation omitted).

*B. Examiner's Findings*

The Examiner finds claim 1 is "directed towards lending an item of value[, which] is a fundamental economic practice," and "do[es] not include limitations that are 'significantly more' than the abstract idea." Final Act. 6. The Examiner elaborates:

> Appellant's claims are similar to loaning a friend money and determining that payday is the best time to ask for the money back; or waiting until a friend's paycheck is deposited to cash a check from that friend. Appellant's claims do not address a technical problem in trying to recover the item of value (prepaid credit). Appellant merely describes the computer implementation of this process.

Ans. 5.

*C. Appellants' Contentions*

Appellants contend claim 1 "recite[s] limitations that are 'significantly more' than the abstract idea of 'lending an item of value[]'" (App. Br. 7) because:

> The [claim] limitations . . . improve the technology of prepaid credit advancement systems in multiple ways. By determining whether a subscriber is eligible for an advance based at least in part on "an assessment of historical data relating to the subscriber account," the system is configured to advance to credits to subscribers who may not have any funds in their account or have a linked account, but who are likely to repay the advance based on an analysis of the historical data relating to the subscriber account. Additionally, by storing prepaid credits accepted by the service provider on the lender account, the present advancement system removes any delay or lag time in transferring the credits to an account of the subscriber.
>
> Furthermore, the limitations . . . improve the functioning of a computer. As explained in the Application, the Recovery

> Service disclosed therein “can be a computer system and software system responsible/or recovering advances from subscribers of the prepaid service bv intercepting events (refills, top-ups, peer transfers, deposits, time-based events).” . . . . By directly monitoring the account of the subscriber on the network of the prepaid service provider and triggering recovery based upon detection of a subsequent increase of prepaid credit, the present system avoids wasting computing resources attempting recovery when there are insufficient funds in the subscriber’s account.

*Id.* at 8–9 (emphasis omitted).

*D. Analysis*

We are unpersuaded of error.

As to the first step, we agree with the Examiner that claim 1 is directed to an abstract idea of lending an item of value—namely by advancing, tracking, and recouping prepaid credit for a service. Appellants argue that the claimed invention additionally “improve[s] the technology of prepaid credit advancement . . . based at least in part on ‘an assessment of historical data relating to the subscriber account’” and “[b]y directly monitoring the account of the subscriber on the network of the prepaid service provider.” App. Br. 8–9 (*see* block-quoted *supra*). As a result, according to Appellants, “the present system avoids wasting computing resources attempting recovery when there are insufficient funds in the subscriber’s account.” *Id.* at 9. Appellants do not show, however, that these features do more than merely implement the abstract idea via generic technology and limit the claimed invention to a technological environment. *See Alice*, 134 S. Ct. at 2358 (“[M]ere recitation of a generic computer cannot transform a patent ineligible abstract idea into a patent eligible invention."); *Versata*, 793 F.3d 1306, 1332 (Fed. Cir. 2015) ("[P]atenting an ineligible concept cannot be circumvented by limiting the use of an ineligible concept to a particular technological environment."); *cf.*, *Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (The at-issue claim, though directed to the abstract idea of filtering, was patent-eligible due to locating the filter tool so as to unconventionally provide "both the benefits of a filter on a local computer and the benefits of a filter on the ISP server."). Appellants' unsupported allegations are insufficient to overcome the judicial exception. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997) (Mere conclusory statements hold little probative value.).

Appellants also attempt to analogize their claims to those in *DDR Holdings LLC v. Hotels.com LP*, 773 F.3d 1245 (Fed. Cir. 2014), by arguing that (1) "the present system is also necessarily rooted in computer technology" because it "is directed to overcoming the problem of determining when to initiate recovery of prepaid credit that has been previously advanced to a subscriber of a prepaid service" and (2) "the invention specifically arises in the realm of computer networks since prepaid service companies operate on a different activity and payment network than prepaid credit advance companies." App. Br. 9–10 (emphasis omitted). This argument is not persuasive because it neglects that the problem overcome by the claimed invention, not merely the invention itself, must arise in the realm of computer networks. *DDR*, 773 F.3d at 1257 ("[O]vercome a problem specifically arising in the realm of computer networks."). Here, the problem overcome by the invention does not arise in the realm of computer networks but is, rather, the commonplace problem of timing a recovery of credit (knowing when to "cash the check") by monitoring the debtor's ability to pay. *See DDR*, 773 F.3d at 1258 (Distinguishing *DDR's* Internet-centric problem of advertisement banner hyperlinks snatching website visitors over "the 'brick and mortar' context" because "[t]here is . . . no possibility that[,] by walking up to [a kiosk in a warehouse store], the customer will be suddenly and completely transported outside the warehouse store.").

Appellants' argument also neglects *DDR's* holding that those patent-eligible claims recited a non-routine, unconventional process in the realm of computer networks. *Id.* at 1258–59 (Holding the claims specified "a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink."). Even assuming Appellants' contention that the claimed monitoring is performed across two networks,[6] Appellants still fail to show the monitoring does more than merely "broadly and generically claim 'use of [different networks]' to perform an abstract business practice." *Id.* (citing the "use of the Internet" language of *Ultramercial, Inc. v. Hulu*, LLC, 772 F.3d 709, 716 (Fed. Cir. 2014)). For example, Appellants do not show that monitoring data from another network was unconventional at the time of the invention.

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[6] Appellants have alleged, but not established, that the claimed invention is restricted to "prepaid service companies operat[ing] on a different activity and payment network than prepaid credit advance companies." App. Br. 10 (quoted *supra*). Because the Examiner does not dispute that these claimed entities operate on different networks (for whatever "networks" may mean), we accept this alleged claim restriction for purposes of appeal.

As to the second step, we find nothing in claim 1 that adds anything "significantly more" to transform the abstract idea of loaning an item of value. *Alice*, 134 S. Ct. at 2357. Beyond that abstract idea, the claims merely recite "well-understood, routine, conventional activit[ies]," such as performing steps "on a computing device." *Alice*, 134 S. Ct. at 2359 (citing *Mayo*, 566 U.S. at 73). Appellants do not identify any error in the Examiner's findings regarding these routine elements. Considered individually or taken together as an ordered combination, the claim elements fail "to 'transform' the claimed abstract idea into a patent-eligible application." *Alice*, 134 S. Ct. at 2357 (citing *Mayo*, 566 U.S. at 72–73, 78).

*E. Dependent claims 9, 18, and 27*

Claim 9 depends from claim 1 and adds the following argued limitations: "extracting subscriber activity data from activity logs relating to the subscriber account; determining a pattern of prepaid credit additions from the subscriber activity data; and calculating the grace period based at least in part on the pattern of prepaid credit additions."

Appellants argue the claimed calculating of a grace period from subscriber activity data achieves a "transformation" that overcomes *Alice's* second step because:

> [T]he subscriber activity data contained in the activity logs is transformed into a grace period which is used to determine when to initiate recovery of a prepaid credit advance. Referring to section (c) of MPEP 2106(2)(B)[], this transformation changes the function of the data. Prior to the transformation, the activity data indicated the activity of a subscriber account with the service provider. After the transformation, the grace period is used by the prepaid credit advance provider to determine when to initiate recovery of a prepaid credit advance.

App. Br. 11.

We are unpersuaded of error. Appellants' argument references the "transformation" prong of the machine-or-transformation test, which "can provide a useful clue in the second step of the *Alice/Mayo* framework," *Smart Sys. Innovations*, 873 F.3d at 1375. Appellants do not show, however, that calculating a customer parameter (grace period) from customer statistics (subscriber activity data) constitutes a "transformation" overcoming *Alice's* second step. The Appeal Brief does not analyze or apply any precedent, but merely quotes USPTO guidelines citing *Bilski* (determining seller's gain "under each historical weather pattern" held patent-ineligible (claim 7)) and *Gottschalk* (converting decimal numerals to binary numerals held patent-ineligible). App. Br. 11. Calculating a customer parameter from customer statistics, however, is not a "transformation" overcoming *Alice's* second step. *See OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1361–64 (Fed. Cir. 2015) (Patent-ineligle method of gathering sales statistics for different price points and calculating an estimated outcome for each price point from those statistics.); *see also In re Bilski*, 545 F.3d 962–63 (Examples of signal and data processing that do not satisfy the transformation prong of the test.).

*F. Conclusion*

For the foregoing reasons, we are not persuaded of error. Accordingly, we sustain the 35 U.S.C. § 101 rejection of representative claim 1 and claims 2–27 falling therewith.

35 U.S.C. § 103(A) REJECTION OF CLAIMS 1, 7, 10, 16, 19, AND 25 OVER MOBILE DECISIONING, VAN LUNCHENE, AND AHMEDZADE

We select claim 1 as representative of claims 7, 10, 16, 19, and 25 for this rejection. *See* 37 C.F.R. 41.37(c)(1)(iv) (representative claims). For the following reasons, we are unpersuaded of error in this rejection of claim 1.

The disputed limitation of claim 1 is "monitoring, by at least one of the one or more computing devices, the subscriber account on a network of the prepaid service provider to detect any subsequent increase of prepaid credit in the subscriber account." Appellants argue the Examiner erred in finding Ahmedzade teaches or suggests the claimed monitoring because:

> The relevant portion of Ahmedzade discloses receiving a list of network subscribers that have made a balance top-ups, comparing the list to a list of debtors, and charging the accounts of network subscriber's that have made a top-up. However, this section of Ahmedzade does not disclose or suggest "*monitoring* the subscriber account *on a network of the prepaid service provider*" to detect any subsequent increase of prepaid credit.
>
> Unlike the present system, Ahmedzade relies on receiving logs of all subscriber activity and comparing the logs to debtor's lists. By contrast, the present system recovers advances "from subscribers of the prepaid service *by intercepting events* (refills, top-ups, peer transfers, deposits, time-based events)." *See* Application, para [0051].

App. Br. 14.

This argument is not persuasive because it is not commensurate with the scope of claim 1, which does not require the monitoring be performed by the network of the prepaid service provider. Claim 1 does not recite, for example, that the monitoring entails "intercepting events (refills, top-ups, peer transfers, deposits, time-based events)" on the subscriber network, as is argued (above block quote). Claim 1 recites "monitoring, by at least one of the one or more computing devices, the subscriber *account on* the network of the prepaid service provider." App. Br. 26 (Claims Appendix) (emphasis added). We interpret "on a network of the prepaid service provider" of claim 1 as modifying "the subscriber account"—i.e., the subscriber account, not the monitoring, is "on a network of the prepaid service provider." *Id.*; *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (claim terms given their "their broadest reasonable interpretation consistent with the specification"). We, therefore, agree with the Examiner's finding that Ahmedzade teaches the claimed monitoring by reviewing the logs of subscriber activity to track subscriber accounts that are located on the service provider network. Ans. 7; Final Act. 13.

Furthermore, even if claim 1 required the monitoring be performed by the network of the prepaid service provider, Appellants not persuaded us that the Examiner erred. The Examiner finds Ahmedzade teaches "monitoring" not only by teaching reviewing of the log, but also by teaching logging of top-ups. *See* Final Act. 13 ("The creation of the list of subscriber accounts, receiving of the list of subscriber accounts, and analysis of the subscriber account are a monitoring of subscriber accounts" (citing Ahmedzade ¶ 17).). Appellants contrast this logging of top-ups by Ahmedzade's operator network with the "intercepting [top-up] events" example from the Specification. App. Br. 14 ("By contrast, the present system recovers advances 'from subscribers of the prepaid service by intercepting events (refills, top-ups, peer transfers, deposits, time-based events).'") (citing Spec. ¶ 51) (emphasis omitted). Appellants' argument does not persuasively rebut that Ahmadezade's logging of top-ups teaches the claimed monitoring, however, because claim 1 does not limit "monitoring" to intercepting top-ups. Appellants' argument asks us to read the "intercepting" example into claim 1 without presenting a disclaimer of the broader "monitoring" claim language. "[A]bsent a clear disclaimer in the specification, the embodiments in the specification do not limit broader claim language." *Eolas Technologies Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1337 (Fed. Cir. 2005).

For the foregoing reasons, we are not persuaded of error. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of representative claim 1 and claims 7, 10, 16, 19, and 25 falling therewith.

35 U.S.C. § 103(a) REJECTION OF CLAIMS 2, 11, AND 20
OVER MOBILE DECISIONING, VAN LUNCHENE, AHMEDZADE,
AND ZAIN KENYA

We select claim 2 as representative of claims 11 and 20 for this rejection. *See* 37 C.F.R. 41.37(c)(1)(iv) (representative claims). For the following reasons, we are unpersuaded of error in the rejection of claim 2.

The disputed limitation of claim 2 is "determining a maximum amount of prepaid credit that the subscriber is eligible to be advanced based on an assessment of historical data relating to the subscriber account." Appellants argue the Examiner erred in finding the combination of Mobile Decisioning (MDSA) and Zain Kenya suggest the claimed determining because:

> [T]he disclosure of "MDSA [being] able to lend various airtime amounts depending the usage history of the subscriber" does not necessarily require the determination of a maximum amount of prepaid credit that the subscriber is eligible to be advanced based on an assessment of historical data relating to the subscriber

> account. For example, MDSA could receive a request for a certain amount of prepaid credit from a subscriber, determine whether the subscriber is entitled to the requested amount of prepaid credit, and either approve or deny the request, all without determining a *maximum amount of prepaid credit* that the subscriber is eligible to receive.
>
> . . . .
>
> Zain relies on a generic credit check of the customer in order to determine an amount that the customer is eligible for but does not involve an assessment of historical data <u>relating to the subscriber account</u>. Under the system disclosed in Zain, a subscriber with a bad credit score who consistently repays prepaid credit advances with the system would be eligible for a smaller advance that a subscriber with a good credit score who is frequently delinquent in repaying prepaid credit advances.

App. Br. 16–18.

We are not persuaded of error. As the Examiner finds, Mobile Decisioning teaches determining an amount of prepaid credit based on the subscriber's historical data and Zain Kenya determines a maximum amount of prepaid credit. Final Act. 18–19; Ans. 7–8. Specifically, Mobile Decisioning teaches "various airtime [advance] amounts depending on usage history" and "dynamically customiz[ing] airtime advances . . . to reward [a subscriber] for past usage of the services." Mobile Decisioning, 1.
Zain Kenya teaches airtime advances by denominations of "KES 20, KES 50 and KES100." Zain Kenya, 1. In view of these teachings, we agree with the Examiner that a person of ordinary skill in the art would contemplate determining "various airtime [advance] amounts depending on usage history" (Mobile Decisioning) and as denominations (Zain Kenya). Mobile Decisioning, 1; Zain Kenya, 1. We also agree that the above combination

achieves the claimed determining of a maximum amount of prepaid credit (denomination) based on historical data of a subscriber account (based on usage history). Appellants' arguments against the references individually are not persuasive because, as explained, the Examiner is relying upon the combination of references. *See, e.g., In re Keller*, 642 F.2d 413, 426 (CCPA 1981) ("one cannot show non-obviousness by attacking references individually where . . . the rejections are based on combinations of references"); *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

For the foregoing reasons, we are not persuaded of error. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of representative claim 2 and claims 11 and 20 falling therewith.

35 U.S.C. § 103(a) REJECTION OF CLAIMS 8, 9, 17, 18, 26, AND 27 OVER MOBILE DECISIONING, VAN LUNCHENE, AHMEDZADE, QUILLIAN, AND HANNON

The disputed limitation of claim 8 is "determining a period of time that has passed since the transfer of prepaid credit from the lender account to the subscriber account; determining whether the period of time is greater than a grace period for the subscriber." Claims 17 and 26 recite similar subject matter. Claims 9, 18, and 27 respectively depend from claims 8, 17, and 26. We address the arguments with reference to the language of claim 8.

Appellants argue the Examiner erred in finding Ahmedzade's paragraph 16 teaches the claimed "period of time" because:

> There is no "determination" of a time period disclosed in Ahmedzade, which simply discloses waiting for some preset

> period of time prior [to] confirming that a transaction occurred.
> . . .
>
> More significantly, the cited section of Ahmedzade also states that the network subscriber is moved from the pre-debtor list to the debtor list "*in case of transaction success*." Therefore, the period of time referred to in Ahmedzade is merely the period of time the system waits to verify whether the transfer actually went through.

App. Br. 21.

We are persuaded of error. Ahmedzade teaches that the "[d]eposit into the balance of NS 10 is done immediately upon receiving of the information about request 31" and "[t]hen a certain period of time (for instance 5 hours) is allowed for confirmation of the transaction 63." Ahmedzade ¶ 16. Thus, Ahmedzade teaches waiting for a "period of time (for instance 5 hours)" and then determining whether the deposit has occurred, i.e., yes or no. *Id.* Ahmedzade does not teach determining how much time has elapsed *since* the deposit occurred, as required to teach the claimed "determining a period of time that has passed since the transfer of prepaid credit."

The Examiner finds that "[i]n order to confirm the transaction after a certain period of time, the system of Ahmedzade must be able to determine a period of time has passed since the transfer." Ans. 8. The Examiner thus appears to find that any confirmation of a *past* transfer will necessarily confirm that a period of time has elapsed since the transfer occurred. As such, the Examiner appears to construe the claimed "determining a period of time that has passed since the transfer of prepaid credit" as encompassing a mere determination that a past transfer has occurred. *Id.*

We find this construction to be neither reasonable nor consistent with claim 8 and the Specification. As further recited by claim 8, the determined period of time is weighed against a grace period ("determining whether the period of time is greater than a grace period for the subscriber"). In view of this recited feature and its corresponding description within the Specification's paragraph 62, a person of ordinary skill in the art would understand that the claimed period of time and grace period are each quantified for weighing against one another. In turn, the artisan would understand the claimed "determining a period of time that has passed" means quantifying that period of time. As argued, the Examiner has shown only that Ahmedzade teaches waiting a predetermined period of time (before verifying whether a transfer occurred).

For the foregoing reasons, we are persuaded of error. Accordingly, we do not sustain the 35 U.S.C. § 103(a) rejection of claims 8, 9, 17, 18, 26, and 27.

## 35 U.S.C. § 103(a) REJECTION OF CLAIMS 3, 5, 12, 14, 21, AND 23 OVER MOBILE DECISIONING, VAN LUNCHENE, AHMEDZADE, AND BIERBAUM

Appellants do not present separate arguments against this rejection of claims 3, 5, 12, 14, 21, and 23, which do not depend from any claims found to overcome their rejections. Accordingly, we sustain the 35 U.S.C. § 103(a) rejection of claims 3, 5, 12, 14, 21, and 23.

DECISION

We affirm the Examiner's decision rejecting claims 1–5, 7, 10–14, 16, 19–23, and 25.

We reverse the Examiner's decision rejecting claims 8, 9, 17, 18, 26, and 27.

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-IN-PART