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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte AMJAD HANIF, BRIAN BURKE, and JEFF TAYLOR

Appeal 2017-003570
Application 12/777,144¹
Technology Center 3600

Before LINDA E. HORNER, JOSEPH A. FISCHETTI, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner’s decision rejecting claims 1–27 and 29–34. Final Office Action (October 16, 2015) (hereinafter “Final Act.”).² We have jurisdiction under 35 U.S.C. § 6(b).

The claimed subject matter relates to the cancellation of feedback received from users of a network-based transaction facility. Specification

¹ Amjad Hanif et al. (“Appellants”) identify the real party in interest as PayPal, Inc. Appeal Brief (April 13, 2016) (hereinafter “Br.”), at 3.

² Claim 28 is canceled. Br. 50 (Claims Appendix).

(May 10, 2010) (hereinafter “Spec.”), ¶ 2. The Specification explains: “For users of a network-based transaction facility, such as an Internet-based auction facility, feedback regarding other users is particularly important for enhancing user trust of the transaction facility.” *Id.* ¶ 4. The Specification further explains: “[A] positive feedback history may establish the credibility and trustworthiness of a particular trader within an on-line trading community. Similarly, a history of negative feedback may discourage other traders from transacting with a specific user.” *Id.* As acknowledged by the Specification, “Sometimes, feedback left for a user may not be accurate.” *Id.* ¶ 33. The claimed invention “provide[s] a mechanism for canceling feedback in the transaction facility 10.” *Id.*

The Examiner rejected the claims as directed to patent ineligible subject matter and as unpatentable over the prior art. Appellants contest both grounds of rejection. For the reasons set forth below, the Examiner did not err in rejecting the claims under these grounds.

The Examiner also maintained a rejection of the claims based on obviousness-type double patenting after Appellants had filed a terminal disclaimer. We find no evidence in the record that the Examiner considered the terminal disclaimer. We reverse the double patenting rejection. Should there be further prosecution of this application, we direct the Examiner to consider the terminal disclaimer. Because we sustain grounds of rejection as to each of the pending claims, we AFFIRM.

CLAIMED SUBJECT MATTER

Claims 1, 10, 16, and 30 are the independent claims. Claim 16 is representative of the subject matter on appeal and is reproduced below.

16. A method comprising:

receiving a request to cancel feedback pertaining to a transaction in a network-based transaction facility from a first party to the transaction;

determining, by use of a processor, whether one or more feedback cancellation criteria are satisfied, at least one of the determined feedback cancellation criteria includes a requirement that each of the first party and a second party do not exceed a feedback cancellation limit;

canceling the feedback pertaining to the transaction if the one or more feedback cancellation criteria are satisfied; and

preventing the first party to the transaction from entering feedback comments for the transaction upon canceling the feedback pertaining to the transaction.

Br. 48 (Claims Appendix).

EVIDENCE

Ratterman	WO 01/61601 A1	Aug. 23, 2001
Marshall	US 2003/0233278 A1	Dec. 18, 2003
Vaidyanathan	US 2004/0128155 A1	July 1, 2004
Burke	US 7,885,850 B2	Feb. 8, 2011

REJECTIONS

The Final Office Action includes the following rejections:

1. Claims 1–27 and 29–34 stand rejected under 35 U.S.C. § 101 as directed to patent ineligible subject matter.
2. Claims 1–27 and 29–34 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan, Ratterman, and Marshall.
3. Claims 1–27 and 29–34 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1–31 of Burke.

RELATED APPEALS

This is the second appeal in the present application. In the first appeal, the Board affirmed a rejection of then-pending claims 1–27 and 29–34 under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan and Ratterman. Appeal 2012-008773 (PTAB March 3, 2015). Since this Decision, Appellants have amended the claims, and the Examiner has presented new grounds of rejection of the amended claims.

The application on appeal is a continuation of Application 10/749,736, which also was the subject of an appeal to this Board. In this related appeal, the Board affirmed a rejection of pending claims 10–15 and reversed a rejection of pending claims 1–7, 9, 16–25, and 27–34 under 35 U.S.C. § 103(a) as unpatentable over Vaidyanathan. Appeal 2008-1169 (BPAI October 2, 2008).

ANALYSIS

Rejection under 35 U.S.C. § 101

In the Final Office Action, the Examiner determined that the claims “are directed to the abstract idea of performing dispute resolution and related calculations . . . and considering a request to cancel a comment and reflecting the outcome of the request.” Final Act. 8. The Examiner found that the additional elements recited in the claims “do not add significantly more to the exception” and that “[a]ll additional elements function in a conventional manner.” *Id.*

Prima Facie Case

As to step 1 of the *Mayo* test, Appellants contend that the Examiner failed to provide adequate explanation or evidence to support the determination that the claims are directed to an abstract idea. Br. 10–11

(numbered items 1–6). The Examiner’s statement of the rejection identified the abstract idea and analogized it to categories of subject matter previously held by courts to be directed to abstract ideas:

Claims 1-27 and 29-34 are directed to the abstract idea of performing dispute resolution and related calculations (i.e., organizing human activities, an idea of itself, mathematical formulas/relationships) and considering a request to cancel a comment and reflecting the outcome of the request (i.e., comparing new and stored information and using rules to identify options, as per the *SmartGene* decision; using categories to organize, store and transmit information, as per the *Cyberfone* decision).

Final Act. 8. We find that Examiner’s findings and analysis are sufficient to present a prima facie case as to step one of *Mayo*. See, e.g., *Amdocs (Israel), Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that there is not a single test for what an abstract idea encompasses and courts instead “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”); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (“both [the Federal Circuit] 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” to determine what constitutes an abstract idea sufficient to satisfy step one of the *Mayo* inquiry); see also *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1366–67 (Fed. Cir. 2018) (comparing the claims at issue to claims held directed to an abstract idea in prior cases for step one of *Mayo*). The Examiner’s analysis was sufficient to put Appellants on notice of the basis for the ground of rejection and to allow Appellants to recognize and seek to counter the grounds of rejection. See *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

As to step 2 of the *Mayo* test, Appellants contend that the Examiner failed to provide adequate explanation or evidence to support the determination that the claims do not add something more than the judicial exception. Br. 11 (numbered items 7–13). The Examiner found:

The claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because, while the claims recite the additional elements of a processor, a feedback cancellation request receiver (executable by the processor), a feedback cancellation criteria evaluator (executable by the processor), a feedback cancellation recorder, a feedback cancellation request processor, a memory, a processor, and a non-transitory computer-readable medium, when considered separately and in combination, they do not add significantly more to the exception. All additional elements function in a conventional manner. For example, the processor and/or software perform the conventional steps of receiving information, identifying information, looking up data, and calculating scores. The memory and non-transitory computer readable medium merely store information. These additional elements are broadly applied to carry out the abstract ideas at a high level of generality, largely performing extra-solution activities (such as receiving data and providing data). The claims are directed to the abstract idea with additional generic computer elements; however, the generically recited computer elements do not add a meaningful limitation to the abstract idea because these elements would be routine in any computer implementation.

Final Act. 8–9. The Examiner notes, for example, that in independent process claim 16, the additional element is a processor that “perform[s] the conventional steps of receiving information, identifying information, looking up data, and calculating scores.” Ans. 16–17. The Examiner explains,

These additional elements are broadly applied to carry out the abstract ideas at a high level of generality, largely performing extra-solution activities (such as receiving data and providing

data). The claims are directed to the abstract ideas with additional generic computer elements; however, the generically recited computer elements do not add a meaningful limitation to the abstract idea because these elements would be routine in any computer implementation.

Id. at 17 (citing to JULY 2015 UPDATE: SUBJECT MATTER ELIGIBILITY guidance memo (“July 2015 Update”), which explains that courts have recognized the recited computer functions to be well-understood, routine, and conventional functions when they are claimed in a merely generic manner). The July 2015 Update guidance memo cites to court decisions finding that computer functions such as performing repetitive calculations and receiving, processing, and storing data are well-understood, routine, and conventional functions when claimed in a merely generic manner. July 2015 Update 7 (citing *Parker v. Flook*, 437 U.S. 584, 594 (1978), *Bancorp Services v. Sun Life*, 687 F.3d 1266, 1278 (Fed. Cir. 2012), *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2360 (2014)).

The Federal Circuit recently explained, “Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.” *Berkheimer*, 881 F.3d at 1369. We understand the Examiner, through citation to the July 2015 Update, to rely on prior court decisions finding that certain computer functions are well-understood, routine, and conventional functions. These prior court decisions adequately support the Examiner’s finding to satisfy the requirement to set forth a prima facie case of unpatentability under 35 U.S.C. § 101. We now examine the Examiner’s analysis of each step of the § 101 inquiry.

Mayo Step One

Appellants argue that “the alleged abstract idea of ‘performing dispute resolution’ is an examiner-written phrase that does not actually appear in any of the rejected claims” and this phrase “abstracts certain examiner-selected limitations and omits numerous other limitations.” *Id.* at 14. We examine this contention with reference to representative claim 16. The Examiner reproduced claim 16 in the Answer with the limitations directed to the details of the abstract idea highlighted in italics. Ans. 15–16. The Examiner essentially italicized the entire claim but for the claim phrase “by use of a processor” in the second recited step. *Id.*

The method of claim 16 can be summarized as follows: receiving a request from a party to a transaction to cancel feedback pertaining to the transaction, determining if feedback cancellation criteria are satisfied, including determining if either party to the transaction has exceeded a feedback cancellation limit, canceling the feedback if the criteria are satisfied, and preventing the party from entering feedback comments for the transaction upon granting of the request. As explained in Appellants’ Specification, providing a process to cancel feedback and prevent introduction of new feedback allows inaccurate feedback to be removed to preserve the reputation of a particular user within the transaction facility. Spec. ¶ 33. For example, if negative feedback about a transaction is posted, and the parties to the transaction were able to resolve the problem after the negative feedback was left, then the parties may agree to cancel the negative feedback. *Id.* In this instance, when parties resolve a problem that formed the basis of the negative feedback, but negative feedback remains in the transaction facility that implicates the reputation of one of the parties to the

transaction, the existence of this negative feedback means that a dispute still exists between the parties until the parties agree to cancel the negative feedback and refrain from posting any new feedback related to this transaction. *See id.* ¶ 37 (describing determining that parties agree to cancel feedback prior to cancellation) and ¶ 47 (describing preventing the posting of further feedback relating to the transaction). Thus, the feedback cancellation process is a means to fully resolve the dispute between the parties to the transaction. As such, we find no error in the Examiner’s characterization of the abstract idea of the claims as being one of performing dispute resolution.

It has been a long-prevalent practice to maintain a repository of reputational information for people engaged in business transactions and to control the integrity of that information. *See, e.g.,* Vaidyanathan ¶ 5 (describing prior art processes involving governmental or non-profit consumer organizations, such as the Better Business Bureau, that provide services to consumers involved in disputed transactions); *see also* www.bbb.org (Better Business Bureau website, an organization founded in 1912 to advance marketplace trust, which allows consumers to provide reviews of member businesses). This type of fundamental practice long prevalent in business relations in our system of commerce is directed to an abstract idea. *See Alice*, 134 S. Ct. at 2356 (holding that “fundamental . . . practice[s] long prevalent” are abstract ideas).

Appellants argue that the Examiner failed to show that the claims are analogous to the abstract ideas in *SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 Fed.Appx. 950 (Fed. Cir. 2014) or *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 Fed.Appx. 988 (Fed. Cir. 2014).

Br. 15–21. The Examiner compared the claimed subject matter to the abstract idea identified by the court in *SmartGene* of comparing new and stored information and using rules to identify options. Final Act. 8. The Examiner further compared the claimed subject matter to the abstract idea identified by the court in *Cyberfone* of using categories to organize, store, and transmit information.

We agree with the Examiner that representative claim 16 implies, in the step of determining that each party has not exceeded a feedback cancellation limit, a comparison of new information (i.e., the current cancellation request) and stored information (i.e., instances of prior cancellation requests). The claim further indicates that, in the determining step, other rules (i.e., criteria) may be applied against information pertaining to the cancellation request prior to honoring the request and cancelling the feedback. For instance, as described above, the process may entail ensuring that both parties agree to the cancellation prior to cancelling the feedback.

These steps are no different than the steps a human mediator would take in attempting to resolve a dispute between parties about a transaction. For instance, if a party dissatisfied with a transaction submits negative feedback about the transaction to the Better Business Bureau, and the parties seek the services of a mediator to resolve the dispute, the mediator may seek to ensure that both parties agree to retraction of the negative feedback prior to seeking to have the negative feedback removed. *See, e.g.*, Vaidyanathan ¶ 5 (describing prior art processes involving governmental or non-profit consumer organizations, such as the Better Business Bureau, that provide services to consumers involved in disputed transactions).

Appellants argue that the decision in *SmartGene* should be limited to the abstract idea of computerizing what doctors do routinely. Br. 16. The court in *SmartGene* broadly stated, however, “this court held that section 101 did not embrace a process defined simply as using a computer to perform a series of mental steps that people, aware of each step, can and regularly do perform in their heads.” 555 Fed.Appx. 950, 954 (Fed. Cir. 2014) (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011)) (additional citations omitted). The court noted that “the claim at issue here involves a mental process excluded from section 101: the mental steps of comparing new and stored information and using rules to identify medical options.” *Id.* at 955.

Admittedly, the steps recited in representative claim 16 go beyond purely mental steps. For instance, the claims recite actually canceling the feedback and preventing the entry of further feedback. However, the realm of abstract ideas is not limited to purely mental steps. For instance, “[p]atents that merely claim well-established, fundamental concepts fall within the category of abstract ideas.” *Cyberfone*, 558 Fed.Appx. at 991 (citing *Bilski v. Kappos*, 561 U.S. 593, 611 (2010)). As noted in *Cyberfone*, the court has held that conducting arbitration, which is similar to the dispute resolution claimed here, is one such well-established, fundamental concept. *Id.* (citing *In re Comiskey*, 554 F.3d 967, 970–91, 981 (Fed. Cir. 2009)). The court in *Comiskey* found that the claims directed to a method for mandatory arbitration resolution claim the mental process of resolving a legal dispute between two parties by the decision of a human arbitrator. 554 F.3d at 981.

We further examine whether the claims “focus on a specific means or method that improves the relevant technology” or are “directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016). In this case, the claims do not recite a particular way of programming or designing the software to allow for cancelation of feedback, but instead merely claim the resulting system and are directed to functionality. The claims are not directed to a specific improvement in the way computers operate. *Cf. Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016).

For these reasons, the Examiner did not err in determining that representative claim 16 is directed to an abstract idea under step one of the *Mayo* inquiry.

Mayo Step Two

The claim elements, both individually and when combined, do not transform the claimed abstract idea into a patent-eligible application of the abstract idea. The patent claim adds conventional computer components to well-known business practices. *Enfish*, 822 F.3d at 1338. For instance, as noted by the Examiner in examining representative method claim 16, the claim recites an abstract idea of dispute resolution performed “by use of a processor.” Ans. 15–16. Using a processor to receive a request to cancel information, comparing information to determine if cancellation criteria are satisfied, and canceling the information, and preventing entry of further information, involve conventional input/output, processing, and data storage activities of a generic computer processor. It is not sufficient to recite performing conventional activities “on a computer.” *Cf. Alice*, 134 S. Ct. at

2358 (“Stating an abstract idea while adding the words ‘apply it with a computer’” is not enough for patent eligibility) (quoting *Mayo*, 132 S. Ct. at 1294). “[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible. The bare fact that a computer exists in the physical rather than purely conceptual realm is beside the point.” *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (internal citations and quotation marks omitted).

We are unpersuaded that anything in representative claim 16 purports to improve computer functioning or “effect an improvement in any other technology or technical field.” *Alice*, 134 S. Ct. at 2359. Nor are we persuaded that the claims solve a problem unique to the Internet, because the Internet is not recited in claim 16. *See DDR Holdings*, 773 F.3d at 1257. The claims also are not adequately tied to “a particular machine or apparatus.” *Bilski*, 561 U.S. at 602. For these reasons, the Examiner did not err in determining that representative claim 16 fails to recite significantly more than the abstract idea under step two of the *Mayo* inquiry.

Because claim 16 is directed to an abstract idea, and nothing in the claims adds an inventive concept, the claim is not patent-eligible under § 101. Therefore, we sustain the Examiner’s rejection of claim 16 under 35 U.S.C. § 101. We find no meaningful distinction between independent method claim 16 and independent claims 1, 10, and 30; the claims all are directed to the same underlying invention. As the Federal Circuit has made clear “the basic character of a process claim drawn to an abstract idea is not changed by claiming only its performance by computers, or by claiming the process embodied in program instructions on a computer readable medium.”

See CyberSource Corp. v. Retail Decisions, Inc., 654 F.3d 1366, 1375–76 (Fed. Cir. 2011) (citing *In re Abele*, 684 F.2d 902 (CCPA 1982)). Therefore, claims 1, 10, and 30 fall with claim 16.

Dependent Claims

Appellants contend that the Examiner failed to consider the dependent claims separately and has not established a prima facie case against the dependent claims. Br. 21–23. Representative dependent claim 17 depends from method claim 16 and recites the additional step of “determining that the second party to the transaction agrees to cancel the feedback pertaining to the transaction.” Br. 48 (Claims Appendix). The Examiner explained: “[T]he dependent claims further define details of the abstract ideas. Appellant[s] ha[ve] not identified any additional elements in the dependent claims that amount to significantly more than any of the abstract ideas. . . . There is no unconventional functionality attributed to any of the additional elements recited throughout the claims.” Ans. 21; *see also* Final Act. 3.

As to whether the Examiner has set forth a prima facie case, the Examiner has explained adequately the basis for the rejection of these claims, in explaining that the subject matter recited in each dependent claim further defines details of the abstract idea and does not add unconventional functionality to the additional elements. Appellants characterize certain additional elements recited in the dependent claims as “additional limitations pertaining to dispute resolution.” Br. 22. This characterization bolsters the Examiner’s view that the additional elements recited in the dependent claims further define the details of the abstract idea. For instance, representative dependent claim 17 recites that the processor determines if the second party agrees to cancellation of the feedback. This is a conventional step that a

dispute resolution mediator would take in attempting to reach agreement between parties to resolve a dispute about a transaction.

For these reasons, we are not persuaded by Appellants that the Examiner failed to present a prima facie case as to representative dependent claim 17. Accordingly, we sustain the rejection of claim 17 under 35 U.S.C. § 101, and claims 2–9, 11–15, 18–29, and 31–34 fall with claim 17.

Rejection under 35 U.S.C. § 103(a)

In the Final Office Action, the Examiner found that Vaidyanathan discloses the apparatus substantially as recited in claim 1, including a feedback cancellation request receiver, a feedback cancellation criteria evaluation, and a feedback cancellation recorder, but does not explicitly disclose, *inter alia*, that at least one of the determined feedback cancellation criteria includes a requirement that each of the first party and a second party do not exceed a feedback cancellation limit. Final Act. 9–12. The Examiner found that Marshall presents dispute resolution services as a commodity and teaches that parties to a transaction may prepay for a limited number of dispute resolutions in an online dispute resolution service. *Id.* at 12–13 (citing Marshall ¶¶ 54–55). The Examiner further found that Vaidyanathan’s system is a dispute resolution system and has the ability to charge for this service. *Id.* Based on these facts, the Examiner determined that it would have been obvious to modify Vaidyanathan to include prepaid online dispute resolution services and criteria requiring that the parties do not exceed a feedback cancellation limit “in order to encourage frequent users of Vaidyanathan’s transaction and dispute resolution services to purchase a package of limited dispute resolution services” including the ability to request cancellation of feedback. *Id.* at 13 (“Simply checking to

see if a threshold of requests to cancel feedback by any participating party serves to confirm that contractual obligations are or have been met”). The Examiner explains that using such pre-payment options allow Vaidyanathan to achieve cost recovery or possibly profitability for its value-added service. *Id.*

Appellants contend that the Examiner erred in rejecting the claims because the Examiner misconstrued a “feedback cancellation limit” and “[a] need for a threshold limit for prepaid services would not motivate, nor is equivalent to, a feedback cancellation limit.”³ Br. 42 (emphasis omitted). Appellants assert the Examiner misinterpreted the claimed “feedback cancellation limit.” We look to Appellants’ Specification to interpret this term.

Appellants’ Specification discloses, “The feedback cancellation criteria evaluator 604 is responsible for evaluating information pertaining to the current feedback cancellation request based on a set of feedback cancellation criteria that encompass various rules for canceling feedback in the transaction facility 10.” Spec. ¶ 36; *see also id.* ¶ 42. The Specification provides that such rules “may require, for example, . . . that the feedback cancellation request be below a threshold number of allowed feedback cancellations for each party to the transaction.” *Id.* The Specification further provides “exemplary feedback withdrawal criteria used by the criteria evaluator 604.” Spec. ¶ 51 (citing Table 1). The criteria include determining whether the user is over a usage limit. *Id.* (Table 1, Order 10).

³ Appellants argue the claims subject to the obviousness rejection as a group. Br. 41–43. We select claim 1 as representative, and claims 2–27 and 29–34 stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

The Specification explains: “You can request withdrawal for only 15 transactions during a 30-day period.” *Id.*; *see also id.* ¶ 54 (Table 2, Order 10M). We interpret a “feedback cancellation limit” in light of Appellants’ Specification to mean an upper threshold on the number of cancellation requests allowed for each party to the transaction.

Appellants’ arguments appear to attribute some undisclosed reason for imposing a feedback cancellation limit different from the motivation for imposing such a limit proposed by the Examiner (e.g., a threshold number of requests based on the number of such dispute resolutions for which pre-payment was made). The claim does not recite the reason for imposing a limit, and the Specification does not confine the limit to any particular reason. The Examiner’s articulated reasoning for imposing a limit on the number of cancellation requests is based on rational underpinnings that the prior art teaches dispute resolution services as a commodity. As such, Appellants have not demonstrated error in the Examiner’s rejection based on obviousness.

For these reasons, we sustain the rejection of representative claim 1, and claims 2–27 and 29–34 which fall with claim 1, under 35 U.S.C. § 103(a).

Rejection based on Obviousness-Type Double Patenting

Appellants filed a terminal disclaimer on August 8, 2011, disclaiming the terminal part of the statutory term of any patent granted on the application on appeal that would extend beyond the expiration date of the full statutory term of the Burke patent. The terminal disclaimer further agreed that any patent granted on the application on appeal shall be enforceable only if such patent and the Burke patent are commonly owned.

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We cannot find any evidence in the record that the Examiner considered this terminal disclaimer. We reverse the obviousness-type double patenting rejection. Should there be further prosecution of this application, we direct the Examiner to consider the terminal disclaimer.

DECISION

The decision of the Examiner rejecting claims 1–27 and 29–34 under 35 U.S.C. § 101 is affirmed.

The decision of the Examiner rejecting claims 1–27 and 29–34 under 35 U.S.C. § 103(a) is affirmed.

The decision of the Examiner rejecting claims 1–27 and 29–34 under the doctrine of obviousness-type double patenting is reversed.

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

AFFIRMED