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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ESIN SEITOMER and TIM ARONE

Appeal 2017-003776
Application 12/191,787
Technology Center 3600

Before ST. JOHN COURTENAY III, JENNIFER L. McKEOWN, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1, 4–11, 14, 15, 18, and 19, which are all the claims pending in this application. Claims 2, 3, 12, 13, 16, and 17 are cancelled. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

¹ According to Appellants, the real party in interest is American International Group, Inc. App. Br. 1.

STATEMENT OF THE CASE

Introduction

Appellants' invention "relates generally to systems and methods for estimating the value of a residential property and its contents . . . to provide an initial insurance premium quote for insurance coverage for a home insurance product." (Spec. ¶ 1).

Exemplary Claim

1. A method for calculating an estimated replacement cost of a home fix insurance coverage for the home, the method comprising:

accessing a home value estimator application stored on a non-transitory computer readable storage medium and operated on a processor;

displaying a user interface of the home value estimator application across a communication network;

receiving data pertaining to different characteristics of the home from the user interface of the home value estimator application, the different characteristics comprising data pertaining to home renovations and home contents, the home renovations data comprising data pertaining to additions and alterations made to the home, the home contents data comprising data pertaining to home furnishings and clothing wardrobes in the home, and the data comprising the quantity and the quality of the home renovations and the home contents;

retrieving replacement costs of the different characteristics of the home using the home value estimator application from at least one matrix stored in a replacement cost database operably arranged with the processor based on the data pertaining to different characteristics of the home received through the user interface, the replacement costs including replacement costs based upon the data pertaining to

home renovations and home contents, including the home renovations data comprising data pertaining to additions and alterations made to the home, the home contents data comprising data pertaining to home furnishings and clothing wardrobes in the home, and the data comprising the quantity and the quality of the home renovations and the home contents;

calculating, using the home value estimator application, an estimated replacement cost of the home from the replacement costs of the different characteristics of the home; and

generating an initial insurance premium and an initial insurance coverage amount based upon the estimated replacement cost.

App. Br. 25 (emphasis added to contested limitations).

Rejections

- A. Claims 1, 4–11, 14, 15, 18, and 19 are rejected under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter. Final Act. 5.
- B. Claims 15, 18, and 19 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of AccuCoverage™ Website², hereinafter AccuCoverage, in view of Cheng et al (US 2007/0198278 A1; August 23, 2007), hereinafter Cheng, in view of Birchall (US 2008/0097796 A1; April 24, 2008).
- C. Claims 1, 4–11, and 14 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of

² Available at <https://web.archive.org/web/20060717111012/http://www.accucoverage.com/Home.aspx> (last visited on July 27, 2018).

AccuCoverage, Cheng, Birchall, and Stender (US 7,343,310 B1; March 11, 2008).

D. Claim 5 is rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of AccuCoverage, Cheng, Birchall, Stender, and Geraghty (US 2002/0099596 A1; July 25, 2002).

Grouping of Claims

Claims 1, 11, and 15 are independent claims. Regarding § 103 rejections B, C, and D over the cited prior art, and based upon Appellants' arguments, we decide the appeal of rejection C of claims 1, 4–11, and 14 on the basis of representative independent claim 1. Based on Appellants' arguments, we decide the appeal of rejection B of claims 15, 18, and 19 on the basis of representative independent claim 15. We address § 103 rejection D of dependent claim 5, *infra*. See 37 C.F.R. § 41.37(c)(1)(iv) (2012).

Issues on Appeal

Did the Examiner err in rejecting claims 1, 4–11, 14, 15, 18, and 19 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter?

Did the Examiner err in rejecting claims 1, 4–11, 14, 15, 18, and 19 under pre-AIA 35 U.S.C. § 103(a) as being obvious over the cited combinations of references?

ANALYSIS

We have considered all of Appellants' arguments and any evidence presented. To the extent Appellants have not advanced separate, substantive

arguments for particular claims, or other issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). We highlight and address specific findings and arguments for emphasis in our analysis below.

Mayo/Alice Analysis under 35 U.S.C. § 101

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws 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 *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 82–84 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355.

The first step in that analysis is to determine whether the claims at issue are directed to one of those patent-ineligible concepts, such as an *abstract idea*. 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. *Id.* at 2355–57.

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).

Otherwise, the inquiry proceeds to the second step in which the elements of the claims are considered “individually and ‘as an ordered

combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). We consider the question of whether the claims are directed to a *specific improvement* in the capabilities of the computing devices, or, instead, “a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

We, therefore, decide under step two whether the claims: (a) set forth an *inventive concept* that provides a specific means or method that *improves* the relevant technology, or (b) are directed to a result or effect that itself is the abstract idea, in which the claims merely invoke generic processes and machinery. *See Enfish*, 822 F.3d at 1336.

The Examiner’s Rejection A under 35 U.S.C. § 101

Regarding the first step of the *Alice/Mayo* analysis, the Examiner concludes claims 1, 4–11, 14, 15, 18, and 19 are directed to an abstract idea:³

Claim(s) 1, 4-11, 14, 15, 18 and 19 are directed to a system and series of steps for estimating a cost (including the steps of: accessing a home value estimator application . . . , displaying a user interface . . . , receiving data pertaining to different characteristics of the home . . . , retrieving replacement costs . . . , calculating as estimated replacements cost of the home . . . , and generating an initial insurance premium and an initial insurance coverage . . .), which is *a fundamental economic practice*, as well as *a method of organizing human activities*, and thus an abstract idea.

³ “Patent eligibility under § 101 presents an issue of law” *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340 (Fed. Cir. 2013).

Additionally, the courts have recognized similarly directed claims of comparing new and stored information and using rules to identify options (*SmartGene*), organizing information through mathematical correlations (*Digitech*), using categories to organize, store and transmit information (*Cyberphone*), creating a contractual relationship (*buySAFE*), and a mathematical procedure for converting one form of numerical representation to another (*Benson*) to all be directed to abstract ideas.

Final Act. 7 (emphasis added).

Regarding the second step of the *Mayo/Alice* analysis, the Examiner finds the claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception,

because the claims do not provide improvements to another technology or technical field, improvements to the functioning of the computer itself, and do not provide meaningful limitations beyond general linking the use of an abstract idea to a particular technological environment. Additionally, the claims are directed to an abstract idea with additional generic computer elements that do not add meaningful limitations to the abstract idea because they require no more than a generic computer to perform generic computer functions that are *well-understood, routine, and conventional activities previously known to the industry*. The Dependent claim(s) when analyzed as a whole are also held to be patent ineligible under 35 U.S.C. 101 because for the same reasoning as above and the additional recited limitation(s) fail(s) to establish that the claim(s) is/are not directed to an abstract idea.

Final Act. 7 (emphasis added).⁴

⁴ 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 v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

For the aforementioned reasons, the Examiner concludes that all claims 1, 4–11, 14, 15, 18, and 19 on appeal are not patent-eligible under 35 U.S.C. § 101.

Mayo/Alice Analysis — Step 1

Regarding *Alice* Step 1, Appellants argue that the appealed claims do not “simply claim an abstract idea, a mental process or substantially all practical uses of a law of nature or a natural phenomenon.” App. Br. 5.

However, Appellants provide no substantive arguments regarding *Alice* Step 1. App. Br. 5–7. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Therefore, we proceed to *Alice* Step 2.

Mayo/Alice Analysis – Step 2

Because we conclude the claims are directed to an abstract idea for essentially the same reasons articulated by the Examiner (Final Act. 5), we turn to the second part of the *Alice/Mayo* analysis. We analyze the claims to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to ““significantly more”” than the abstract idea. *Alice*, at 2357.

Regarding *Alice* Step 2, Appellants address the purported *inventive concept* of the claims:

Without acquiescing in any way to the conclusion in the pending Office Action that the claims are directed to “a fundamental economic practice, as well as a method of organizing human activities, and thus an abstract idea,” May 1, 2015 Office Action, p. 2, ¶ 19, it is respectfully submitted that each appealed claim of the present application includes additional features that ensure the claims are more than a drafting effort designed to monopolize an abstract idea. App. Br. 7 (emphasis added).

In support, Appellants cite to “*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1259 (Fed. Cir. 2014) (holding that claims directed to syndicated commerce on the computer using the Internet recite patent eligible subject matter).” App. Br. 7. Appellants urge that “[e]ach appealed claim includes significantly more than a judicial exception itself and is directed to a new and useful application.” *Id.* However, Appellants provide no evidence in support of this argument.

We do not find that Appellants’ claims are similar to the claimed solution the court held to be patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014). In *DDR*, the Federal Circuit applied the Supreme Court’s *Alice* two-step framework, and upheld the validity of *DDR*’s patent on its web-page display technology. *DDR*, 773 F.3d at 1255.

We note the court in *DDR* emphasized that the ’399 patent claims did *not* “recite a fundamental economic or longstanding commercial practice.” *DDR*, 773 F.3d at 1257. As distinguished from the claims considered by the court in *DDR*, Appellants’ claims are directed to a method or system for calculating an estimated replacement cost of a home for insurance purposes, and thus *are* directed to a fundamental economic practice, for the reasons discussed above regarding *Alice* step 1.

Moreover, the problem addressed by Appellants’ claims is not similar or otherwise analogous to the specific technical problem addressed by the subject claims in *DDR*, which were directed to *retaining a website visitor when the visitor clicked on a third-party merchant’s advertisement on the host website*. Instead of taking the visitor to the third-party merchant’s website (and thus losing the visitor to the third-party merchant), *DDR*’s

claimed system generated a *hybrid web page* that (1) displayed product information from the third-party merchant, but also (2) retained the host website's "look and feel."

Here, Appellants' claims 1, 4–11, 14, 15, 18, and 19 are not directed to a website that retains the host website's "look and feel" while displaying product information from the third-party merchant, as was the case in *DDR*, at 1257. Although Appellants' invention is directed to the *result* of "generating an initial insurance premium and an initial insurance coverage amount based upon the estimated replacement cost" (claim 1), we find such premium and coverage amounts are at best merely directed to an *improvement* in the insurance-relevant *informational content* (i.e., data) as intended to be viewed and considered by a person.

Specifically, we find no language in the claims on appeal that focuses on a specific *improvement* to the recited processor that performs all the recited steps or functions of computer-implemented claims 1, 4–11, 14, 15, 18, and 19. The claims on appeal are *silent* regarding specific limitations directed to an *improved* computer system, processor, memory, network, database, or Internet. Therefore, we find Appellants' claimed invention does not provide a solution "necessarily rooted in *computer technology* in order to overcome a problem specifically arising in the realm of computer networks," as considered by the court in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d at 1257. (emphasis added).

Further regarding the use of the recited generic "processor", "database" (claim 1), "server" and "communication network" (claim 11), the Supreme Court held "the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention."

Alice, at 2358; *see also Bascom Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016) (“An abstract idea on ‘an Internet computer network’ or on a generic computer is still an abstract idea.”).

Our reviewing court has “repeatedly held that such invocations of computers and networks that are not even arguably inventive are ‘insufficient to pass the test of an inventive concept in the application’ of an abstract idea.” *Elec. Power Grp., LLC, v. Alstom S. A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016) (internal citations omitted); *see also Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (“Rather, the claims recite both a generic computer element—a processor—and a series of generic computer ‘components’ that merely restate their individual functions That is to say, they merely describe the functions of the abstract idea itself, without particularity. This is simply not enough under step two.”).

Appellants further contend the *Bilski* machine-or-transformation test is applicable because,

claim 1 satisfies the machine-or-transformation test. For example, the method of claim 1 includes: accessing a home value estimator application stored on a non-transitory computer readable storage medium and operated on a processor; and displaying a user interface of the home value estimator application across a communication network. These steps identify particular devices and require a particularly-programmed machine. It is respectfully submitted that the use of these features breathes life and meaning into the claims, imposes a meaningful limit on the claim’s scope, and involves more than insignificant “extra-solution” activity.

App. Br. 7 (emphasis omitted).

*The Bilski “Machine-or-Transformation” test*⁵

As recognized by the Federal Circuit in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014), the machine-or-transformation test, as outlined in *In re Bilski*, 545 F.3d 943, 954 (Fed. Cir. 2008), can provide a “useful clue” in the second step of the *Alice* framework. Under *Bilski’s* machine-or-transformation test, a claimed process can be patent-eligible under § 101, if:

- (1) it is tied to a particular machine or apparatus; or
- (2) the process transforms a particular article into a different state or thing. *Bilski*, 545 F.3d at 954 (citing *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972)).

Applying the machine-or-transformation test here (only to method (process) claims 1, 4–10, 15, 18, and 19), we conclude that none of Appellants’ method claims are *sufficiently tied to a particular machine*, because it is our view that a *generic processor*, without more, is not a *particular machine*.⁶ Nor have Appellants established that the method claims on appeal transform a particular (physical) article into a different state or thing.

⁵ As held by the Supreme Court, “although the machine-or-transformation test is reliable in most cases, it is not the *exclusive* test. . . . [R]ather it is a critical clue.” *Bilski v. Kappos*, 561 U.S. 593, 613–14 (2010) (Justices Stevens, Ginsburg, Breyer, and Sotomayor concurring).

⁶ Our reviewing courts have not precisely defined the contours of a “particular machine.” *Cf.* “[T]he fact that one of skill in the art could program a computer to perform the recited functions cannot create structure where none otherwise is disclosed.” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1351 (Fed. Cir. 2015) (citing *Function Media, L.L.C. v. Google, Inc.*, 708 F.3d 1310, 1319 (Fed. Cir. 2013)).

The Supreme Court provides further guidance in *Bilski v. Kappos*, 561 U.S. 593 (2010), that a “prohibition against patenting abstract ideas ‘cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.’” *Id.* at 610 (citation omitted).

Because none of Appellants’ claims on appeal is directed to an *improvement* in a processor, database, or other computer/network component, we conclude that none of the claim limitations, viewed both individually and as an ordered combination, amounts to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter.

Applying the aforementioned guidance from our reviewing courts to the claims before us on appeal, we conclude, in our *Mayo/Alice* analysis, that each of Appellants’ claims 1, 4–11, 14, 15, 18, and 19, considered as a whole, is directed to (under step one), a *patent-ineligible abstract idea*, and under step two, does not recite something “*significantly more*” (*Alice*, at 2357 (internal citation and quotations omitted)) to transform the nature of the claim into a patent-eligible application.

Accordingly, for at least these reasons, we sustain the Examiner’s rejection A under 35 U.S.C. § 101 of claims 1, 4–11, 14, 15, 18, and 19, as being directed to patent-ineligible subject matter in light of *Alice* and its progeny.⁷

⁷ To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. See 37 C.F.R. § 41.37(c)(1)(iv).

Rejection C of Independent Claim 1 under § 103(a)

Issues: Under pre-AIA 35 U.S.C. § 103(a), did the Examiner err by finding that AccuCoverage, Cheng, Birchall, and Stender would have *collectively* taught or suggested the contested *receiving, retrieving, calculating, and generating* claim limitations emphasized above, within the meaning of representative independent claim 1? ⁸

Appellants merely recite the claim language (App. Br. 17), and urge that “Birchall is focused on conducting a claim adjustment process for a specific insured item rather than determining a replacement cost for a home’s contents.” App. Br. 18.

However, our reviewing court guides it is irrelevant that the prior art and the present invention may have different purposes. *See Nat’l Steel Car, Ltd. v. Canadian Pac. Ry., Ltd.*, 357 F.3d 1319, 1339 (Fed. Cir. 2004) (“A finding that two inventions were designed to resolve different problems . . . is insufficient to demonstrate that one invention teaches away from another.”). It is sufficient that references suggest doing what Appellants did, although the Appellants’ particular purpose was different from that of the references. *In re Heck*, 699 F.2d 1331, 1333 (Fed. Cir. 1983) (citing *In re Gershon*, 372 F.2d 535, 539 (CCPA 1967)). For a prima facie case of obviousness to be established, *the reference need not recognize the same problem solved by the Appellants*. *See In re Kemps*, 97 F.3d 1427, 1430 (Fed. Cir. 1996). The Supreme Court provides further guidance: “[N]either the particular motivation nor the avowed purpose of the [Appellants]

⁸ We give the contested claim limitations the broadest reasonable interpretation (BRI) consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

controls” when performing an obviousness analysis. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007).

Further, Appellants fail to address the Examiner’s specific findings regarding the contested limitations. *See* Final Act. 8–9. Instead, Appellants merely recite the language of claim 1, without any substantive argument. App. Br. 17–18. As such, we find Appellants’ arguments unpersuasive. *See In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (“[W]e hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.”).

We note that attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *See In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997). Therefore, based upon our review of the record, and a preponderance of the evidence, we are not persuaded by Appellants’ arguments. Accordingly, we agree with and adopt the Examiner’s underlying factual findings and legal conclusion of obviousness regarding the contested limitations of representative independent claim 1. (Final Act. 11).

Combinability of the Cited References under § 103(a)

Appellants additionally contend the Examiner has relied upon impermissible hindsight in combined the cited references. (App. Br. 16). Appellants urge:

It is respectfully submitted that the ordinary artisan, having no prior knowledge of [Appellants’] invention, would not have a credible reason for modifying the AccuCoverage estimate

worksheet with any of the features of: Cheng’s approach to determining a current value for real estate; Birchall’s method for salvage calculation; and/or Stender’s method for providing web-based user interface to legacy, personal-lines insurance applications, in such a way as to arrive at the method for estimating a replacement cost of a home recited in claim 1.

App. Br. 16.

However, the Supreme Court provides applicable guidance: “when a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *KSR*, 550 U.S. at 417 (quoting *Sakraida v. Ag Pro, Inc.*, 425 U.S. 273, 282 (1976)).

Further regarding Appellants’ allegation the Examiner relied on impermissible hindsight in formulating the rejection (App. Br. 16), Appellants have not provided any objective evidence of secondary considerations (e.g., unexpected results, long-felt but unmet need, commercial success), which our reviewing court guides “operates as a beneficial check on hindsight.” *Cheese Systems, Inc. v. Tetra Pak Cheese and Powder Systems, Inc.*, 725 F.3d 1341, 1352 (Fed. Cir. 2013).

Moreover, on this record, we find the Examiner (Final Act. 12–13) has set forth sufficient “articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Specifically the Examiner cites to a specific portion of Cheng (¶ 6) as providing a motivation for the proffered combination. Similarly, the Examiner cites to a specific portion of Birchall (¶ 6) as providing a motivation for the proffered combination. Final Act. 13. Appellants have not addressed the Examiner’s specific findings. *Id.*

Therefore, based upon a preponderance of the evidence, we are not persuaded of error regarding the Examiner's underlying factual findings and ultimate legal conclusion of obviousness regarding independent claim 1.

Accordingly, we sustain rejection C of representative independent claim 1. We find Appellants' arguments regarding rejection C of independent claim 11 (App. Br. 19–20) are essentially directed to the same issues we have addressed *supra* regarding independent claim 1. Therefore, we sustain rejection C of independent claim 11 for the same reasons discussed above regarding claim 1. The remaining grouped dependent claims 4–10 and 14, also rejected under rejection C, and not substantively argued separately, fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection B of Independent Claim 15

Appellants merely recite the claim language regarding the recited steps of *collecting, employing, and calculating*. Claim 15; *see* App. Br. 22. However, Appellants fail to address the Examiner's specific findings regarding the contested limitations. *See* Final Act. 8–10. Given the absence of substantive argument traversing the Examiner's specific findings (*id.*), on this record, we are not persuaded the Examiner erred. *See Lovin*, 652 F.3d at 1357.

However, Appellants additionally contend:

none of the references teach or suggest the collecting the particular replacement cost data recited in the collecting step claimed or *using the quality of the clothing wardrobes in the home as a basis for calculating the estimated total replacement cost of the home* as recited in claim 15. Birchall is focused on conducting a claim adjustment process for a specific insured

item rather than determining a replacement cost for a home's contents which is used in preparing a total replacement cost of a home.

App. Br. 22–23 (emphasis added).

In the Answer, the Examiner further explains the basis for the rejection:

It appears as if the Applicant is reading limitations into the claims. Consequently, the points argued are not recited in the claims themselves. The claims merely recite that the replacement costs are based on the quantity and quality of the home renovations and the home contents rather than the quality of the clothing wardrobe. AccuCoverage, in at least pages 10-13, discloses calculating a replacement cost for a home by determining and adding costs for the different characteristics of a home using component based technology and that different finishes and materials have different replacement costs that a user inputs via a user interface and the AccuCoverage system using component based technology and retrieving the replacement cost data from information stored in databases based upon the user inputted data. AccuCoverage also indicated that the replacement cost calculations can use used for insurance purposes on pages 10-11. AccuCoverage also discloses that different home finishes and products would have different replacement costs. Cheng, in at least Figures 1-2, and 14-20, discloses calculating replacement costs based on data regarding home renovations including the quantity and quality of the home renovations. Birchall, in at least the abstract, Figures 3-4, and paragraph 0002, discloses determining replacement costs based on data regarding home contents including home furnishings and personal possessions in the home. It would have been obvious to one skilled in the art that personal possessions include both clothing and home furnishings. Therefore, when combined as shown in the final rejection, the combination of AccuCoverage, Cheng, and Birchall, does indeed disclose the claimed limitations.

Ans. 18–19.

Based upon our review of the evidence cited by the Examiner (*id.*), we find including the *quality of the clothing wardrobe(s)* in the home (and the corresponding estimated replacement cost) as a basis for calculating the estimated total replacement cost for a home (including any other valuable chattel stored within the home) would have merely been a predictable result. *See KSR*, at 401 (“[A] combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.”).

Therefore, based upon a preponderance of the evidence (as cited by the Examiner Ans. 18–19), we are not persuaded of error regarding the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness. Nor have Appellants filed a Reply Brief in response to the Examiner’s findings and explanations in the Answer. Accordingly, we sustain rejection B of representative independent claim 15. The remaining dependent claims 18 and 19, also rejected under rejection B, and not substantively argued separately, fall with claim 15. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejection D of Remaining Dependent Claim 5

Appellants advance no separate substantive arguments regarding claim 5, as rejected by the Examiner under rejection D. *See* Final Act. 19–20. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Conclusions

The Examiner did not err in rejecting claims 1, 4–11, 14, 15, 18, and 19 under 35 U.S.C. § 101, as being directed to patent-ineligible subject matter.

The Examiner did not err in rejecting claims 1, 4–11, 14, 15, 18, and 19, under pre-AIA 35 U.S.C. § 103(a), as being obvious over the combined teachings and suggestions of the cited references.

DECISION

We affirm the Examiner’s decision rejecting claims 1, 4–11, 14, 15, 18, and 19, under 35 U.S.C. § 101.

We affirm the Examiner’s decision rejecting claims 1, 4–11, 14, 15, 18, and 19, under pre-AIA 35 U.S.C. § 103(a).

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