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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT J. WOODMANSEY, PHILIP M. GINSBERG,
and GLENN D. KIRWIN

Appeal 2017-004414¹
Application 11/084,547²
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 82–90, 92–113, and 131–153 which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b). An Oral Hearing was held on March 26, 2019.

We AFFIRM.

¹ Our decision references Appellants' Appeal Brief ("Appeal Br.," filed September 30, 2016) and Reply Brief ("Reply Br.," filed January 17, 2017), and the Examiner's Answer ("Ans.," mailed November 16, 2016) and Final Office Action ("Final Act.," mailed August 20, 2015).

² Appellants identify "BGC Partners, Inc." as the real party in interest. Appeal Br. 2.

CLAIMED INVENTION

Appellants' claims relate "to systems and methods for linking orders in electronic trading systems," and more particularly "to systems and methods which enable traders to link trading of goods, services, financial instruments, and commodities in electronic trading systems" (Spec. 1:10–15).

Claims 82 and 134 are the independent claims on appeal. Claim 82, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

82. A method comprising:

[a] at a trader's workstation computer providing an interface to at least one electronic trading system;

[b] receiving, via a processor, into the workstation from a trader on a remote device:

[i] selections of a first item and at least one second item that are traded in the at least one electronic trading system, wherein the first item is different from the at least one second item;

[ii] selections of at least one linking parameter that specifies a linking relationship between the first item and the at least one second; and

[iii] a trader-selected trigger event specifying an occurrence among data, the data to be received from the at least one electronic trading system that is monitored by the workstation;

[iv] in which the remote device and the processor are in electronic communication over a network;

[c] at the workstation, monitoring, via the processor, data received from the at least one electronic trading system to detect the trader-selected trigger event; and

[d] on detection of the trader-selected trigger event, generating, via the processor, the linking relationship between the first item and the at least one second item and controlling, via

the processor, one or more orders for the first item and the at least one second item on the at least one electronic trading system.

REJECTIONS

Claims 82–90, 92–113, and 131–153 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 82–90, 92–101, 103–112, and 131–153 are rejected under 35 U.S.C. § 103(a) as unpatentable over Rickard (US 6,112,189, iss. Aug. 29, 2000) and Neyman (US 7,333,952 B1, iss. Feb. 19, 2008).

Claims 102 and 113 are rejected under 35 U.S.C. § 103(a) as unpatentable over Rickard, Neyman, and Korhammer (US 6,278,982 B1, iss. Aug. 21, 2001).

ANALYSIS

Patent-Ineligible Subject Matter

Independent Claim 82

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See id.* at 219

(“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 192 (1981)); “tanning, dyeing, making water-proof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1853))); and manufacturing flour (*Gottschalk*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Mayo/Alice* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (alterations in original) (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

The PTO recently published revised guidance on the application of § 101. *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“2019 Revised Guidance”). Under that guidance, we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application, i.e., that “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 53 ; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

See 2019 Revised Guidance.

Appellants argue that the Examiner’s rejection is in error because the Examiner fails to establish a prima facie case of subject matter ineligibility

(*see* Appeal Br. 6–15; *see also* Reply Br. 2–8). Appellants’ arguments are not persuasive.

In rejecting the pending claims under 35 U.S.C. § 101, the Examiner analyzes the claims using the *Mayo/Alice* two-step framework (*see* Final Act. 10–18; *see also* Ans. 5–13). The Examiner determined that the claims are directed to “enabling traders to link two or more items for trading and specify parameters for controlling placement of orders for those items” (Final Act. 2). The Examiner also determined that the claims are directed to “linking trade orders by enabling a trader to select two or more items that are to be linked and specify[ing] linking parameters for those items” (Ans. 2), which the Examiner considers to be an abstract idea, inasmuch as the claims are similar to “economic concepts found by the courts to be abstract ideas” (*id.* at 3). The Examiner further determined that independent claim 82 does not include additional elements or a combination of elements sufficient to transform the claim into a patent-eligible application of the abstract idea (*see* Final Act. 2–3; *see also* Ans. 3–4). The Examiner, thus, has followed the two-part framework specified by the Supreme Court in *Mayo/Alice* consistent with Office guidelines.

In this regard, the Examiner has articulated the reasons for the rejection and has notified Appellants of the reasons for the rejection “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. And we find that, in doing so, the Examiner sets forth a *prima facie* case of subject matter ineligibility. *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011); *Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (Section 132 “is violated when a rejection is so uninformative that

it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”). And, when viewed through the lens of the 2019 Revised Guidance, the Examiner’s analysis depicts the claimed subject matter as one of the ineligible “[c]ertain methods of organizing human activity” that include “fundamental economic principles or practices (including hedging, insurance, mitigating risk)” and “commercial or legal interactions (including ... sales activities or behaviors ...)” under Prong One of Revised Step 2A. *See* 2019 Revised Guidance, 84 Fed. Reg. at 51–52.

In response to the Examiner’s determination, Appellants argue that the Examiner “has not properly identified an alleged abstract idea,” “provides only conclusory opinions that the alleged abstract idea is abstract,” and thus, erred in determining that the present claims are directed to an abstract idea (*see* Appeal Br. 7–8; *see also* Reply Br. 2–4). We cannot agree.

Under the first prong of step 2A of the 2019 Revised Guidance, we first determine if the claims recite an abstract idea. In this regard, we note that the Specification is titled “LINKING ORDERS IN ELECTRONIC TRADING SYSTEMS,” and states that the disclosure relates to “systems and methods for linking orders in electronic trading systems” (Spec. 1:10–12). The Background section of the Specification identifies that “[m]odern day trading includes not only the buying and selling of a single type of item, but also more complex transactions involving exchanges of a combination of the same or different types of items” (*id.* at 2:18–21). According to the Specification, “[t]he trading of combinations of items in this way facilitates arbitrage, hedging, and speculation” (*id.* at 2:23–25), but “because such

combinations of items may have very complex relationships, there is a need to automate the trading of combinations of items” (*id.* at 2:26–30).

Consistent with this description, independent claim 82 recites broadly “[a] method” including steps for “providing an interface to at least one electronic trading system,” “receiving ... selections of a first item and at least one second item that are traded in the at least one electronic trading system,” receiving “selections of at least one linking parameter that specifies a linking relationship between the first item and the at least one second [item],” and receiving “a trader-selected trigger event specifying an occurrence among data.” The method includes additional steps for “monitoring ... data received from the at least one electronic trading system to detect the trader-selected trigger event,” and “on detection of the trader-selected trigger event, generating ... the linking relationship between the first item and the at least one second item and controlling ... one or more orders for the first item and the at least one second item on the at least one electronic trading system.”

Upon reviewing the Specification and the claim as whole, as summarized above, we agree with the Examiner that independent claim 82 is directed broadly to “enabling traders to link two or more items for trading and specify parameters for controlling placement of orders for those items.” Here, independent claim 82 receives information (i.e., selections of a first item, at least one second item, at least one linking parameter, and a trigger event (limitation [b])), and then monitors data (i.e., received from the at least one electronic trading system (limitation [c])) to control ordering (limitation [d]). Thus, it is clear that independent claim 82 recites a form of hedging or sales activities/behaviors (*cf.* Spec. 1:10–2:30), and as such, recites

fundamental economic principles or practices and/or commercial interactions that, under the Revised Guidance, fall under the category of “certain methods of organizing human activity.” Accordingly, independent claim 82 recites an abstract idea. *See OIP Techs., Inc. v. Amazon.com, Inc.* 788 F.3d 1359, 1362–63 (Fed. Cir. 2015)(concluding that claimed concept of “offer-based price optimization” is an abstract idea “similar to other ‘fundamental economic concepts’ found to be abstract ideas by the Supreme Court and this court); *Bancorp Servs., L.L.C v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1277–78 (Fed. Cir. 2012) (Holding that performance by computer of operations that previously were performed manually or mentally, albeit less efficiently, does not convert a known abstract idea into eligible subject matter).

Having concluded that claim 82 recites a judicial exception, i.e., an abstract idea, we turn to the second prong of step 2A of the 2019 Revised Guidance and determine whether the claims recite a practical application of the recited judicial exception. Here we look to see if, for example, (i) any additional elements of the claims reflects an improvement in the functioning of a computer or to another technological field, (ii) an application of the judicial exception with, or by use of, a particular machine, (iii) a transformation or reduction of a particular article to a different state or thing (iv) or a use of the judicial exception in some other meaningful way beyond generally linking the use of the judicial exception to a particular technological environment. *See* 2019 Revised Guidance, 84 Fed. Reg. at 55; *See also* MPEP § 2106.05(a)–(c), (e)–(h).

We find no indication in the Specification, nor do Appellants direct us to any indication, that the steps recited in independent claim 82 invoke any

assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes any improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention “appl[ies], rel[ies] on, or us[es] the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 55.

Appellants argue that independent claim 82 is not directed to an abstract idea because it is similar to the Federal Circuit decisions in *DDR Holdings, LLC v. Hotels, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014). More particularly, Appellants argue:

the present claims solve a problem rooted in computer technology to improve the functionality of electronic trading systems by enabling traders to be linked according to selected parameters and then automatically controlled according to those parameters responsive to a selected trigger event. The claimed solution is necessarily implemented in a networked computer environment due to the multiple network nodes and processing and display elements from which multiple orders are received, communicated, and managed.

(Appeal Br. 8; Reply Br. 8). We cannot agree.

Instead, we agree with the Examiner that the additional limitations of a “trader’s workstation computer, an interface, a processor, []a remote device, and electronic trading system” (Ans. 4) simply allow a generic computer to perform the claimed operations using generic computer functions (*cf.* Spec. 5:9–6:29). Moreover, Appellants have not shown how

the claimed subject matter is rooted in technology given that the Specification describes only the use of generic computer equipment used in routine, conventional, and generic manner.

In this regard, we note that the Specification identifies that “workstations 102 and 104 may be personal computers, laptop computers, mainframe computers, dumb terminals, data displays, Internet browsers, Personal Digital Assistants (PDAs), two-way pagers, wireless terminals, portable telephones, etc., or any combination of the same” (Spec. 5:17–22), “[p]rocessor 106, and any additional processors, may be any suitable circuitry or devices capable of processing data such as microprocessors, personal computers, network servers, mainframe computers, dedicated computer systems, etc.” (*id.* at 5:29–33), “[e]ach of networks 108 and 110 may be any suitable data network for communicating data between workstations 102 and 104 and processor 106, such as a local area network, a wide area network, the Internet, an Intranet, a wireless network, a hard wired connection, a dial-up network, etc., or any combination of the same” (*id.* 6:3–8), and “[n]etwork interface 128 may be any suitable interface and/or computer network that facilitates communication between processor 106 and external trading systems 130” (*id.* at 6:27–29).

Appellants argue that claim 82 is not directed to an abstract idea pursuant to the Federal Circuit decision in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (*see* Reply Br. 4–6). More particularly, Appellants argue “that the combination of elements recited in the amended claims perform functions that are not generic computer functions” (Reply Br. 5 (emphases omitted)). However, independent claim 82, unlike the claims found non-abstract in prior cases, uses generic

computer technology to provide, receive, and monitor/detect data, and then generate/control a linking relationship between the data, and does not recite an improvement to a particular computer technology. *See, e.g., McRO*, 837 F.3d at 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”) (*cf.* Spec. 4:20–26, 5:17–22, 5:29–33, 6:3–8, 6:27–29, 8:5–7, 9:32–3).

Appellants last argue that the claims are patent-eligible because “the claims are directed toward specific and narrow embodiments including meaningful limitations that in no way ‘tie up’ or pre-empt the alleged abstract ideas” (Appeal Br. 12–13). However, a lack of complete preemption does not make the claims any less abstract. *See buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1355 (Fed. Cir. 2014); *see also Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *see also OIP Techs.*, 788 F.3d at 1362–1363 (“[T]hat the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract.”).

Turning to Step 2B of the of the 2019 Revised Guidance, we determine whether the additional elements (1) add a specific limitation or combination of limitations that is not well-understood, routine, and conventional activity in the field, which is indicative that an inventive concept may be present or (2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an

inventive concept may not be present. *See* 2019 Revised Guidance, 84 Fed. Reg. at 56.

Appellants argue that “independent claims **82** and **134** do, indeed, recite elements that alone and/or in combination are significantly more than any alleged abstract idea” (Appeal Br. 10–11; *see also* Reply Br. 4–7). However, other than merely reproducing portions of independent claim 82 (*see* Appeal Br. 10–11), Appellants provide no further argument, such as how the elements are arranged in a non-generic or unconventional manner such that it is a technical improvement over prior art ways of “linking trade orders by enabling a trader to select two or more items that are to be linked and specify linking parameters” (Ans. 3–4). *See BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1351 (Fed. Cir. 2016).

Finally, to the extent Appellants maintain that the claimed invention is patent-eligible, i.e., that claim 82 amounts to “significantly more” than an abstract idea, because Appellants contention “that the instant rejections under § 103 are improper” (Reply Br. 5–6), Appellants misapprehend the controlling precedent.

Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent-eligible. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or non-obviousness, but rather, a search for “an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 573 U.S. at 217–18 (citation omitted).

“Groundbreaking, innovative, or even brilliant discovery does not by itself

satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology vs. Myriad Genetics, Inc.*, 569 U.S. 576, 591(2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond*, 450 U.S. at 188–89 (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

Remaining claims 83–90, 92–113, and 131–153

Independent claim 134 recites generally an apparatus including a computer processor programmed for performing the steps of receiving selections of a first item, at least one second item, at least one linking parameter, and a trigger event (limitation [b]), monitoring data (limitation [c]), and controlling one or more orders based on the monitoring (limitation [d]). Appellants request that each claim be considered separately (Appeal Br. 14). However, Appellants have not provided any separate arguments for independent claim 134 (*see* Appeal Br. 6–14; *see also* Reply Br. 2–8). As such, we are not persuaded that the Examiner erred in rejecting independent claim 134 under 35 U.S.C. § 101 for the same reasons as to independent claim 82, *supra*.

Regarding the remaining claims, Appellants do not direct our attention to any specific limitations in the dependent claims that would alter our analysis. We find that dependent claims 83–90, 92–113, 131–133, and 135–153 merely describe further characteristics of the underlying concept and lack additional elements that would render the claims patent-eligible. As such, we agree with the Examiner that the dependent claims “do not remedy the deficiencies of the independent claims” (Ans. 8). The dependent claims

merely further describe characteristics of the at least one order, the first item, the at least one second item, the location and sequence of order submissions, the linking parameter, and the trigger event, which we discern sit squarely within, and does not alter appreciably, the broader concept of “enabling traders to link two or more items for trading and specify parameters for controlling placement of orders for those items.”

In view of the foregoing, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of claims 82–90, 92–113, and 131–153 for the reasons discussed above.

Obviousness

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claims 82 and 134 under 35 U.S.C. § 103(a) because Neyman, upon which the Examiner relies, “do[es] not disclose or suggest ‘on detection of the trader-selected trigger event, generat[ing] ... the linking relationship between the first item and the at least one second item,” as recited by limitation [d] of independent claim 82, and similarly recited by independent claim 134 (Appeal Br. 18–20 (emphases omitted); Reply Br. 9–10).

The Examiner maintains the rejection is proper, and cites column 3, lines 27–31 and 55–65, column 9, lines 9–13, and column 10, lines 16–26 and 32–37 of Neyman as disclosing the argued limitation (*see* Final Act. 5, 13). In the Examiner’s Answer, the Examiner also cites column 3, lines 6–15 and column 5, line 55 through column 6, line 2 of Neyman as disclosing the argued limitation (*see* Ans. 11).

We have reviewed the cited portions of Neyman, and agree with Appellants that none of the cited portions of Neyman discloses or suggests

the argued limitation. Neyman is directed to electronic brokerage “systems in which counterparties trade anonymously within fixed credit limits” (Neyman, col. 1, ll. 6–8). Although we agree with the Examiner that Neyman discloses trigger events and “automatically submit[ting] an order once the market reaches a given condition” (Ans. 11 (citing Neyman, col. 5, l. 55 – col. 6, l. 2) (emphases omitted)), we cannot agree with the Examiner that Neyman’s “means for matching and executing joint execution orders comprising a plurality of linked orders” (*see* Final Act. 5; *see also* Ans. 11 (citing Neyman, col. 3, ll. 27–31) discloses or suggests “generating, via the processor, the linking relationship,” based upon “detection of the trader-selected trigger event,” as called for by limitation [d] of independent claims 82 and 134. Instead, we agree with Appellants that the Examiner has not shown how “Ne[y]man discloses or suggests the act of ‘generating ... the linking relationship’ occurring after detection of the trader-selected trigger event” (Reply Br. 9 (emphasis omitted); Appeal Br. 18).

More particularly, we agree with Appellants that in Neyman, the “linking relationship is generated before the trigger event occurs” (Reply Br. 10 (emphases omitted)), whereas limitation [d] requires that the linking relationship be generated after the trigger event occurs, i.e., “on detection of the trader-selected event, generating ... the linking relationship.” In making this determination, we note that Neyman discloses that “[a] trader may program his terminal automatically to submit an order once the market reaches a given condition” (Neyman, col. 5, l. 55–col. 6, l. 2). Neyman further discloses that “[t]he deal process begins with one or more traders submitting orders ... with instructions to buy or sell with specific restrictions, such as price and amount” (*id.* at col. 7, ll. 50–53) and that

“[w]hen the deal matching process is completed ... the deal execution process begins” (*id.* at col. 10, ll. 16–17). The Examiner does not rely on Rickard to address this limitation (*see* Final Act. 5–6). Thus, we are persuaded by Appellants’ argument that the combination of Rickard and Neyman fails to disclose or suggest the argued limitation.

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claims 82 and 134 under 35 U.S.C. § 103(a).³ For the same reasons, we also do not sustain the Examiner’s rejection of claims 83–90, 92–101, 103–112, 131–133, and 135–153, which depend therefrom. On the same basis, we do not sustain the obviousness rejection of dependent claims 102 and 113, as the additional reference, Korhammer, is not cited to remedy the aforementioned deficiency.

DECISION

The Examiner’s rejection of claims 82–90, 92–113, and 131–153 under 35 U.S.C. § 101 is affirmed.

The Examiner’s rejections of claims 82–90, 92–113, and 131–153 under 35 U.S.C. § 103(a) are 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)(1)(iv).

AFFIRMED

³ Because Neyman fails to disclose or suggest the limitations for which it was cited by the Examiner, we do not consider the availability of Neyman as a valid prior art reference at this time (*see* Appeal Br. 17–18; *see also* Reply Br. 9).