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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* ROBERT PACE, GREGG WEINSTEIN,  
PAUL VIGILANTE, CLAUDIA IDANN RERICHA,  
RICHARD COHN, WALTER JOSEPH CLAYTON,  
MICHAEL DONAHUE, and MINDY GORDON

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Appeal 2017-004425<sup>1</sup>  
Application 11/927,189<sup>2</sup>  
Technology Center 3600

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Before BIBHU R. MOHANTY, TARA L. HUTCHINGS, 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 1–25. We have jurisdiction under 35 U.S.C. § 6(b).

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<sup>1</sup> Our decision references Appellants’ Appeal Brief (“Appeal Br.,” filed October 28, 2016) and Reply Brief (“Reply Br.,” filed January 25, 2017), and the Examiner’s Answer (“Ans.,” mailed November 25, 2016) and Final Office Action (“Final Act.,” mailed July 7, 2016).

<sup>2</sup> Appellants identify Goldman, Sachs & Co. as the real party in interest. Appeal Br. 2.

We AFFIRM.

### CLAIMED INVENTION

Appellants' claimed invention relates to "a financial ecosystem whose participants carry on their activities in a manner that ensures compliance with various internal and external qualifications, requirements, and conditions" (Spec. ¶ 1).

Claims 1, 5, 6, 12, and 22 are the independent claims on appeal. Claim 12, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

12. A method comprising:

[a] receiving data related to a financial entity entering into a financial ecosystem for trading securities privately between qualified entities in compliance with private placement requirements;

[b] verifying eligibility and qualification status of the entity for participating in the financial ecosystem based on the received data, wherein verifying the eligibility and qualification status comprises:

[c] identifying at least one first prerequisite that governs whether an entity is eligible to participate in the ecosystem;

[d] determining via a computer whether the entity meets the at least one first prerequisite, thereby being eligible to participate in the ecosystem;

[e] identifying at least one second prerequisite that governs whether an entity is qualified to participate in the ecosystem;

[f] determining whether the entity meets the at least one second prerequisite, thereby being qualified to participate in the ecosystem; and

[g] if the entity is eligible and qualified, executing a contract in which the entity agrees to adhere to the at least

- one second prerequisite, thereby allowing the entity to participate in the ecosystem;
- [h] identifying at least one third prerequisite that governs whether the entity is permitted to engage in one or more designated ecosystem transactions;
- [i] determining whether the entity meets the at least one third prerequisite, thereby permitting the entity to engage in designated ecosystem transactions;
- [j] when the entity is so permitted, granting the entity designated status, thereby allowing the entity to engage in designated ecosystem transactions; and
- [k] entering into one or more designated ecosystem transactions by the entity if the entity qualifies for a reservation number for each designated ecosystem transaction.

#### REJECTION

Claims 1–25 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

#### ANALYSIS

##### *Patent-Ineligible Subject Matter*

##### *Independent claims 1, 5, 6, 12, and 22*

Appellants argue independent claims 1, 5, 6, 12, and 22 as a group (Appeal Br. 12–19; Reply Br. 2–7). We select independent claim 12 as representative, and the remaining independent claims stand or fall with independent claim 12. *See* 37 C.F.R. § 41.37(c)(1)(iv).

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))).

In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 176; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber

products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* 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 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.” 2019 Guidance 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* Guidance.

Here, in rejecting the pending claims under 35 U.S.C. § 101, the Examiner determined that the claims are directed to an abstract idea for “establishing and operating a financial trading ecosystem” (Final Act. 2; Ans. 3). More particularly, the Examiner states that independent claim 12 includes steps for “receiving data, verifying eligibility and qualification status, identifying, determining, if eligible and qualified executing a contract, identifying, determining, when permitted granting and entering into one or more designated ecosystem transactions” (Final Act. 2), and is

similar to a mental process that could be performed in the human mind, or by a human using a pen and paper. Such concept is similar to other mental processes found abstract by the courts

such as comparing new and stored information and using rules to identify options in *SmartGene*, and obtaining and comparing intangible data in *Cybersource*.

(Final Act. 2–3; *see also* Ans. 2–3). The Examiner also determined that independent claim 12 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. 3; *see also* Ans. 3).

We are not persuaded, as an initial matter, by Appellants’ argument that the Examiner erred in determining that claim 12 is directed to an abstract idea (Appeal Br. 12–14; *see also* Reply Br. 2–6). The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification, based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, the Specification, including the claim language, make clear that the claims focus on an abstract idea, and not on any improvement to computer technology and/or functionality.

The Specification is titled “**ECOSYSTEM ALLOWING COMPLIANCE WITH PRESCRIBED REQUIREMENTS OR OBJECTIVES.**” The Background section of the Specification describes that there are drawbacks, e.g., governmental regulation, public disclosure, risk, with regulated marketplaces (Spec. ¶¶ 3–7). According to the Specification, “there is a need for systems and methods that allow market

participants to interact in a manner that ensures compliance with terms and conditions, including those driven by regulatory constraints” (*id.* ¶ 8). To address these drawbacks, “the present invention provides an environment . . . that allows only certain participants to privately place trade orders, trade securities, settle trades, and receive nonpublic information” (*id.* ¶ 53). And, taking independent claim 12 as representative, the claimed subject matter is generally directed to a set of steps for receiving entity data, verifying eligibility and qualification status of the entity, identifying first, second, and third prerequisites, determining whether the entity meets these prerequisites, permitting/allowing, and entering transactions.

Understood in light of the Specification, we agree with the Examiner that independent claim 12 is directed broadly to “establishing and operating a financial trading ecosystem” (Final Act. 2; Ans. 3). 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 “[m]ental processes” that include “concepts performed in the human mind (including an observation, evaluation, judgment, opinion),” and thus an abstract idea. *See* 2019 Revised Guidance, 52

The 2019 Revised Guidance provides five “exemplary considerations” that “are indicative that an additional element (or combination of elements)[] may have integrated the exception into a practical application.” 2019 Revised Guidance at 55 (emphasis added). The first exemplary consideration is whether “[a]n additional element reflects an improvement in the functioning of a computer, or an improvement to other technology or technical field.” *Id.* (citing MPEP § 2106.05(a)). Here, Appellants argue that independent claim “12 recites a specific process using particular

information and techniques to achieve an improved technological result” (Appeal Br. 14; *see also* Reply Br. 2–5). However, we find no indication in the Specification, nor do Appellants direct us to any indication, that the steps recited in independent claim 12 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention 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 Guidance*, 55.

It also is significant here that although independent claim 12 recites that the step of determining whether an entity meets a first prerequisite is performed “via computer,” none of the other steps, i.e., receiving entity data, verifying eligibility and qualification status of the entity, identifying first, second, and third, prerequisites, determining whether the entity meets the second and third prerequisites, permitting/allowing, and entering

transactions, include any “via computer” limitation. Even so, the step of determining whether an entity meets a first prerequisite can be performed by a human, e.g., mentally or manually, using a pen and paper, without the use of a computer or any other machine.<sup>3</sup> For example, receiving entity data can be collected manually (*see* Spec. ¶¶ 66–69), the verification/qualification, identification, determination, and permitting/allowing steps can be performed, either mentally or manually (*see, e.g.*, Spec. ¶¶ 89, 95), and the last step of entering transactions can also be performed manually (*see* Spec. ¶¶ 117).

Appellants argue that the Examiner improperly “summarizes the entirety of Claim 12 and the other claims (as part of an over-generalized characterization of the claims) into a few words in an attempt to make the claims sound abstract” (Appeal Br. 12; *see also id.* at 18–19). Appellants’ argument is not persuasive at least because there is no requirement that the Examiner’s formulation of the abstract idea copy the claim language. The Examiner’s characterization here, moreover, is fully consistent with the Specification, as discussed above. That independent claim 12 includes more words than the phrase the Examiner used to articulate the abstract idea to which the claim is directed is an insufficient basis to persuasively argue that the claim language has been mischaracterized or that the Examiner has otherwise failed to consider all of the limitations of the claim. *See Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016).

An abstract idea can generally be described at different levels of abstraction. As the Board has done, the claimed abstract idea could be described as generating menus on a

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<sup>3</sup> We note that independent claim 11 does not even recite that the method steps are performed by a processor or a computer.

computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.

Appellants further argue that independent claim 12 is not directed to an abstract idea because it “recite[s] a specific process that performs specific operations in a manner never done before using specific data” (Appeal Br. 13–14). That argument is not persuasive of Examiner error at least because preemption is not the sole test for patent-eligibility.

There is no dispute that the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption.” *Alice Corp.*, 573 U.S. at 216. But, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 573 U.S. at 215). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellants further argue that the pending claims are not directed to an abstract idea pursuant to the Federal Circuit decisions in *Enfish* and *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (*see* Reply Br. 2–5). However, there is a fundamental difference between computer functionality improvements, on the one hand, and uses of existing computers as tools to perform a particular task, on the other. Indeed, the

Federal Circuit applied this distinction in *Enfish* in rejecting a § 101 challenge at the step one stage of the *Mayo/Alice* analysis because the claims at issue focused on a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data, and not on asserted advances in uses to which existing computer capabilities could be put. *Enfish*, 822 F.3d at 1335–36.

We find no parallel here between independent claim 12 and the claims in *Enfish* nor any comparable aspect in claim 12 that represents “an improvement to computer functionality.” In this regard, we note that the Specification discloses broadly that “ecosystem controller **1901** may serve to aggregate, process, store, search, serve, identify, instruct, generate, match, or facilitate interactions with a computer through securities-related technologies, or other related data” (Spec. ¶ 125). Here, Appellants assert, without explaining, that several limitations from independent claim 12 “are specifically designed to achieve an improved technological result” (Reply Br. 4). However, the alleged advantages that Appellants identify do not appear to concern an improvement to computer capabilities or provide details on the technological manner in which the steps are performed, but instead relate to an alleged improvement in establishing and operating a financial trading ecosystem through a process in which a computer is used as a tool in its ordinary capacity (*see, e.g.*, Spec. ¶¶ 125–145).

We also find no parallel between independent claim 12 and the claim at issue in *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016) (*see* Reply Br. 9–11). Appellants assert that like the claims in *McRO*, independent claim 12 is patent-eligible because it “is limited to a

specific process using particular information and techniques and therefore does not preempt approaches that use different structures or different techniques” (Appeal Br. 14; Reply Br. 3–5).

The Federal Circuit premised its determination that the claims in *McRO* were patent-eligible, not merely on the specificity of the claimed animation scheme, but rather on the fact that the claims, when considered as a whole, were directed to a technological improvement over the existing, manual 3-D animation techniques and used limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice. We are not persuaded that a comparable situation is presented here. As our reviewing court has made clear, “relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible.” *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015).

Turning to the second step of the *Alice* framework, Appellants argue that the Examiner has failed to establish “why the additional elements of [c]laim 12 other than a computer or processor do not add significantly more to the exception individually and in combination” (Appeal Br. 14–17; *see also* Reply Br. 5–7). However, we agree with the Examiner that the additional elements taken alone or in combination do not perform anything more than conventional computer implementation (*see* Final Act. 3; Ans. 3). More particularly, we agree with the Examiner that the only additional limitation of independent claim 12 “is the processor (i.e. computer) configured to execute the abstract idea” (Ans. 3).

Appellants also argue that “the Examiner makes no mention of the numerous elements of the 255-word claim that are more than simply a

computer or processor performing a process for entering into at least one designated ecosystem transaction by an entity” (Appeal Br. 13). However, Appellants do not point to a particular portion of the Specification to show where the Specification discloses how these other numerous elements transform the abstract idea into patent-eligible subject matter. Nor do Appellants provide adequate evidence or technical reasoning that independent claim 12 improves some existing technological process or solves some technological problem in conventional industry practice, such as in *Diamond v. Diehr*, 450 U.S. 175 (1981). *See Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1334 (Fed. Cir. 2015) (determining that the “claims recit[ed] a commonplace business method aimed at processing business information despite being applied on a general purpose computer”), *cert. denied*, 136 S. Ct. 2510 (2016); *see also Alice*, 134 S. Ct. at 2359.

Here, we determine the steps for “receiving data, verifying eligibility and qualification status, identifying, determining, if eligible and qualified executing a contract, identifying, determining, when permitted granting and entering into one or more designated ecosystem transactions” (*see* Final Act. 2), amount to nothing more than mere instructions to implement the abstract idea on a computer—none of which add an inventive concept because they merely require the application of conventional, well-known analytical steps. *See Ultramercial*, 772 F.3d at 716 (“[T]he claimed sequence of steps comprises only ‘conventional steps, specified at a high level of generality,’ which is insufficient to supply an ‘inventive concept.’” (citing *Alice*, 134 S. Ct. at 2357)). Thus, each limitation, at best, does no more than require a generic computer to perform generic computer functions.

And, considered as an ordered combination, the computer component of Appellants' independent claim 12 adds nothing that is not already present when the limitations are considered separately. Viewed as a whole, Appellants' claims simply recite the concept of "establishing and operating a financial trading ecosystem" (Final Act. 2; Ans. 3). The claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims at issue amount to nothing significantly more than an instruction to apply the abstract idea of "establishing and operating a financial trading ecosystem" (Final Act. 2; Ans. 3), which under our precedents, is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 134 S. Ct. at 2360.

Appellants last argue that independent claim "12 recites a specific process that uses specific data and specific technology in a manner never done before," analogous to the situation in *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (*see* Appeal Br. 16–17; Reply Br. 5–7). However, Appellants do not persuasively explain how, and we do not see how, Appellants' claims parallel the claims in *Bascom*, which recited a "non-conventional and non-generic arrangement of known, conventional pieces" within a network, the arrangement of elements being "a technical improvement over the prior art ways of filtering." *Bascom*, 827 F.3d at 1350. *See also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) ("Rather, the 'interactive interface' simply describes a generic web server with attendant software, tasked with providing web pages to and communicating with the user's computer.").

Appellants other arguments, including those directed to now-superseded USPTO guidance, have been considered but are not persuasive of error. (*See* 2019 Guidance at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017 of the MPEP (published Jan. 2018) should not be relied upon.”).)

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 12 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of independent claim 12, and independent claims 1, 5, 6, and 22, which fall with independent claim 12.

*Dependent claims 2–4, 7–11, 13–21, and 23–25*

Appellants also argue separately dependent claims 2–4, 7–11, 13–21, and 23–25 (*see* Appeal Br. 19–25; *see also* Reply Br. 7–8). As we find, however, that dependent claims 2–4, 7–11, 13–21, and 23–25 merely describe further characteristics of the underlying concept and lack additional elements that would render the claims patent-eligible, we also sustain the rejection under § 101 of these dependent claims on the same basis as the independent claims from which they depend. In particular, the dependent claims merely recite variations related to additional prerequisites and rules, which we discern sits squarely within, and does not alter appreciably, the broader concept of “establishing and operating a financial trading ecosystem” (Final Act. 2; Ans. 3).

We are not persuaded, on the present record, that the Examiner erred in rejecting claims 2–4, 7–11, 13–21, and 23–25 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claims 2–4, 7–11, 13–21, and 23–25 for the reasons discussed above.

Appeal 2017-004425  
Application 11/927,189

DECISION

The Examiner's rejection of claims 1–25 under 35 U.S.C. § 101 is affirmed.

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