UNITED STATES PATENT AND TRADEMARK OFFICE

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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 ANTHONY RENSHAW

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Appeal 2017-005201
Application 12/827,358[1]
Technology Center 3600

———————

Before HUBERT C. LORIN, NINA L. MEDLOCK, and
BRADLEY B. BAYAT, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Anthony Renshaw (Appellant) seeks our review under 35 U.S.C.
§ 134(a) of the Rejection of claims 10–15 and 21–31. We have jurisdiction
under 35 U.S.C. § 6(b).

SUMMARY OF DECISION

We AFFIRM.

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[1] The Appellant identifies Axioma, Inc., as the real party in interest. Appeal
Br. 1.

THE INVENTION

Claim 10, reproduced below, is illustrative of the subject matter on appeal.

10. A computer-implemented method for computing a quantitative measure of a market trend comprising:

[1] storing in a memory a first selection universe of names of possible investment holdings for the market current at a first time;

[2] computing the constituent asset holdings of a first portfolio having a predicted risk, measured in units of annual volatility or equivalent units, from the first selection universe by solving a first portfolio construction problem using a first risk model whose risk estimates are current at the first time such that the predicted risk of the first portfolio is a minimum risk among all possible, acceptable portfolios;

[3] storing in a memory a second selection universe of names of possible investment holdings for the market current at a second time where the second time is different than and prior to the first time;

[4] computing the constituent asset holdings of a second portfolio having a predicted risk, measured in units of annual volatility or equivalent units, from the second selection universe by solving a second portfolio construction problem using a second risk model whose risk estimates are current at the second time such that the predicted risk of the second portfolio is a minimum risk among all possible, acceptable portfolios;

[5] selectively combining the first and second portfolios to create a third portfolio whose weights are a function of the differences in the weights in each name of the constituent asset holdings of the first and second portfolios;

[6] evaluating said differences in names and weights of the constituent asset holdings of the first and second portfolios to obtain a quantitative measure of a possible trend; and

[7]   evaluating the names and weights of this third portfolio to obtain a quantitative measure of the possible trend; and

[8]   outputting the quantitative measure of the possible trend.

Appeal Br. 26–27 (Claims Appendix) (numbering and bracketing have been added).

THE REJECTIONS

The following rejections are before us for review:

Claims 10–15 and 21–31 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

Claims 10–15 and 21–31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ricciardi (US 2002/0059126 A1, published May 16, 2002) and Wherry et al. (US 2002/0038273 A1, published Mar. 28, 2002).

ISSUES

Did the Examiner err in rejecting claims 10–15 and 21–31 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter?

Did the Examiner err in rejecting claims 10–15 and 21–31 under 35 U.S.C. § 103(a) as being unpatentable over Ricciardi and Wherry?

ANALYSIS

The rejection of claims 10–15 and 21–31 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

Independent claims 10 and 31

The Appellant argues independent claims 10 and 31 together. *See* Appeal Br. 10–16. We select claim 10 as representative of the independent claims.

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014), identifies a two-step framework for determining whether claimed subject matter is judicially excepted from patent-eligibility under 35 U.S.C. § 101.

According to *Alice* step one, "[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept," such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, the Examiner determined that "[t]he claims are directed to the abstract idea of computing constituent asset holdings of portfolios so as to measure possible trends" and that this "is considered to be an abstract idea because it is (i) a fundamental economic practice, and/or (ii) mathematical relationships." Non-Final Act. 2. The Examiner also determined that all of the claimed "steps could be performed mentally or by hand by a human." Ans. 5. According to the Examiner, the claims are directed to concepts similar to the abstract ideas identified in *Alice, Bilski v. Kappos,* 561 U.S. 593 (2010), and *Parker v. Flook*, 437 U.S. 584 (1978). *Id.*

The Appellant argues that "the claims do not constitute simply 'the abstract idea of computing constituent asset holdings of portfolios so as to measure possible trends' which would in fact be abstract." Appeal Br. 11. According to the Appellant:

> Numerous, well known, variations on mathematical modeling techniques for computing asset holdings of a portfolio are addressed at page 1, line 18 –page 5, line 15, for example. All of these approaches are very specific in how they seek to optimize portfolios, and to differentiate themselves from one another in the marketplace. Some have been described and used for decades. These approaches are not abstract at all as

> they are implemented in systems employed around the world
> which are advantageously employed in the management of
> billions of dollars of investments.

Id.

The difficulty with the Appellant's argument is that it does not address the claimed subject matter. "[T]he name of the game is the claim." *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998). *See also In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994) ("The problem with Warmerdam's argument is that the claims here do not have that effect. It is the claims which define the metes and bounds of the invention entitled to the protection of the patent system."). "The § 101 inquiry must focus on the language of the Asserted Claims themselves." *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1149 (Fed. Cir. 2016). *See Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345 (Fed. Cir. 2013) (admonishing that "the important inquiry for a § 101 analysis is to look to the claim"); *see also Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343, 1346 (Fed. Cir. 2014) ("We focus here on whether the claims of the asserted patents fall within the excluded category of abstract ideas.").

The "directed to" inquiry in the claims applies a stage-one filter to the claims, considered in light of the Specification, based on whether "their character as a whole is directed to excluded subject matter." *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015); *see also Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (Inquiring into "'the focus of the claimed advance over the prior art.'").

Claim 10 recites "[a] computer-implemented method for computing a quantitative measure of a market trend comprising:" (1) storing first information, (2) computing second information ("a first portfolio") from the first information, and (3) storing third information, (4) computing fourth information ("a second portfolio") from the third information, (5) selectively combining information ("the first and second portfolios") to create a fifth information ("third portfolio"), (6) evaluating differences between information ("the first and second portfolios"), (7) evaluating information ("the third portfolio"), and (8) outputting information ("the quantitative measure of the possible trend."). Claim 10 specifies the content of certain information. For example, the first information includes "a first selection universe of names of possible investment holdings for the market current at a first time," and the second information includes "constituent asset holdings of a first portfolio having a predicted risk, measured in units of annual volatility or equivalent units."

The court in *Enfish* put the question as being "whether the focus of the claims is on [a] specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool." *Enfish*, 822 F.3d at 1335–1336. The court found that the "plain focus of the claims" was on "an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity." *Id.* at 1336.

"In determining the eligibility of respondents' claimed process for patent protection under § 101, their claims must be considered as a whole." *Diamond v. Diehr*, 450 U.S. 175, 188 (1981). The question is whether the claims as a whole "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, we find that claim 10, as a whole, is focused on storing, computing, and evaluating information, namely information about investment holdings. We do not see that claim 10 is focused on an improvement to any technology such as a computer or an improved process for storing or retrieving data in a computer. Here, as in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011), all of claim 10's "method steps can be performed in the human mind, or by a human using a pen and paper." As in *CyberSource*, the method of claim 10 "can be performed by a human who simply reads records . . . from a preexisting database." *Id.* Storing, computing, and evaluating information, including information about investment holdings, is akin to purely mental processes. *Return Mail, Inc. v. United States Postal Serv.*, 868 F.3d 1350, 1368 (Fed. Cir. 2017) ("Encoding and decoding mail recipient information—including whether the sender wants a corrected address—are processes that can, and have been, performed in the human mind.").

"The 'abstract idea' step of the inquiry calls upon us to look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs of Texas, LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *see also Enfish*, 822 F.3d at 1335, quoted in *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1241 (Fed. Cir. 2016).

In that regard, the Specification discusses the problem, which is that "many events in the equity market often occur at a regular pattern with respect to the end of the month" (Spec. 12: 3–4). For example, benchmarks, indexes, financial reports, and risk models may be released once a month. *Id.* at 12: 3–14. According to the Specification, "[t]o address such events, the present invention introduces a variable N that defines the number of days before or after the end of the month." *Id.* at 12: 21–22. As an example, the Specification describes that a portfolio manager constructs two different portfolios: a first portfolio using a statistical factor risk model that is dated as of "N=+4" and a second portfolio using a statistical factor risk model that is dated as of "N=+1". *Id.* at 15: 3–18. The differences between the two portfolios "will represent a quantitative measure of a trend in the market that the portfolio manager wishes to exploit." *Id.* at 15: 21–22. In light of the Specification's description of the problem and solution, the advance over the prior art by the claimed invention is constructing investment portfolios using separate portfolio optimizations using risk models associated with different times (i.e., values of "N") and comparing the portfolios in order to identify a quantitative measure of a trend in the market.

Given the focus of claim 10 as a whole, in light of the Specification, is on data gathering activities[2] in support of constructing investment portfolios using separate portfolio optimizations using risk models associated with different times (i.e., values of "N") and comparing the portfolios in order to

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[2] *Cf. Elec. Power Grp.*, 830 F.3d at 1353 (When "[t]he focus of the asserted claims" is "on collecting information, analyzing it, and displaying certain results of the collection and analysis," the claims are directed to an abstract idea).

identify a quantitative measure of a trend in the market, the claims are properly characterized as being "directed to" computing a quantitative measure of a market trend. Computing a quantitative measure of a market trend is an abstract idea. It is similar to the concept of managing risk, which is a fundamental economic practice. *See Bilski.* It is also similar to the concept of risk mitigation identified in *Alice.*

The Appellant next argues that the claims "do not preempt other and different strategies," and reproduces limitations of claims 10–15 and 21–30. Appeal Br. 12–13.

We are not persuaded of error in the Examiner's rejection. Repeating what is claimed does not explain *why* the claims are not directed to an abstract idea as the Examiner has determined them to be.

It is true that the Supreme Court has characterized pre-emption as a driving concern for patent eligibility. *See Alice*, 134 S. Ct. at 2354. But characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption 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*, 134 S. Ct. at 2354). However, "[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility." *Id.* at 1379. *Cf. OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) ("[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."). "What matters is whether a claim threatens to subsume the full scope of a fundamental concept, and when those concerns arise, we must look for meaningful limitations that prevent the claim as a whole from covering the concept's every practical application." *CLS Bank Int'l v. Alice Corp. Pty. Ltd.*, 717 F.3d 1269, 1281 (Fed. Cir. 2013) (Lourie, J., concurring). Here, we find the claimed subject matter covers patent-ineligible subject matter. Accordingly, the pre-emption concern is necessarily addressed. "Where a patent's claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, [] preemption concerns are fully addressed and made moot." *Ariosa Diagnostics*, 788 F.3d at 1379.

In view of the above, we see no error in the Examiner's determination that claim 10 is directed to an abstract idea. We reach the same conclusion as to independent claim 31, which recites similar limitations.

Step two of the *Alice* framework is "a search for an 'inventive concept'—*i.e.,* an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Alice*, 134 S. Ct. at 2355 (alteration in original) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.,* 566 U.S. 66, 73 (2012)).

> In that regard, the Examiner determined that

> The additional elements or combination of elements (e.g. "storing," "outputting") in the claims other than the abstract idea per se amounts to no more than: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and

conventional activities previously known to the pertinent
industry.

Non-Final Act. 2–3.

The Appellant argues that "to the extent an abstract concept is
employed, it is done 'to a new and useful end' which remains 'eligible for
patent protection'" (citing *Gottschalk v. Benson*, 409 U.S., 63, 67 (1972))
and "a specific context and approach to this usage are required which when
considered as a whole amount to significantly more than the abstract idea."
Appeal Br. 13–14. Appellant also argues that claim 10 requires a "close
interrelationship and cooperation of all the steps of this claim" and "in
particular the combining of the two different portfolios current at different
times results in a unique third portfolio which is evaluated in a unique way
and then utilized to output 'the quantitative measure of the possible trend.'"
Id. at 16. And Appellant contends that "[u]nconventional steps and elements
when considered as a whole confine the invention to a particular useful
application." *Id.*

But the particulars of claim 10 simply give the storing, computing,
evaluating, and outputting steps a practical application. In that regard, "[t]he
Court [in *Flook*] rejected the notion that the recitation of a practical
application for the calculation could alone make the invention patentable."
CyberSource Corp. v. Retail Decisions, Inc., 654 F.3d 1366, 1371 (Fed. Cir.
2011). *See also, Bancorp Services, L.L.C. v. Sun Life Assur. Co. of Canada
(U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) ("[T]he use of a computer in an
otherwise patent-ineligible process for no more than its most basic function
— making calculations or computations — fails to circumvent the
prohibition against patenting abstract ideas and mental processes."). And
although claim 10 invokes specific mathematical relationships in making the

computations, that does not alter our analysis. *Cf. Flook*, 437 U.S. at 592
("We think this case must also be considered as if the principle or
mathematical formula were well known.")

The Appellant argues that the claims are similar to the claims held
eligible in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir.
2014). Appeal Br. 14–16. According to the Appellant, "the present
invention is necessarily rooted in computer technology and clearly is
identified as addressing problems in existing portfolio determination
strategies, as addressed at length in the Background of the Invention." *Id.*
at 14. The Appellant reproduces limitations of claim 10 and argues that the
"claimed process solves specific problems with previous approaches in a
manner similar to the way in which Internet-centric problems were solved in
DDR Holdings." *Id.* at 16.

In *DDR Holdings*, the Federal Circuit determined that although the
patent claims at issue involved conventional computers and the Internet, the
claims nevertheless addressed the problem of retaining website visitors who,
if adhering to the routine, conventional functioning of the Internet hyperlink
protocol, would be transported instantly away from a host's website after
"'clicking'" on an advertisement and activating a hyperlink. *DDR Holdings*,
773 F.3d at 1257. The court determined that those claims were directed to
statutory subject matter because they claim a solution "necessarily rooted in
computer technology in order to overcome a problem specifically arising in
the realm of computer networks." *Id.*

No such technological advance is evident in the claimed invention.
Unlike the situation in *DDR Holdings*, the claimed computer components
operate precisely in the expected manner of storing data in a memory in

association with other data, and computing and evaluating information. Claim 10 does not recite the Internet or any network. In fact, the Specification specifically indicates that a network connection is not needed. *See* Spec 6: 22–23 ("Another platform would be a stand-alone software program that could be run on a computer."); *Id.* at 9: 22–23 ("Internet connection 26 and server 28 are not needed."). *Cf. SmartGene, Inc. v. Advanced Biological Laboratories, SA,* 555 Fed.Appx. 950, 955 (Fed. Cir. 2014) ("The claim does not purport to identify new computer hardware: it assumes the availability of physical components for input, memory, look-up, comparison, and output."). Nothing in the claim, understood in light of the Specification, requires anything more than conventional computer implementation.[3] "The specification fails to provide any technical details for the tangible components, but instead predominately describes the system and methods in purely functional terms." *In re TLI Commc'ns LLC Patent Litig.,* 823 F.3d 607, 612 (Fed. Cir. 2016). "[A]fter *Alice,* there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible." *DDR Holdings,* 773 F.3d at 1256 (citation omitted).

The Appellant further argues that the Specification, and Figures 4 and 5 in particular, "show results of backtesting" that "illustrate advantageous cumulative returns and realized risks." Appeal Br. 16. But we do not see how providing an improvement to "cumulative returns and realized risks" renders the claimed subject matter any less abstract, especially considering

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[3] *See, e.g.,* Spec. 9: 12–13 ("System 100 is implemented as a computer 12 including one or more programmed processors, such as a personal computer, workstation, or server.").

that risk managing *per se* has already been determined to be an abstract idea. *See Bilski*. In fact, this evidence further illustrates that, in contrast to the claims in *DDR*, the problem solved by the invention here is focused on "the performance of some business practice known from the pre-Internet world along with the requirement to perform it" using some unspecified computer. *DDR Holdings*, 773 F.3d at 1257.

The Appellant further seeks to analogize the present claims to those in *Amdocs (Israel) Limited v. Openet Telecom, Inc*, 841 F.3d 1288 (Fed. Cir. 2016). Reply Br. 2–3. But we see no parallel between the claims before us and the claims in *Amdocs*. In *Amdocs*, the court determined that "the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality" and the "enhancing limitation depends not only upon the invention's distributed architecture, but also depends upon the network devices and gatherers — even though these may be generic — working together in a distributed manner." *Id.* at 1300–01. The Appellant has not identified any similar "distributed architecture" in the Appellant's claims or in the Appellant's Specification, for that matter.

The Appellant's arguments challenging the Examiner's determination that independent claims 10 and 31 do not add anything significantly more to transform the abstract idea to which they are directed into an inventive concept are unpersuasive.

We have considered all of the Appellant's remaining arguments and have found them unpersuasive. Accordingly, we sustain the Examiner's determination that independent claims 10 and 31 are directed to ineligible subject matter under 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*,

656 F. App'x 991, 997 (Fed. Cir. 2016) ("We have considered all of
LendingTree's remaining arguments and have found them unpersuasive.
Accordingly, because the asserted claims of the patents in suit are directed to
an abstract idea and do not present an 'inventive concept,' we hold that they
are directed to ineligible subject matter under 35 U.S.C. § 101.").

Dependent claims 11–15 and 21–30

Albeit the Appellant reproduces limitations of every dependent claim
(Appeal Br. 12–13), none of the dependent claims is separately argued in
any substantive way. The dependent claims describe various mathematical
relationships and information processing schemes which do little to
patentably transform the abstract idea. Where such claims are directed to the
same abstract idea, "addressing each claim of the asserted patents . . . [is]
unnecessary." *Content Extraction*, 776 F.3d at 1348.

Accordingly, we sustain the Examiner's determination that dependent
claims 11–15 and 21–30 are directed to ineligible subject matter under
35 U.S.C. § 101 for the same reasons set forth above.

*The rejection of claims 10–15 and 21–31 under 35 U.S.C. § 103(a) as being
unpatentable over Ricciardi and Wherry.*

Claim 10 requires, in part, computing asset holdings of first and
second portfolios using different risk models and "selectively combining the
first and second portfolios to create a third portfolio whose weights are a
function of the differences in the weights in each name of the constituent
asset holdings of the first and second portfolios." Appeal Br. 26 (Claims
Appendix). In other words, two distinct portfolios are created using distinct

risk models, and then the portfolios are combined. Claim 31 contains similar limitations as claim 10.

The Examiner finds that Ricciardi discloses selectively combining two portfolios at paragraphs 34, 258, 303, 663–676, 704–706, 710, and 711 and Figure 27. According to the Examiner:

> One example of selectively combining portfolios involves comparing the weight by percent of a first portfolio's holdings to a second 100% invested portfolio, [704]–[706], then adding new securities to get a third portfolio. See [710]–[711] as example of this process for an individual security showing a trend that indicates a buy signal trend. Repeating this for all the portfolio's securities would be akin [to] starting with one portfolio, comparing it to another portfolio, and ending at a final portfolio. See also Fig. 27; [37]; [258]; [303]. Another example of selectively combining portfolios is given by "Combining Strategies," e.g., combining the risk strategy with another strategy, [663]–[676].

Non-Final Act. 10.

The Appellant argues, *inter alia*, that Ricciardi does not disclose a "combination of two minimum risk portfolios which are minimum risk portfolios which are current at two distinct times, the first time and the second time defined in claim 10." Appeal Br. 20. According to the Appellant, albeit Ricciardi discloses terms related to time, Ricciardi does not disclose that "two portfolios that are current at different times are combined." *Id.*

We have carefully reviewed the cited passages of Ricciardi and the Examiner's discussion of them. For example, Figure 27 of Ricciardi depicts a "Differences" feature that "allows you to compare the stocks in one portfolio or index with those of another." Paragraphs 704–706 discuss a "process for generating buys" wherein "[e]xisting portfolio positions will be

16

increased where permitted by the trade-size cutoff, and new securities will be added to the portfolio where necessary." We do not see how, and the Examiner has not adequately explained how, modifying the positions of a portfolio would be akin to selectively combining two distinct portfolios as called for in claim 10. There is no disclosure of combining two portfolios. The mere fact that a portfolio is modified (i.e., by re-balancing securities in the portfolio and adding new securities to the portfolio) is not sufficient to meet the above limitation of claim 10.

Paragraph 664 discloses "Buy and Sell signals from one strategy at a timescale are combined with buy and sell signals from one or more other strategies at that time-scale to give combined strategy buy and sell signals at the time-scale." But combining buy and sell signals is not the same as combining two distinct portfolios as required by claim 10. The mere fact that two distinct things (i.e., signals or strategies) are combined is not sufficient to meet the above limitation of claim 10.

A prima facie case of obviousness has not been made out in the first instance by a preponderance of the evidence. Accordingly, we reverse the rejection of independent claims 10 and 31. For the same reasons, we also do not sustain the rejection of dependent claims 11–15 and 21–30. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) ("dependent claims are nonobvious if the independent claims from which they depend are nonobvious").

CONCLUSIONS

The rejection of claims 10–15 and 21–31 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter is affirmed.

The rejection of claims 10–15 and 21–31 under 35 U.S.C. § 103(a) as being unpatentable over Ricciardi and Wherry is reversed.

DECISION

The decision of the Examiner to reject claims 10–15 and 21–31 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