UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte J. T. CHAPIN, PRAVINRAY GANDHI,
CHRISTOPHER E. HASBROOK, and
STEPHEN I. KERBER

Appeal 2017-005509
Application 13/115,983[1]
Technology Center 3600

Before CARLA M. KRIVAK, HUNG H. BUI, and
JON M. JURGOVAN, *Administrative Patent Judges*.

BUI, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants seek our review under 35 U.S.C. § 134(a) of the
Examiner's Final Rejection of claims 1–12, 18, and 19, which are all the
claims pending in the application. We have jurisdiction under 35 U.S.C.
§ 6(b).

We AFFIRM.[2]

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[1] According to Appellants, the real party in interest is UL LLC. App. Br. 3.
[2] Our Decision refers to Appellants' Appeal Brief ("App. Br.") filed
September 28, 2016; the Reply Brief ("Reply Br.") filed February 14, 2017;
Examiner's Answer ("Ans.") mailed January 5, 2017; Final Office Action
("Final Act.") mailed March 30, 2016; and original Specification ("Spec."),
filed May 25, 2011.

STATEMENT OF THE CASE

Appellants' invention relates to a method and system "for analyzing insurance risk data" and "predicting a real-time probability of loss events for insurance policies and determining risk reduction actions to prevent or mitigate such events." Spec. ¶ 2. Appellants' method and system "determine an expected loss to [a] building in the event of a fire, and calculat[e] a fire risk score for the building to assist an insurance company assess a risk of insuring the building." Abstract. According to Appellants, the expected loss is determined by "obtaining or determining a driving time from . . . one or more fire stations [identified near the building] to the building" and "performing a statistical regression analysis to: at least the driving time . . . , the age of the building and the size of the building," the expected loss being modified based on "the presence or absence of a sprinkler system, a fire alarm system, or other hazard mitigation, prevention, or warning system." Spec. ¶¶ 37, 51; Abstract.

Claims 1 and 7 are independent. Claim 1 illustrates Appellants' invention, as reproduced below:

> 1. A historical based fire risk determination system comprising:
>   a program memory;
>   a computer processor electrically coupled to the program memory;
>   a first data source including a plurality of loss event records wherein each loss event record includes one or more material, demographic, geographic, or behavioral attributes contributing to a loss event;
>   a second data source including building data corresponding to a plurality of insurance applications, wherein each insurance application includes:
>   an address of a building,

an age of the building, and

a size of the building;

a third data source including fire station addresses;

a fourth data source including real estate values;

wherein the first data source, the second data source, the third data source, and the fourth data source are connected via a communication network;

wherein the program memory includes a risk analysis engine including instructions stored in the program memory that are executable by the computer processor to:

extract, via the communication network, data associated with an identified building from the first, second, and fourth data sources, the extracted data including a real estate value of the identified building,

generate weighted data by assigning weights to the extracted data associated with the identified building, wherein the weights include (i) a first weight for an age of the identified building, (ii) a second weight for a size of the identified building, and (iii) a third weight indicating whether the identified building has a basement,

identify, from the third data source, one or more fire stations near an address of the identified building,

obtain or determine, by the computer processor, a driving time from the one or more fire stations to the address of the identified building,

perform, by the computer processor, a statistical regression analysis on the driving time and the weighted data to determine, based on the real estate value of the identified building, an expected loss amount to the identified building in the event of a fire, and

modify, by the computer processor, the expected loss amount based on a presence of at least one component installed within the identified building and capable of influencing detection, growth, and suppression of the fire within the identified building.

App. Br. A–1 to A–4 (Claims App'x).[3]

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[3] The pages of Appellants' Claim Appendix are numbered A–1 to A–4.

Examiner's Rejection[4]

Claims 1–12, 18, and 19 stand rejected under 35 U.S.C. § 101 as

being directed to non-statutory subject matter. Final Act. 4–9.

ANALYSIS

In *Alice Corp. Pty. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), the

Supreme Court reiterates an analytical two-step framework previously set

forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566

U.S. 66, 79 (2012), "for distinguishing patents that claim laws of nature,

natural phenomena, and abstract ideas from those that claim patent-eligible

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[4] Claims 1–3, 6–9, and 12 were rejected under 35 U.S.C. § 103(a) as being
unpatentable over Eggenberger et al. (US 2006/0111799 A1; published May
25, 2006; "Eggenberger"), Savage et al. (US 2008/0300924 A1; published
Dec. 4, 2008; "Savage"), Jones et al. (US 2006/0287892 A1; published Dec.
21, 2006; "Jones"), Helitzer et al. (US 2005/0055249 A1; published Mar. 10,
2005; "Helitzer"), Dirnberger et al. (US 2007/0027725 A1; published Feb. 1,
2007; "Dirnberger"), and Miller et al. (US 2004/0153330 A1; published
Aug. 5, 2004; "Miller"). Final Act. 10–28. In addition claims 4 and 10 were
rejected under 35 U.S.C. § 103(a) as being unpatentable over Eggenberger,
Savage, Jones, Helitzer, Dirnberger, Miller, and Laird et al. (US
2005/0085257 A1; published Apr. 21, 2005; "Laird"); claims 5 and 11 were
rejected under 35 U.S.C. § 103(a) as being unpatentable over Eggenberger,
Savage, Jones, Helitzer, Dirnberger, Miller, and Bonissone et al. (US
2004/0220840 A1; published Nov. 4, 2004; "Bonissone"); claim 18 was
rejected under 35 U.S.C. § 103(a) as being unpatentable over Eggenberger,
Savage, Jones, Helitzer, Dirnberger, Miller, Gallo et al. (US 2006/0156228
A1; published July 13, 2006; "Gallo"), and Ouzounian (US 2009/0119338
A1; published May 7, 2009); and claim 19 was rejected under 35 U.S.C.
§ 103(a) as being unpatentable over Eggenberger, Savage, Jones, Helitzer,
Dirnberger, Miller, and Gallo. Final Act. 28–35. However, these § 103(a)
rejections were withdrawn in the Examiner's Answer, and are no longer
pending on appeal. Ans. 3, 23.

applications of those concepts." *Alice*, 134 S. Ct. at 2355. The first step in the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts," such as an abstract idea. *Id.* If the claims are directed to eligible subject matter, the inquiry ends. *Thales Visionix Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1339 (Fed. Cir. 2016). If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether there are additional elements that "'transform the nature of the claim' into a patent-eligible application." *Alice*, 134 S. Ct. at 2355 (citing *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to "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.'" *Id.* (citing *Mayo*, 566 U.S. at 72–73).

Alice/Mayo—Step 1 (Abstract Idea)

Turning to the first part of the *Alice/Mayo* analysis, the Examiner determines claims 1 and 7 are directed to "an algorithm for determining a fire risk" and "an expected loss amount to [an] identified building in the event of a fire" based on "the real estate value of the identified building" and "based on a plurality of loss event records wherein each loss event record includes one or more building data, or geographic attributes contributing to a loss event," which is "a fundamental economic practice as seen for example in Savage . . . and/or in Eggenberger." Ans. 5; Final Act. 5 (citing Savage ¶¶ 5, 26, and 29); *see* Eggenberger Abstract. The Examiner also determines claims 1 and 7 are directed to an abstract idea of "collecting data,

recognizing certain data within the collected data set, and storing that recognized data in a memory," which is analogous or similar to the abstract ideas of gathering and organizing data discussed in *CyberSource* and *Content Extraction*. Ans. 7–8, 18, and 20 (citing *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat'l Ass'n*, 776 F.3d 1343 (Fed. Cir. 2014)); Final Act. 7.

Appellants contend the Examiner erred in rejecting claim 1, and similarly claim 7, as directed to non-statutory subject matter because the claims are not directed to an abstract idea, and the Examiner overgeneralized the claims. App. Br. 13–15; Reply Br. 2–3. Particularly, Appellants argue "the Examiner is incorrect in asserting that claims 1 and 7 are simply directed to 'determining a fire risk based on a plurality of loss event records'"; rather, "the 'focus' of claims 1 and 7 is multiple data sources from which data is extracted and the processing that is performed on the extracted data" including "generating weighted data from the extracted data, performing a statistical regression analysis on a driving time and the weighted data to determine an expected loss amount to an identified building in the event of a fire," and "modifying the expected loss amount" based on the presence of a fire detection or suppression component(s) in the building. App. Br. 14.

Appellants' arguments are not persuasive. At the outset, we note the Examiner did not overgeneralize the claims as "determining a fire risk based on a plurality of loss event records" as Appellants assert. *See* App. Br. 14. Rather, the Examiner determines, and we agree, claims 1 and 7 are abstract because they recite generic data gathering and manipulation steps that can

also "be performed mentally" or "**by a human using a pen and paper.**"
Ans. 7–8, 18; Final Act. 6–7. The data gathering steps include "obtaining
data from multiple sources and extracting data," such as the claimed
extracting data associated with the identified building including the
building's real estate value, age, size, and whether the building has a
basement—steps that can be performed by a person consulting county and
city records of residential (or other types of) buildings. Ans. 20; *see* App.
Br. A–1 (Claims App'x). The data manipulation steps include steps of
"comparing data that can be performed mentally," such as the claimed
"identify[ing], from the third data source, one or more fire stations near an
address of the identified building" and obtaining "a driving time from the
one or more fire stations to the address of the identified building"—steps
that can be performed by a person consulting a map of a neighborhood
where the building is located. Ans. 8; *see* App. Br. A–1 (Claims App'x).

Data manipulation steps further include the claimed *"assigning
weights to the extracted data," "perform*[ing] *. . . a statistical regression
analysis,"* and *"modify*[ing] *. . . the expected loss amount"*—steps that can
be performed by a person using a pen and paper. Final Act. 7; *see* App. Br.
A–1, A–2 (Claims App'x). Appellants argue the claimed "extracting data
from multiple data sources, generating weighted data from the extracted
data, performing a statistical regression analysis, and modifying an expected
loss amount based on a specific factor" provide "an improvement to the
accuracy and the efficiency in which insurance policies are priced to more
accurately reflect a property's actual fire risk." Reply Br. 3. However,
claim 1 recites "generate weighted data by assigning weights to the extracted
data associated with the identified building," "perform . . . a statistical

regression analysis on the driving time and the weighted data to determine, based on the real estate value of the identified building, an expected loss amount," and "modify . . . the expected loss amount based on a presence of at least one [fire detection, growth, and suppression] component" of the building are broadly claimed steps that do not specify or impose any bounds on the "weights," generated "weighted data," "statistical regression analysis," and modification of "expected loss amount." *See* App. Br. A–1, A–2 (Claims App'x); Final Act. 7. In other words, these broadly claimed steps can be performed by a person estimating an expected loss amount based on the person's knowledge of a building, such as, for example, based on the person's knowledge of his or her single-family home and his or her knowledge of personal property values of items in the house.

Such data gathering and manipulation steps are abstract ideas similar to data gathering and manipulation techniques identified in *Cyberfone*, *Digitech*, *Content Extraction*, *Electric Power Group*, and *Intellectual Ventures*. *See Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App'x 988, 992 (Fed. Cir. 2014); *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014) (employing mathematical algorithms to manipulate existing information); *PerkinElmer, Inc. v Intema Ltd.*, 496 Fed. Appx. 65 (Fed. Cir. 2012) (comparing data to determine a risk level); *Content Extraction*, 776 F.3d 1343, 1347 (finding that "[t]he concept of data collection, recognition, and storage is undisputedly well-known," and "humans have always performed these functions"); *Electric Power Grp, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353– 54 (Fed. Cir. 2016) (collecting information and "analyzing information by steps people go through in their minds, or by mathematical algorithms,

without more, [are] essentially mental processes within the abstract-idea category"); and *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information). Additionally, the law is clear that "a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101." *CyberSource*, 654 F.3d at 1373. Additionally, mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *See CyberSource*, 654 F.3d at 1375 ("That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.").

Furthermore, "an expected loss amount" as claimed, is merely information, and as such is intangible. *See, e.g., Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 451 n.12 (2007); *Alice*, 134 S. Ct. at 2355; *Gottschalk v. Benson*, 409 U.S. 63, 67–68, 71–72 (1972) ("Phenomena of nature, though just discovered, mental processes, and abstract intellectual concepts are not patentable, as they are the basic tools of scientific and technological work."); and *Parker v. Flook*, 437 U.S. 584, 589 (1978) ("Reasoning that an algorithm, or mathematical formula, is like a law of nature, *Benson* applied the established rule that a law of nature cannot be the subject of a patent"). "[C]ollecting information, including when limited to particular content (which does not change its character as information)," and "analyzing information by steps people go through in their minds, or by mathematical algorithms, without more," are "within the realm of abstract ideas." *Elec. Power Grp.*, 830 F.3d at 1353–54; *see also Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1349 (Fed. Cir. 2015); *Digitech*, 758 F.3d at

1350 ("Data in its ethereal, non-physical form is simply information that does not fall under any of the categories of eligible subject matter under section 101"); and *CyberSource*, 654 F.3d at 1370.

We also agree with the Examiner that claims 1 and 7 are abstract because they are directed to a fundamental economic business practice of creating a contractual relationship (insurance) by determining fire risk and expected loss for a building, for assisting an insurance company in assessing the risk of insuring the building or for modifying an insurance policy associated with the building. Ans. 5; Final Act. 5; *see* Spec. ¶¶ 2 ("system and method for analyzing insurance risk data and, more particularly, for predicting a real-time probability of loss events for insurance policies and determining risk reduction actions to prevent or mitigate such events"), 46, 51 ("calculate a fire risk score for the building to assist an insurance company assess a risk of insuring the building"). Similar abstract ideas for implementing contractual relationships (e.g., for insurance purposes) have been identified in *Bancorp*, *Accenture Global Services*, and *Alice*. *See Bancorp Servs., L.L.C. v. Sun Life Assurance Co. of Can. (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012) (concluding managing an insurance policy was an abstract idea); *Accenture Global Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1345, *see also* 41–44 (Fed. Cir. 2013) (claims reciting "generalized software components arranged to implement an abstract concept [of generating insurance-policy-related tasks based on rules to be completed upon the occurrence of an event, e.g., for processing an insurance claim] on a computer" not patent eligible); and *Alice*, 134 S. Ct. at 2356–57 (intermediated settlement of traded or exchanged financial obligations to mitigate the risk that one party will not perform).

Appellants further argue claim 1 is similar to the claims in *Enfish* because "the claimed multiple data sources from which data is extracted and the processing that is performed on the extracted data provides . . . an improvement in computer capabilities." App. Br. 14–15 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). Particularly, Appellants argue claims 1 and 7 are directed to improvements in computer functionality because "the claimed multiple data sources and the processing enables the claimed system and method to accurately assess fire risk to an identified building, . . . determine and modify an expected loss amount to the identified building based on data from multiple sources," "generat[e] weighted data and perform[] a statistical regression analysis." App. Br. 14. Appellants' Specification, however, does not describe how the claimed applications for determining fire risk and expected loss amounts effect specific improvements to the computer processor, program memory, communication network, or to the way, such systems operate. Ans. 15, 18, and 20–22. *See Enfish*, 822 F.3d at 1336. Additionally, Appellants do not present evidence to establish their claims "are directed to improvements in computer functionality" (*see* App. Br. 15). Appellants also have not demonstrated their claim "improve[s] the way a computer stores and retrieves data in memory," as the claims in *Enfish* did via a "self-referential table for a computer database." *See Enfish*, 822 F.3d at 1327, 1337.

Appellants also have not demonstrated their claim provides a "solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks," as explained by the Federal Circuit in *DDR Holdings, LLC, v. Hotels.com, L.P.*, 773 F.3d 1245, 1258 (Fed. Cir. 2014), or an "unconventional

technological solution . . . to a technological problem" that "improve[s] the performance of the system itself," as explained in *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1299, 1302 (Fed. Cir. 2016).

We also find Appellants reliance on *McRO* unavailing. Reply Br. 2–3 (citing *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)). Particularly, Appellants argue their claims, like the claims of *McRO*, "are directed to the *improvement* of a technological process" and "recite a series of steps that improve the accuracy and efficiency of existing processes," provide an "*overall result* . . . [that] does . . . improve upon other existing processes related to assessing the risk of fires and the impacts thereof," and "[a]bsent these improvements, insurance policies would continue to be inaccurately priced." Reply Br. 2–3. However, the court determined that *McRO*'s claim was not directed to an abstract idea because it "uses the limited rules in a process specifically designed to achieve an improved technological result" over "existing, manual 3-D animation techniques"; in contrast, Appellants' claimed series of steps address a business problem of assisting an insurance company in assessing a risk of insuring a building. *See McRO*, 837 F.3d 1299, 1316; Ans. 13, 18, 20, and 22. Additionally, the claims in *McRO* were drawn to improvements in the operation of a computer at a task, rather than applying a computer system to perform known data extraction and processing steps (e.g., perform a statistical regression analysis, and modify an amount of expected loss), as in Appellants' claims 1 and 7. *See McRO*, 837 F.3d at 1314. We additionally note Appellants' claims do not require an "insurance premium price" to be *accurately priced*, as Appellants advocate (*see* Reply Br. 3).

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Appellants also argue their claims are not directed to an abstract idea because the "claims recite a particular solution to [a] problem and define a particular way to achieve a desired outcome to this problem," the problem being "that conventional replacement-driven property analyses fail to account for certain factors which results in inaccurate fire risk assessment." Reply Br. 3 (citing Spec. ¶ 5). We remain unpersuaded because the claims focus on the *problem* of assisting an insurance company to assess or modify an estimated risk of insuring a building—a problem that is not a technical problem or one rooted in computer technology or particular only to the Internet. *See* Spec. ¶¶ 2, 46, 51 and; Ans. 13, 21–22; *see also DDR Holdings*, 773 F.3d at 1257–58 (finding claims directed to a "solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks" are patent eligible).

Accordingly, we agree with the Examiner claims 1 and 7 are directed to an abstract idea.

Alice/Mayo—Step 2 (Inventive Concept)

Under the second part of the *Alice/Mayo* analysis, the Examiner determines claims 1 and 7 "***do not include*** additional elements that are sufficient to amount to ***significantly more than the judicial exception***"; rather, the claims recite generic computer elements "perform[ing] generic computer functions that are well-understood, routine, and conventional activities previously known to the industry." Final Act. 6, 8; Ans. 9–10, 20.

Appellants argue claims 1 and 7 recite an "'inventive concept' . . . [of] data extraction from the multiple data sources and the processing that is performed on the extracted data," and this inventive concept is "necessarily rooted in computer technology" to provide "a solution to problems caused

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by conventional systems." App. Br. 15 (citing *DDR Holdings*, 773 F.3d at 1245). As discussed *supra*, we are not persuaded Appellants' claims 1 and 7 provide a "solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks," as explained by the Federal Circuit in *DDR Holdings*. *See DDR*, 773 F.3d at 1257. Additionally, as discussed *supra*, the steps recited in claims 1 and 7 are consistent with an algorithm readily performed mentally or with pen and paper by a human being. We are also not persuaded the added computer elements such as the computer processor, program memory, data sources, communication network, and risk analysis engine transform the abstract idea into a patent eligible invention. Ans. 9–10, 20. "[T]he use of generic computer elements like a microprocessor" to perform conventional computer functions "do not alone transform an otherwise abstract idea into patent-eligible subject matter." *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (citing *DDR Holdings*, 773 F.3d at 1256).

Appellants further argue their claims are similar to the claims in *Bascom*, particularly because Appellants' claims recite a "***specific arrangement***" of claim elements and "rely on a ***specific order*** of processing steps, i.e., the data is extracted, the data is processed, the statistical regression analysis is performed, the expected loss amount is determined, and the expected loss amount is modified" which "is no different than the content-filtering system in *Bascom*." Reply Br. 4 (citing *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016)). We disagree. Appellants' claims and Specification do not identify a specific improvement to computer technology or computer operation effected by the claims. In contrast, *Bascom's* patent-eligible ordered

combination of claim limitations contain an "inventive concept [that] harnesses [a] technical feature of network technology in a filtering system by associating individual accounts with their own filtering scheme and elements while locating the filtering system on an ISP [Internet Service Provider] server," thus "improv[ing] the performance of the computer system itself" with a "technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems." *See Bascom,* 827 F.3d at 1350–52.

Accordingly, we agree with the Examiner that independent claims 1 and 7 are directed to an abstract idea and amount to nothing more than an attempt to patent the abstract idea embodied in the claimed steps. *See Alice,* 134 S. Ct. at 2355 (quoting *Mayo,* 566 U.S. at 78).

Because we agree with the Examiner's analysis and find Appellants' arguments insufficient to show error, we sustain the rejection of claims 1 and 7 under 35 U.S.C. § 101. No separate arguments are presented for dependent claims 2–6, 8–12, 18, and 19, which fall with independent claims 1 and 7. App. Br. 15; *see* 37 C.F.R. § 41.37(c)(1)(iv). We, therefore, sustain the Examiner's rejection under 35 U.S.C. § 101 of claims 2–6, 8–12, 18, and 19.

CONCLUSION

On the record before us, we conclude Appellants have not demonstrated the Examiner erred in rejecting claims 1–12, 18, and 19 under 35 U.S.C. § 101.

DECISION

As such, we affirm the Examiner's final rejection of claims 1–12, 18, and 19.

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