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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ADITYA FALODIYA and SARANSH KATARIYA

Appeal 2017-009134
Application 13/847,828
Technology Center 3600

Before ST. JOHN COURTENAY III, JASON J. CHUNG, and
BETH Z. SHAW, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Non-Final Rejection of claims 1–20, which constitute all the claims pending in this application. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Embodiments of Appellants' invention generally relate to “rating techniques and, more particularly, to a method and apparatus for a rating a

¹ According to Appellants, the real party in interest is Adobe Systems, Inc. of San Jose, California. App. Br. 4.

multi-version product.” Spec. 1, ll. 4–5.

Exemplary Claim

1. A computer-implemented method comprising:

receiving a request initiated by a user to provide a rating for a product;

[L1] *accessing, based on the request to provide a rating for the product, product version information that defines a plurality of versions of the product, wherein the plurality of versions of the product comprise an initial version of the product and one or more modified or updated versions of the product;*

[L2] *providing, for display to the user on a graphical user interface, a timeline comprising a plurality of indicators, wherein a given indicator of the plurality of indicators corresponds to a given version of the plurality of versions of the product;*

receiving, based on input received in response to the user interacting with the graphical user interface, an indication of a selection of an indicator from among the plurality of indicators on the timeline, wherein the indicator corresponds to an indicated version of the product;

providing within the graphical user interface, and in response to the selection of the indicator, a rating element corresponding to the indicated version of the product;

[L3] *receiving, based on the user interacting with the rating element corresponding to the indicated version of the product, a rating for the indicated version of the product; and*

[L4] *updating, by at least one processor, ratings data for the indicated version of the product.*

App. Br. 38 (Claims Appendix) (Contested limitations emphasized).

Rejections

- A. Claims 1–20 are rejected under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more. Non-Final Act. 3.
- B. Claims 1, 2, 4, 8, 9, 11, and 14–17 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Burckart et al. (US 2013/0212039), hereinafter referred to as Burckart, in view of Smith (US 2011/0087737), hereinafter referred to as Smith. Non-Final Act. 8.
- C. Claim 3, 7, 10, 13, and 18 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Burckart in view of Smith, and further in view of Benzado (*iTunes App Store now identifies reviews by app version*, <http://www.benzado.com/blog/posU215/itunes-reviews>, (last visited June 4, 2015)), hereinafter referred to as Benzado. Non-Final Act. 27.
- D. Claims 5 and 12 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Burckart in view of Smith, and further in view of Maciocci et al. (US 2012/0078684), hereinafter referred to as Maciocci. Non-Final Act. 31.
- E. Claim 6 is rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Burckart in view of Smith, and Maciocci, and further in view of cs.mcgill.ca (Mean), hereinafter referred to as cs.mcgill.ca. Non-Final Act. 33.
- F. Claim 19 is rejected under 35 U.S.C. § 103 as being obvious over

the combined teachings and suggestions of Burckart, Smith, and Benzado, and in further view of Maciocci. Non-Final Act. 34.

G. Claim 20 is rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Burckart, Smith, Benzado, and Maciocci, and further in view of cs.mcgill.ca. Non-Final Act. 36.

Issues on Appeal

Did the Examiner err in rejecting claims 1–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more?

Did the Examiner err in rejecting claims 1–20 under 35 U.S.C. § 103, as being obvious over the cited combinations of references?

ANALYSIS

We have considered all of Appellants’ arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection A under 35 U.S.C. § 101

Mayo/Alice Analysis

Under 35 U.S.C. § 101, a patent may be obtained for “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Ass’n for*

Molecular Pathology v. Myriad Genetics, Inc., 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66, 82–84 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S. Ct. at 2355.

The first step in that analysis is to determine whether the claims at issue are directed to one of those patent-ineligible concepts, such as an *abstract idea*. Abstract ideas may include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57.

If the “acts” of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter. *See Gottschalk v. Benson*, 409 U.S. 63, 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.” *In re Ferguson*, 558 F.3d 1359, 1363 (Fed. Cir. 2009) (quoting *Gottschalk*, 409 U.S. at 67). Moreover, if a method can be performed by human thought alone, or by a human using pen and paper, it is merely an abstract idea and is not patent eligible under § 101. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011).

If the claims are *not directed* to a patent-ineligible concept, *the inquiry ends*. *See Visual Memory LLC v. NVIDIA Corp.*, 867 F.3d 1253, 1262 (Fed. Cir. 2017).

Otherwise, the inquiry proceeds to the second step in which the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). We consider the question of whether the claims are directed to a *specific improvement* in the capabilities of the computing devices, or, instead, “a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

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

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

Regarding the first step of the *Alice/Mayo* analysis, the Examiner concludes that claims 1–20 are directed to a judicial exception, i.e., an abstract idea (citing legal authorities in support):

The abstract idea is deemed to be an *idea of itself* such as an uninstanced concept, plan or scheme, as well as a *mental process* (thinking) that can be performed in the human mind, or by a human using pen and paper as product version data may be collected, calculated and displayed using a pen and paper. *This concept is similar to other concepts that have been identified as abstract by the courts*, such as using categories to organize, store, and transmit information [storing ratings based on product version] (*Cyberfone Sys. v. CNN Interactive Grp.*, 558 Fed. Appx. 988 (Fed. Cir. 2014)), comparing new and stored information and using rules to identify options [calculating ratings based on an indicated product version] (*SmartGene, Inc.*

v. Advanced Biological Labs., SA, 555 Fed. Appx. 950 (Fed. Cir. 2014)), organizing information through mathematical correlations [presenting calculated product ratings via a timeline of product release date] (*Digitech Image Tech., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014)), and collecting data, recognizing certain data within the collected data set, and storing that recognized data in a memory [storing product ratings based on version] (*Content Extraction & Transmission v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014)). Furthermore, claims 6 & 20 are directed to the abstract idea of calculating a consolidated rating using an equation. The abstract idea is deemed to be a mathematical relationship/formula such as *mathematical algorithms, relationships, formulas, and calculations*. This concept is similar to other concepts that have been identified as abstract by the courts, such as a formula for updating alarm limits (*Parker v. Flook*, 437 U.S. 584 (1978)) and a mathematical procedure for converting one form of numerical representation to another (*Benson*, 409 U.S. at 63). *Therefore, the claims are directed to multiple abstract ideas.*

Non-Final Act. 3–4 (emphasis added).²

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

Generic computers (i.e. processor, computer readable storage medium, database etc.) performing generic computer functions, alone, do not amount to significantly more than the abstract idea. Applicants' specification supports the use of mere general purpose computing equipment for performing the steps of the claims (see, e.g., [0020] discussing "the server 104 is a type of computing device, e.g., a desktop computer, laptop, tablet

² "Patent eligibility under § 101 presents an issue of law." *Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1340–41 (Fed. Cir. 2013).

computer, smart phone, personal digital assistant, cellular phone, and the like") that are *well understood, routine and conventional* structures known to the industry and which provides evidence that the claimed computing components are functioning and processing instructions in a conventional manner known in the art. The processor, computer readable storage medium, and database limitations are merely attempting to limit the product version rating system to a *computerized environment* rather than reciting a specific component used in product version rating that *improves the functioning of a computer itself*. Therefore, the limitations are simply *a field of use* that is an attempt to limit the abstract idea to a particular technological environment and, so do not add significantly more.

Non-Final Act. 5–6 (emphasis added).³

The Examiner cites a number of case authorities in support (Non-Final Act. 6), and concludes “the claimed invention does not demonstrate a technologically rooted solution to a computer-centric problem or recite an improvement to another technology or technical field, an improvement to the function of any computer itself, applying the exception with, or by use of, a particular machine, or provide meaningful limitations beyond generally linking an abstract idea to a particular technological environment such as computing.” *Id.* at 6–7.

For the aforementioned reasons, the Examiner concludes that all claims 1–20 on appeal are not patent eligible under 35 U.S.C. § 101.

³ The patent-eligibility inquiry may contain underlying issues of fact. *Mortg. Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325 (Fed. Cir. 2016). In particular, “[t]he question of whether a claim element or combination of elements is well-understood, routine and conventional to a skilled artisan in the relevant field is a question of fact.” *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (Fed. Cir. 2018).

Mayo/Alice Analysis — Step 1

Regarding *Alice* Step 1, Appellant contends:

the pending claims are patent eligible under *Alice* step one because: 1) the Office Action fails to identify an abstract idea that applies to the claims as a whole; 2) the *Office Action* erroneously relies on non-precedential decisions; 3) the Office Action improperly compares past court decisions to the claims; and 4) the claims recite an invention that improves the functioning of a computer.

App. Br. 27–28.

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

The Non-Final Rejection dated 12 July 2016 (hereinafter NFR) clearly states that the claims are directed to the abstract idea of "*receiving, calculating and presenting ratings for different product versions such as a series of software application updates*" See NFR p.3. Each of the claim elements identified under the Step 2A analysis are identified as part of this single abstract idea. The NFR then goes on to state that the abstract idea falls under the category of an idea of itself as product version data may be collected, calculated and displayed by a human being using a pen and paper. *Several court decisions were then cited in order to support this assertion, each with a brief explanation of how the identified abstract idea is similar to the abstract idea identified in the relevant court decision.* These explanations were not meant to be newly identified abstract ideas, but rather clarifications as to how the previously identified abstract idea related to the court decision. For example, the abstract idea of "*receiving, calculating and presenting ratings for different product versions such as a series of software application updates*" which includes the mathematical calculation of product ratings which are then organized and presented on a product version timeline is similar to the abstract idea of *organizing information through mathematical correlations* identified in *Digitech*.

Ans. 3–4 (emphasis added).

In response to Appellants’ objection (App. Br. 27–28), the Examiner expressly withdraws her reliance on all previously cited non-precedential Federal Circuit decisions, but continues to “rely on the remaining cited court decisions (*Digitech, Content Extraction, Flook, & Benson*) to support her position.” Ans. 4.

In determining whether claims are patent-eligible under Section 101, our reviewing court guides: “the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016). The Federal Circuit also guides that “[E]xaminers are to continue to determine if the claim recites (i.e., sets forth or describes) a concept that is similar to concepts previously found abstract by the courts.” *Id.* at 1294 n.2.

Here, we emphasize that under *Alice*, step one, the Examiner cites to the following precedential decisions to support the legal conclusion that Appellants’ claims are directed to an abstract idea:

- A. *Digitech Image Tech., LLC v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014).
- B. *Content Extraction & Transmission v. Wells Fargo Bank, N.A.*, 776 F.3d 1343 (Fed. Cir. 2014).
- C. *Parker v. Flook*, 437 U.S. 584 (1978).
- D. *Gottschalk v. Benson*, 409 U.S. 63 (1972).

Non-Final Act. 4.

Appellants urge: “Although the Office Action does cite to two precedential decisions, *Digitech Image Tech., v. Electronics for Imaging, Inc.*, 758 F.3d 1344 (Fed. Cir. 2014) and *Content Extraction & Transmission*

v. Wells Fargo Bank, NA., 776 F.3d 1343 (Fed. Cir. 2014), neither of these two cases identifies any abstract idea related to the above abstract ideas.” App. Br. 31–32.

On this record, we find Appellants fail to persuasively traverse the Examiner’s legal conclusion (Non-Final Act. 3–4) that the claims on appeal are directed to multiple patent-ineligible abstract ideas,⁴ without more, by substantively distinguishing the claims on appeal from the subject claims and the courts’ analyses in the four aforementioned cases cited by the Examiner (*Digitech*, *Content Extraction*, *Flook (Respondent)*, and *Benson (Respondent)*).

Instead, Appellants cite to *Enfish* in support (App. Br. 28, 29, and urge, under *Alice* step 1, that the claims on appeal are directed to a specific

⁴ For example, the Examiner concludes:

The abstract idea is deemed to be an *idea of itself* such as an uninstantiated concept, plan or scheme, as well as a *mental process* (thinking) that can be performed in the human mind, or by a human using pen and paper as product version data may be collected, calculated and displayed using a pen and paper. This concept is *similar to other concepts that have been identified as abstract by the courts*, such as using categories to organize, store, and transmit information [storing ratings based on product version] . . . The abstract idea is deemed to be a *mathematical relationship/formula such as mathematical algorithms, relationships, formulas, and calculations*. This concept is similar to other concepts that have been identified as abstract by the courts, such as a formula for updating alarm limits (*Parker v. Flook*, 437 U.S. 584 (1978)) and a mathematical procedure for converting one form of numerical representation to another (*Benson*, 409 U.S. at 63). Therefore, the claims are directed to multiple abstract ideas.

Non-Final Act. 3–4 (emphasis added).

improvement in computer technology:

by intelligently collecting and displaying information compactly and comprehensively within a single dynamic graphical user interface for multiple-version products. For example, a company wanting to collect and provide product ratings on a per-product-version basis would have to set up each individual version as its own stand-alone product in prior rating systems. Thus, a user would have to access a separate user interface for each individual version, a technical problem that the current claims overcome. Accordingly, the claimed invention, like the claims in *Enfish*, are directed to a specific improvement in computer technology.

App. Br. 33.

Regarding Appellants' arguments analogizing *Enfish* to the claims before us on appeal (App. Br. 26–27), we note the *Enfish* court (822 F.3d at 1336) concluded that there was no abstract idea under *Alice* step 1 because the claims at issue were directed to “a specific improvement to the way computers operate, embodied in the self-referential table.”

Thus, the *Enfish* court found the claimed self-referential logical table was a specific type of data structure designed to *improve the way a computer stores and retrieves data in memory*. *Enfish*, 822 F.3d at 1339. Because the analysis stops if there is no abstract idea under *Alice* step 1, the *Enfish* court concluded the subject claims were patent eligible.

Here, Appellants have not persuasively shown that any features of the claimed invention *improve* the way the recited generic computer and/or processor(s) store and retrieve data in a manner analogous to that found by the court in *Enfish*. Nor have Appellants analogized the “rating database” recited in independent claim 8 to the self-referential logical table the *Enfish* court concluded was a specific type of data structure designed to *improve the*

way a computer stores and retrieves data in memory. Enfish, 822 F.3d at 1339.

Therefore, on this record, we are not persuaded that Appellants' claimed invention improves the functionality or efficiency of the recited computer, processors, or database, or otherwise changes the way the claimed generic computer components function, at least in the sense contemplated by the Federal Circuit in *Enfish*.

Accordingly, we are not persuaded the Examiner erred in concluding that claims 1–20 are directed to an abstract idea.

Mayo/Alice Analysis — Step 2

Because we conclude the claims are directed to an abstract idea for essentially the same reasons articulated by the Examiner (Non-Final Act. 3–4), we turn to the second part of the *Alice/Mayo* analysis. We analyze the claims to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to “significantly more” than the abstract idea. *Alice*, 134 S. Ct. at 2357 (internal quotations and citation omitted).

Regarding *Alice* Step 2, Appellants address the purported *inventive concept* of the claims. Appellants urge: “Even if the pending independent claims were directed to an abstract idea, which they are not, the claim limitations set forth an ‘ordered combination’ that amount to significantly more than the concept articulated by the *Office Action*.” App. Br. 33.

In support, Appellants cite to *BASCOM Glob. Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016). App. Br. 34–35.

Appellants urge:

As in *BASCOM*, the pending claims provide a "specific technical solution" to a technical problem. Indeed, it is the "ordered combination" of all elements that comprise a unique way of collecting and displaying information within a graphical user interface that transform any of the alleged abstract ideas in the *Office Action* into "a particular, practical application" of intelligently displaying information compactly and comprehensively within a graphical user interface. *See BASCOM*, 827 F.3d at 1352. Indeed, the specific "ordered combination" of the claim elements in independent claims 1, 8, and 14 that provides a "technology based solution" (as opposed to an abstract-idea-based solution) that overcomes existing problems in the art.

App. Br. 34–35.

The Federal Circuit held in *BASCOM* that the claimed Internet content filtering, featuring an implementation “versatile enough that it could be adapted to many different users’ preferences while also installed remotely in a single location,” expressed an inventive concept in “the non-conventional and non-generic arrangement of known, conventional pieces.” *BASCOM*, 827 F.3d at 1346, 1350.

Here, however, we are not persuaded that Appellants’ purportedly “unique way of collecting and displaying information within a graphical user interface” transforms the claimed invention into a particular, practical application by intelligently displaying “information compactly and comprehensively within a graphical user interface,” as urged by Appellants. App. Br. 34. In particular, Appellants have not shown any “non-conventional and non-generic arrangement of known, conventional pieces” as was found by the *BASCOM* court. *BASCOM*, 827 F.3d at 1346, 1350. We emphasize that *BASCOM* additionally guides that “[a]n abstract idea on

‘an Internet computer network’ or on a generic computer is still an abstract idea.” *Id.* at 1348.

Moreover, we conclude the display of Appellants’ claimed updated “*ratings data* for the indicated version of the product” (claim 1) is non-functional descriptive material (NFDM) merely intended for human viewing. (emphasis added). Similar language of commensurate scope is recited in independent claims 8 and 14.⁵

In reviewing the record, we find the claims on appeal are *silent* regarding specific limitations directed to an *improved* computer system, processor, memory, network, database, or Internet. Therefore, we find Appellants’ claimed invention does not provide a solution “necessarily rooted in *computer technology* in order to overcome a problem specifically arising in the realm of computer networks,” such as considered by the court in *DDR Holdings LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) (emphasis added).

⁵ The Manual of Patent Examining Procedure (MPEP) provides applicable guidance: “where the claim as a whole is directed to conveying a message or meaning to a human reader independent of the intended computer system, and/or the computer-readable medium merely serves as a support for information or data, no functional relationship exists.” MPEP § 2111.05 (III.) (9th Ed., Rev. 08.2017, Last Revised Jan. 2018). *See also Ex parte Nehls*, 88 USPQ2d 1883, 1889 (BPAI 2008) (precedential) (“[T]he nature of the information being manipulated does not lend patentability to an otherwise unpatentable computer-implemented product or process.”). Therefore, in applying the procedural guidance of the MPEP, and the controlling guidance of *Nehls*, we broadly but reasonably construe the recited “updated “*ratings data* for the indicated version of the product” (claim 1) as non-functional descriptive material merely intended for human perception.

Further regarding the use of the recited generic computer, processor(s) and database, the Supreme Court has held “the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention.” *Alice*, 134 S. Ct. at 2358. Our reviewing court provides additional guidance: *See FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1096 (Fed. Cir. 2016) (“[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015) (claims reciting, *inter alia*, sending messages over a network, gathering statistics, using a computerized system to automatically determine an estimated outcome, and presenting offers to potential customers found to merely recite “well-understood, routine conventional activities” by either requiring conventional computer activities or routine data-gathering steps (internal citation omitted)); *see also Elec. Power Grp.*, 830 F.3d at 1355 (“We have repeatedly held that such invocations of computers and networks that are not even arguably inventive are ‘insufficient to pass the test of an inventive concept in the application’ of an abstract idea.” (quoting *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1353, 1355 (Fed. Cir. 2014))); *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1341 (Fed. Cir. 2017) (“Rather, the claims recite both a generic computer element—a processor—and a series of generic computer ‘components’ that merely restate their individual functions That is to say, they merely describe the functions of the abstract idea itself, without particularity. This is simply not enough under step two.”).

On this record, we are of the view that Appellants' claims do not operate the recited generic computer components in an unconventional manner to achieve an improvement in computer functionality. The Supreme Court additionally guides that the "prohibition against patenting abstract ideas 'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or [by] adding 'insignificant postsolution activity.'" *Bilski*, 561 U.S. at 610–11 (quoting *Diehr*, 450 U.S. at 191–92).

Therefore, we conclude that none of the claim limitations, viewed both individually and as an ordered combination, amount to significantly more than the judicial exception in order to sufficiently transform the nature of the claims into patent-eligible subject matter.

In light of the foregoing, we conclude, under the *Mayo/Alice* analysis, that each of Appellants' claims 1–20, considered as a whole, is directed to a *patent-ineligible abstract idea* (under *step one*), and under *step two*, does not recite something *significantly more* to transform the nature of the claim into a patent-eligible application.

Accordingly, for the reasons discussed above, we sustain the Examiner's rejection A under 35 U.S.C. § 101 of claims 1–20, as being directed to a judicial exception, without significantly more.⁶

⁶ To the extent Appellants have not advanced separate, substantive arguments for particular claims, or other issues, such arguments are waived. See 37 C.F.R. § 41.37(c)(1)(iv).

Rejections B–G under 35 U.S.C. § 103

GROUPING OF CLAIMS

Based upon Appellants’ arguments (App. Br. 9–23) and our discretion under 37 C.F.R. § 41.37(c)(1)(iv), we decide the appeal of obviousness Rejection B of claims 1, 8, and 14–16 on the basis of representative claim 1; we decide the appeal of obviousness Rejection B of dependent claims 2 and 9 on the basis of representative claim 9; and, we decide the appeal of obviousness Rejection B of dependent claims 4 and 11 on the basis of representative claim 4. We address *infra* obviousness Rejection B of separately argued dependent claim 17.

Appellants advance no separate, substantive arguments regarding the remaining claims, which are rejected under § 103 Rejections C–G. Therefore, remaining claims 3, 5–7, 10–13, and 18–20, not argued separately or with specificity, fall with the respective independent claim from which they depend.⁷

⁷ “Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.” 37 C.F.R. § 41.37(c)(1)(iv). In addition, when Appellants do not separately argue the patentability of dependent claims, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986).

Rejection B of Independent Claim 1 under 35 U.S.C. § 103

Issues: Under 35 U.S.C. § 103, did the Examiner err by finding the cited combination of Burckart and Smith would have taught or suggested contested limitations L1, L2, L3, and L4:

[L1] *accessing, based on the request to provide a rating for the product, product version information that defines a plurality of versions of the product, wherein the plurality of versions of the product comprise an initial version of the product and one or more modified or updated versions of the product;*

[L2] *providing, for display to the user on a graphical user interface, a timeline comprising a plurality of indicators, wherein a given indicator of the plurality of indicators corresponds to a given version of the plurality of versions of the product;*

...

[L3] *receiving, based on the user interacting with the rating element corresponding to the indicated version of the product, a rating for the indicated version of the product; and*

[L4] *updating, by at least one processor, ratings data for the indicated version of the product[,]*

within the meaning of representative claim 1?⁸ (emphasis added).

We have reviewed Appellants' arguments in the Briefs, the Examiner's obviousness rejections, and the Examiner's response to Appellants' arguments. Appellants do not proffer sufficient argument or evidence for us to find error in the Examiner's findings. *See Ex parte Frye,*

⁸ We give the contested claim limitations the broadest reasonable interpretation ("BRI") consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997); *see, e.g., Spec. ¶ 11* ("It should be understood, that the drawings and detailed description thereto are not intended to limit embodiments to the particular form disclosed.").

94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). For at least the reasons discussed below, we agree with and adopt the Examiner's underlying factual findings and legal conclusions of obviousness, as set forth in the Non-Final Action and Answer.

The Examiner finds *Burckart*, as modified by the cited features of *Smith*, teaches or suggests contested limitations L1–L4 at paragraphs 40–52, 80, 81, 93, 95–96, and Figure 6B. *See* Non-Final Act. 8–9.

Appellants disagree, and contend:

First, the combination of *Burckart* in view of *Smith* fail to teach claim elements within the independent claims directed to accessing and providing product version information that allow the *multi-version* product rating system to capture ratings on a per-product-version basis. Second, neither *Burckart* or *Smith*, whether considered alone or in combination, teach claim elements directed to receiving ratings on a *per-product-version basis*, and updating ratings for a product on a *per-product-version basis*. Third, the *Office Action* errs in alleging that *Burckart* teaches "product state information," and in addition, the *Office Action* further errs in arguing that "product state information" is analogous to different versions of a product.

App. Br. 10–11(emphasis added).

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

The Examiner agrees that *Burckart* does not teach rating different versions of a product such as various generations of a Honda Civic. However, *Burckart* does teach rating products at various stages of a product's lifecycle. *Burckart* teaches that any product or service can be used in the rating system.

Ans. 11.

Turning to the evidence, the Examiner cites to *Burckart* (¶¶ 23, 25, and 40) in support. However, we emphasize the Examiner relies on *Smith* (¶¶ 14, 16, 42), and particularly paragraph 45, for teaching or suggesting

product *versions* (e.g., updated i-phone app versions). Ans. 12–14. The Examiner notes:

The category in Burckart is the age of the product. The category in the instant application is a version of the product (such as a generation). While it is true that Burckart does not explicitly teach rating product *versions*, the Examiner maintains that the timeline interface of Burckart is capable of receiving and displaying ratings corresponding to product *versions* rather than product ages when modified by the teachings of Smith. Smith, which also teaches placing reviews on an opinion timeline, clearly discusses generating an opinion timeline for an asset based on an initial review of an asset and a second review of the same asset which may be provided in response to an update to the asset (See Smith: [0014] & [0016]).

Ans. 12–13.

Burckart ¶ 23 describes, in pertinent part: “In one embodiment, the user reviews **116** are displayed in a longitudinal fashion based on a customer ownership lifecycle experience (COLE) model for users of a product or service so that other consumers may be better informed about how the customer experience may change or be affected over time.” Burckart ¶ 32 describes: “In one embodiment, the consumer review system **100** includes a timeline **114** that includes the user reviews **116** for a particular product or service. The timeline **114** may display the user reviews **116** in an organized manner that allows consumers to see the lifecycle **118** for one or more users.” Burckart ¶ 40 further describes that the user can add new ratings or review information to review system 100: “When a user is adding ratings/review information to the consumer review system **100**, the timeline **114** may be re-displayed to present real dates and times for ease of data entry.” Burckart ¶ 44 also describes: “The review interface **110** may be

configured to display a ratings diagram **600** with averaged ratings values for multiple users over a lifecycle **118** for each user.”

As for a teaching or suggestion of product *versions*, the Examiner relies principally of Smith (¶ 45), which describes Apple i-phone software updates (i.e., suggesting updated, new versions of apps or other software):

For example, a user may purchase an Apple IPHONE TM 3G immediately after [it] is released, experiencing problems with dropped calls and accessing the Internet. After much frustration, the user may submit a poor review of the product on CNET Reviews. A few weeks later a software update may be released for the Apple IPHONE TM 3G, which may resolve those problems. The user may receive a notification from CNET about the software update, along with a request to update their review, which the user does. As additional updates are released, the user may continue to add information to the review, creating a feedback loop that can be used for a variety of content and product recommendations. In addition, the individual product review influences the overall user rating for the product manufacturer (e.g., Apple).

Smith ¶ 45.

We emphasize the Supreme Court guides: “[A] combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 401 (2007).

Here, we find the Examiner combined familiar elements which would have realized a predictable result at the time of Appellants’ invention. *See* Non-Final Act. 8–16; Ans. 10–20. After reviewing Appellants’ rebuttals in the Reply Brief (4), we find Appellants’ contention unavailing that “[t]he Examiner’s Answer erroneously mischaracterizes the iPhone 3G example of *Smith* by alleging that when the software of the iPhone 3G is modified, the result is another version of the iPhone 3G.”

Appellants urge that “Smith's specification . . . describes the iPhone 3G example as reviewing an ‘individual product,’” citing Smith at [0045].” *Id.* We disagree with Appellants, because we find an iPhone with a new version of software (such as a new version of an iPhone app or new OS firmware) teaches, or at least suggests, a new, updated *version* of the product (i.e., the iPhone, including its newly updated software). In the alternative, we find a new, updated version of an iPhone app is a new version of the software (e.g., app), which could be considered as a separate, stand-alone product.

We also emphasize that the Examiner’s ultimate legal conclusion of obviousness is based upon the *combined* teachings of the cited references. Further, “the question under 35 USC 103 is not merely what the references expressly teach but what they would have *suggested* to one of ordinary skill in the art at the time the invention was made.” *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)). (Emphasis added); *see also* MPEP § 2123.

Given that there is evidence of record (*see* Benzado, as relied on by the Examiner for Rejection C; Non-Final Act. 27), that the “iTunes App Store now identifies reviews by app *version*” (Title, (emphasis added)), we find Appellants’ arguments unavailing regarding contested limitations L1–L4 of claim 1, especially because Appellants had constructive notice of the Benzado non-patent document. *See* PTO-892 “Notice of References Cited,” mailed June 26, 2015.

Therefore, we disagree with Appellants’ additional contention that “when viewed in light of *Smith’s* specification . . . one of ordinary skill in the art would not consider installing software on the iPhone 3G as

transforming the iPhone 3G to another ‘version’ of the iPhone.” Reply Br. 5. Although a software update would not *physically* transform the structure of an iPhone 3G into an iPhone 4, we find an app or OS update would transform the iPhone 3G into an improved *version* of the 3G.

For at least the aforementioned reasons, we find a preponderance of the evidence supports the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness regarding the contested *accessing, providing, receiving, and updating* steps of the method of representative claim 1, as rejected under rejection B. *See* Non-Final Act. 8–16; Ans. 10–20. Therefore, we sustain the Examiner’s Rejection B of claim 1, and Rejection B of grouped claims 8 and 14–16, not argued separately. *See supra*, “GROUPING OF CLAIMS.”

Rejection B of Dependent Claims 2 and 9 under 35 U.S.C. § 103

Although claims 2 and 9 recite similar limitations having commensurate scope, Appellants advance arguments regarding claim 9 as being representative of the group consisting of dependent claims 2 and 9. *See* App. Br. 23–24.

Appellants contend the cited combination of Burckart and Smith does not teach or suggest “updat[ing] the graphical ratings display to be reflective of the updated ratings data *for the indicated version of the product*, as recited in dependent claim 9, and as similarly recited in dependent claim 2. (emphasis added).

We note Appellants’ argument is focused on the Examiner’s findings regarding Burckart. (App. Br. 23–24). As discussed above regarding

Rejection B of claim 1, Appellants fail to consider the Examiner's reliance on Smith (¶ 45) for teaching or suggesting *version* information.

Because Appellants have failed to address the Examiner's specific findings (relying upon the combined teachings and suggestions of Burckart and Smith, and particularly Smith ¶ 45 for teaching or suggesting product *versions*), we find a preponderance of the evidence supports the Examiner's underlying factual findings and ultimate legal conclusion of obviousness for representative claim 9 under § 103 rejection B. Grouped claim 2 (also rejected under Rejection B) falls with claim 9. *See supra*, "GROUPING OF CLAIMS."

Rejection B of Dependent Claims 4 and 11 under 35 U.S.C. § 103

Although claims 4 and 11 recite similar limitations having commensurate scope, Appellants advance arguments regarding claim 4 as being representative of the group consisting of dependent claims 4 and 11.

Appellants contend:

Claim 4 depends from independent claim 1 and recites "receiving an indication of the selection of the indicator from among the plurality of indicators on the timeline comprises detecting that a pointer on the timeline is relocated on the timeline to refer to the indicator." Claim 11 recites similar limitations.

App. Br. 24.

Appellants note that the Examiner relies on paragraph 36 of Burckart to teach the contested subject matter:

For example, *Burckart* states that a "user review 116 may expand in response to a mouse click on the point or snapshot 300 representing the user review 116." *Id.* With respect to paragraph [0036] of *Burckart*, the Examiner notes that mouse

click equates to the claimed selection, and snapshot equates to the claimed indicator. *See Office Action*, p. 17.

App. Br. 24.

Appellants further contend:

The Examiner is incorrect with respect to these interpretations. To illustrate, *Burckart* teaches that a snapshot is a truncated user review. See e.g., *id.*, [0024], [0033], and [0036]. For example, *Burckart* states, "snapshots 300 may include the review title, the rating, a portion of the review text, or any of the information corresponding to the user review 116 that may be useful to consumers viewing the timeline 114." *Id.* at [0033]. In contrast, the *claimed indicator* corresponds to an indicated *product version*, not a *review*. Accordingly, the Examiner errs in equating *Burckart's* snapshot with the claimed indicator.

App. Br. 24–25 (emphasis added).

Again, we find the dispositive issue turns upon the *product version*. Because Appellants have failed to address the Examiner's specific findings (relying upon the *combined* teachings and *suggestions* of *Burckart* and *Smith*, and particularly *Smith* ¶ 45 for teaching or suggesting *product versions*), we find a preponderance of the evidence supports the Examiner's underlying factual findings and ultimate legal conclusion of obviousness for representative claim 4 under § 103 rejection B. Grouped claim 11 (also rejected under Rejection B) falls with claim 4. *See supra*, "GROUPING OF CLAIMS."

Rejection B of Dependent Claim 17 under 35 U.S.C. § 103

Appellants note:

Claim 17 depends from independent claim 14 and includes "receiving an indication to change from the selection of the first version of the product to the selection of the second version of the product comprises accessing the ratings data for the second version of the product, wherein the ratings data for the

second version of the product includes the received rating, and a rating count for each of a plurality of rating levels on a rating scale for the second version."

App. Br. 25.

Appellants essentially repeat the same arguments advanced previously regarding Rejection B of claims 4 and 9 above, and regarding Burckart (¶¶ 24, 33, 36). App. Br. 25–26. Appellants assert that the disclosure in Burckart (*id.*) is “unrelated to accessing ratings data for a second version of the product after receiving an indication to change from a first *version* of a product to a second *version* of a product. Accordingly, the Examiner errs in equating *Burckart's* snapshot with the claimed indicator.”

Again, we find the dispositive issue turns upon the product *version*. Because Appellants have failed to address the Examiner’s specific findings (relying upon the *combined* teachings and *suggestions* of Burckart and Smith, and particularly Smith ¶ 45 for teaching or suggesting *versions*), we find a preponderance of the evidence supports the Examiner’s underlying factual findings and ultimate legal conclusion of obviousness for claim 17 under rejection B. Accordingly, we sustain rejection B of dependent claim 17.

Rejections C–G under 35 U.S.C. § 103

As indicated above (“GROUPING OF CLAIMS”), Appellants advance no separate, substantive arguments regarding the remaining claims, which are rejected under § 103 Rejections C–G. Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). Therefore, we sustain the Examiner’s Rejections C–G of remaining claims 3, 5–7, 10–13, and 18–20.

Reply Brief

To the extent Appellants *may* advance new arguments in the Reply Brief not in response to a shift in the Examiner's position in the Answer, we note arguments raised in a Reply Brief that were not raised in the Appeal Brief or are not responsive to arguments raised in the Examiner's Answer will not be considered except for good cause. *See* 37 C.F.R. § 41.41(b)(2).

In particular, Appellants' have not shown good cause why we should consider Appellants' untimely allegation that the Examiner has relied upon impermissible hindsight, which was advanced for the first time in the Reply Brief (9).

CONCLUSIONS

The Examiner did not err in rejecting claims 1–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more.

The Examiner did not err in rejecting claims 1–20 under 35 U.S.C. § 103, as being obvious over the cited combinations of references.

DECISION

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED