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KOLISCH HARTWELL, P.C.
200 PACIFIC BUILDING
520 SW YAMHILL STREET
PORTLAND, OR 97204

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DURAN, ARTHUR D

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ROBERT D. SUMMER and JON M. DICKINSON

Appeal 2017-009444
Application 14/738,807
Technology Center 3600

Before HUBERT C. LORIN, ANTON W. FETTING, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE¹

Robert D. Summer and Jon M. Dickinson (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claim 4, the only claim pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed April 13, 2017) and Reply Brief ("Reply Br.," filed June 23, 2014), and the Examiner's Answer ("Ans.," mailed May 26, 2017), and Final Action ("Final Act.," mailed November 14, 2016).

The Appellants invented a method for enhancing the operative, transactional flow of communication-network commerce through implementing a unique, commercial-promotional practice. Specification 1:16–18.

An understanding of the invention can be derived from a reading of sole claim 4, which is reproduced below (bracketed matter and some paragraphing added).

4. A network, affinity-interest-group method,
optionally step-effected by an optional within-group manager,
for enhancing,
in the employment of an electronic-communication computer network, such as the Internet,
affinity-interest-group network commerce in the form of within-group-implemented commercial transactions through limiting,
via authorized-member access-control based upon vetted entrepreneurship linked to at least one established affinity-interest-group member,
network-computer access to an electronic catalogue which contains electronic representations of affinity-interest subject-matter,
said method comprising[:]

[1] creating,

in relation to a selected affinity-interest group

formed of network communicant members
having a common subject-matter affinity
interest,

and

including, optionally, a within-group
manager member,

a network-accessible, but limited-access, electronic
catalogue containing

electronic representations of affinity-interest
goods-and- services deliverables that are
associated with the group members' common
affinity interest,

[2] establishing at least one network-communicant affinity-
group member,

drawn from any of the group members,

characterized by possessing, as established by
vetting, entrepreneurship talent for promoting
commercial transactions regarding the catalogue-
contained deliverables,

to become recognized as an at least one authorized,
entrepreneurially-vetted, affinity-group network-
communicant member

having authorized control over access to
deliverables contained in the catalogue

for the purpose of promoting commercial
transactions respecting such deliverables,

and

[3] through controlled limiting of network-computer catalogue
access,

specifically limiting access to deliverables in the
catalogue to only

- (a) such an at least one vetted, network-communicant member,
 - and
 - (b) another network-communicant member in the group having a potential commercial-transactional interest in a catalogue-contained deliverable,
- and to whom such access is furnished
- specifically, and only, by such a vetted member, and solely for the purpose of considering, and if desired engaging in, a vetted-communicant-promoted commercial transaction regarding a catalogue-contained deliverable.

The Examiner relies upon the following prior art:

Chandler	US 2002/0032599 A1	Mar. 14, 2002
Bonneau	US 2011/0060732 A1	Mar. 10, 2011

Claim 4 stands rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claim 4 stands rejected under 35 U.S.C. § 112(a) as not enabling a person of ordinary skill in the art to make and use the claimed subject matter from the original disclosure.

Claim 4 stands rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention.

Claim 4 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Bonneau and Chandler.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of what a computer is to provide without implementation details.

The issues of enablement matter turn primarily on whether the Examiner provided sufficient analysis to show one of ordinary skill would have been unable to practice the invention.

The issues of indefiniteness matter turn primarily on whether one of ordinary skill would have understood the metes and bounds of the claims.

The issues of obviousness turn primarily on whether any limitations are undeserving of patentable weight and whether the claims are sufficiently broad to encompass the art as combined.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Bonneau

01. Bonneau is directed to on-line catalogs. Bonneau para. 7.
02. Bonneau describes browse hierarchies that are customized in scope to be substantially coextensive with the scope of each of a number of customized versions of an on-line catalog, the customized browse hierarchies being pared down in scope from a

primary hierarchy in accordance with rules-based searches of a central catalog database maintained by the seller. Bonneau para. 7.

03. Bonneau describes generating a plurality of custom browse hierarchies for each of a unique subset of items in a catalog database, a primary hierarchy is established that is representative of the items in the catalog database. Then, for each leaf node of the primary hierarchy, a search rule is derived that comprises an aggregation of constraints specified by the leaf node and its ancestors. In one embodiment, the rule is an “include” rule that defines all items in the database that meet the aggregation of constraints. The constraints are one or more attributes having predefined permissible values. The search rule is then used to identify, for each leaf node in the primary hierarchy, all of the unique subsets that contain at least one of the items meeting the aggregation of constraints. Bonneau para. 18.

04. Bonneau describes a web server providing access to the database to users by means of a browser over the Internet, and the browse hierarchy customized for a particular user is provided to that user for purposes of browsing the unique subset of the database to which the user has been assigned as the user’s custom catalog. Bonneau para. 21.

05. Bonneau describes a seller’s catalog database as centrally managed and maintained, as is the primary browse hierarchy representing the items stored in the catalog database. The seller’s

catalog database consists of data representing items offered for sale by the seller. Bonneau para. 34.

06. Bonneau describes users authorized by the seller as being given access to the database through an application program. Seller-authorized users are charged with maintaining the database and setting up buyer accounts. Bonneau paras. 50–52.

Chandler

07. Chandler is directed to a web-based venture matching accelerator. Chandler para. 3.
08. Chandler describes a web-based application system for the entrepreneurial and venture capital community that acts as a beacon of interactive knowledge-bases, business tools, databases and smart connectivity tools for a local community, and with connection to a series of other local communities whereas to create a virtual network. Chandler para. 9.
09. Chandler describes formulating one or a series of individual virtual local communities that may be connected to one another. Chandler para. 54.
10. Chandler describes a web-based application for venture incubation and acceleration, resource and information. A user, for example, an entrepreneur in a start-up company, accesses the web-site from a suitable terminal having an Internet access. The program provides the entrepreneur with a unique login/password. The program prompts the entrepreneur to complete an online

questionnaire of business planning and management tools (e.g., executive business summary, business plan, typical slide road show, strengths weaknesses opportunities and threats analysis).
Chandler para. 55.

11. Chandler describes rating the entrepreneurial user from the input data. The data entered on the questionnaire is used to give the entrepreneur a score determined by a set of algorithms stored on the server or via an on-line interactive human review and scoring process. The score may include the strength of the start-up business with respect to product, resources, and business opportunity. Also, the system is designed to allow for peer review recommendations to facilitate input regarding opportunities to enhance the entrepreneurial companies business. The questionnaire is made available for viewing by another user accessing the web-site to further analyze and review the score.
Chandler para. 56.

12. Chandler describes placing the company on a list of companies with comparable scores upon determination of the score. For example, a high score may place the company on a list with other companies that are ready to be matched with capital and a low score may place the company on a review and consulting list.
Chandler para. 57.

ANALYSIS

Claim 4 rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us?” To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as 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 Corp., Pty. Ltd. v. CLS Bank Int’l, 134 S. Ct. 2347, 2355 (2014) (alterations in original) (citations omitted) (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66 (2012)).

To perform this test, we must first determine whether the claim at issue are directed to a patent-ineligible concept. The Examiner finds the claim directed to abstract, unspecified vetting of a person for entrepreneurship talent. Final Act. 6.

Although the Court in *Alice* made a direct finding as to what the claims were directed to, we find that this case’s claim itself and the Specification provide enough information to inform one as to what they are directed to.

The preamble to claim 4 recites that it is a method for enhancing affinity-interest-group network commerce. The steps in claim 4 result in recognizing someone as having and granting control authority in an affinity-group. The Specification at page 1, lines 16–18, recites that the invention relates to enhancing the operative, transactional flow of such commerce through implementing a unique, commercial-promotional practice. Thus, all this evidence shows that claim 4 is directed to enhancing transaction flow by recognizing authority in some party, i.e., delegating authority.

It follows from prior Supreme Court cases, and *Bilski* (*Bilski v. Kappos*, 561 U.S. 593 (2010)) in particular, that the claim at issue here is directed to an abstract idea. Like the risk hedging in *Bilski*, the concept of delegating authority is a fundamental business practice long prevalent in our system of commerce. The use of delegating authority is also a building block of management. Thus, delegating authority, like hedging, is an “abstract idea” beyond the scope of § 101. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2356.

As in *Alice Corp. Pty. Ltd.*, we need not labor to delimit the precise contours of the “abstract ideas” category in this case. 134 S. Ct. at 2357. It is enough to recognize that there is no meaningful distinction in the level of abstraction between the concept of risk hedging in *Bilski* and the concept of delegating authority at issue here. *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357. Both are squarely within the realm of “abstract ideas” as the Court has used that term. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2357.

Further, claims involving data collection, analysis, and display are directed to an abstract idea. *Elec. Power Grp. v. Alstom S.A.*, 830 F.3d 1350,

1353 (Fed. Cir. 2016) (holding that “collecting information, analyzing it, and displaying certain results of the collection and analysis” are “a familiar class of claims ‘directed to’ a patent ineligible concept”); *see also In re TLI Commc’ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 4, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data retrieval, analysis, and generation, and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 4 is directed to the abstract idea of retrieving, analyzing, and generating data.

The introduction of a computer into the claim does not alter the analysis at *Mayo* step two.

[T]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implemen[t]” an abstract idea “on ... a computer,” that addition cannot impart patent eligibility. This conclusion accords with the pre-emption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional featur[e]” that provides any “practical assurance that the

process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice Corp. Pty. Ltd., 134 S. Ct. at 2358 (alterations in original) (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea . . . on a generic computer.” *Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2359. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer to create data describing a catalog, identify the name of someone, identify an attribute representing control authority and limiting data access to only that person amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are well-understood, routine, conventional activities previously known to the industry. In short, each step does no more than require a generic computer to perform generic computer functions.

Considered as an ordered combination, the computer components of Appellants’ method add nothing that is not already present when the steps are considered separately. Viewed as a whole, Appellants’ method claim simply recites the concept of delegating authority as performed by a generic computer. To be sure, the claim recites doing so by advising one to create a catalog and delegate and execute control authority over that catalog and data related to it. But this is no more than abstract conceptual advice on the parameters for such delegating authority and the generic computer processes

necessary to process those parameters, and does not recite any particular implementation.

The method claim does not, for example, purport to improve the functioning of the computer itself. Nor do it effect an improvement in any other technology or technical field. The 30 pages of the Specification spell out different generic equipment and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of delegating authority under different scenarios. They do not describe any particular improvement in the manner a computer functions. Instead, the claim at issue amounts to nothing significantly more than an instruction to apply the abstract idea of delegating authority using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp. Pty. Ltd.*, 134 S. Ct. at 2360.

We are not persuaded by Appellants' argument that

this claim[] is not directed to an abstract idea or concept. As claim 4 clearly states, the invented methodology steps recited therein are directed into and toward the world of electronic-communication-networked computers, such as those which populate the Internet. The claimed invention is, therefore, plainly and unequivocally aimed, inter alia, into the world of computer technology, and because it offers and proposes . . . certain unique and unobvious advantages in this world, it functions effectively in a manner directing attention to an improvement in computer-related technology. Unique and unobvious technologic advantages, in addition to other advantages, such as vetted entrepreneurial enhancement of catalogue-based network commerce, and steps aimed at minimizing copyright infringement of catalogue contained,

commercially deliverable copyrighted subject matter, flow from the methodologic cooperative relationship existing between the created limited-access catalogue, and the controlled computer-network-access gating of entry into that catalogue, which entry is definitively limited/confined to the actions of a special, entrepreneurially vetted network communicant. Technically, such gating to effect limited catalogue access functions directly, in a computer network, as a technologic filter, necessarily electronic in nature, respecting (1) data-flow, and (2) associated network bandwidth, managing of networked-computer network communication operation. Such filtering is definitively . . . an improvement in networked computer- related operation and technology by eliminating, through “access” filtering, certain catalogue-communication activities that could/would otherwise take place in a nonfiltered, networked-computer, catalogue-access environment -- thus (1) minimizing, through filtering, network-data-flow communication traffic, and thereby (2) improving bandwidth availability for other network activities -- two distinct improvements in networked-computer-related technology.

The technological improvements thus offered (by what is set forth in claim 4) in computer-related technology are not therein defined, and do not need to be defined, by reference to “physical” components or in relation to “particular physical features” (May 19 Memorandum). Rather, they are defined by “logical processes” as such are expressed in claim-4’s unique and unobvious, central (a) limited-access catalogue creation, (b) vetted entrepreneurial communicant establishing, and (c) networked computer, catalogue access limiting, steps.

App. Br. 24–25 (emphasis omitted). This contention essentially is that the claim is directed to a data filter and that such a filter is both non-abstract and a technological solution to a technological problem. The problem for Appellants is they conflate the idea of using a filter with the technical implementation of such a filter. The guidelines and case law Appellants refer to all support the proposition that a particular implementation of

technology, such as a data filter, is non-abstract. We must agree, but that is not this case. The claim instead recites advice to use a filter. As such, the claim recites a concept, the advice to use a filter.

In this regard, the Supreme Court and the Federal Circuit have held that a wide variety of well-known and other activities constitute abstract ideas. For example, in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, the Federal Circuit held that a claim reciting a “content filtering system for filtering content retrieved from an Internet computer network[, e.g., to prevent users from accessing certain websites,] . . . is [directed to] an abstract idea.” 827 F.3d 1341, 1348 (Fed. Cir. 2016) (internal quotation marks and citation omitted). Additionally, in *Content Extraction & Transmission LLC v. Wells Fargo Bank, National Ass’n*, the Federal Circuit found the claims directed to an abstract idea where they claimed, *inter alia*, “collecting data” and “recognizing certain data within the collected data set.” 776 F.3d at 1347. In *FairWarning IP, LLC v. Iatric Systems, Inc.*, the Federal Circuit held that an automated system for “detecting fraud and/or misuse in a computer environment based on analyzing data” according to “one of several rules” was directed to an abstract idea. 839 F.3d 1089, 1093 (Fed Cir. 2016) (internal quotation marks omitted). Finally in *CyberSource Corp. v. Retail Decisions, Inc.*, the Federal Circuit found claims that could be “performed in the human mind[] or by a human using a pen and paper” were directed to patent-ineligible mental processes. 654 F.3d 1366, 1372 (Fed. Cir. 2011).

We are not persuaded by Appellants’ argument that “[t]here is no predecessor or model anywhere in the known prior art for such a vetted-entrepreneurial-controlled, limited-access catalogue, gated/filtered network catalogue-access behavior; and, it is in relation to this herein claimed, limited-catalogue access control methodology.” App. Br. 26.

Eligibility is a separate issue from novelty. “While the claims may not have been anticipated or obvious because the prior art did not disclose [the selection criteria], that does not suggest that the idea of [‘selecting’ errant files] is not abstract.” *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016); *see Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possible patentable subject matter.”).

Claim 4 rejected under 35 U.S.C. § 112(a) as not enabling a person of ordinary skill in the art to make and use the claimed subject matter from the original disclosure

The Examiner rejects claim 4 because

the claim[] or Spec[.] do not state how entrepreneurship talent is identified or how a user or member or party is vetted. No metrics or quantifiable criteria or examples are provided. No functional steps for how entrepreneurship talent identification or member vetting would occur are found in Applicant’s Spec[.] or claimed

Final Act. 8.

We are persuaded by Appellants' argument that the Examiner did not present a proper analysis. The Examiner did not provide a *Wands* analysis. *In re Wands*, 858 F.2d 731, 736–37 (Fed. Cir. 1988). In *In re Wands*, the court set forth eight factors to consider when determining whether undue experimentation is needed. In any event, the three steps are creating a catalogue, establishing someone as one having control, and limiting access to data. All three steps are relatively primitive operations that a novice programmer, much less one of ordinary skill, could easily perform. The limitations Examiner refers to characterize the data that are operated upon, not the steps performed. As such, it is sufficient that one interpret the data as recited to be enabled.

Claim 4 rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention

The Examiner rejects claim 4 for the same reason as the enablement rejection *supra*. Final Act. 8–9. Aside from the *Wands* factors not required here, our findings are the same.

The Examiner further rejects claim 4 because the limitation of “characterized as possessing, as established by vetting, entrepreneurship talent” is a relative term. *Id.* As with the enablement rejection, it is sufficient that one interpret the data as such, and so one of ordinary skill would understand that this is broad but not indefinite. The claim does not recite vetting *per se* but characterizing data as having been vetted. Thus, any data characterizing such a person in any manner would fall within the scope

because that data could be perceived as characterizing prior vetting, if one so chose.

Claim 4 rejected under 35 U.S.C. § 103(a) as unpatentable over Bonneau and Chandler

Claim 4 recites three steps, viz., creating X; establishing Y, and limiting access to Z, where X is labeled as a network-accessible, but limited-access, electronic catalogue containing electronic representations of affinity-interest goods-and- services deliverables that are associated with the group members' common affinity interest; Y is labeled as at least one network-communicant affinity-group member, drawn from any of the group members, characterized by possessing, as established by vetting, entrepreneurship talent for promoting commercial transactions regarding the catalogue- contained deliverables, to become recognized as an at least one authorized, entrepreneurially-vetted, affinity-group network-communicant member having authorized control over access to deliverables contained in the catalogue for the purpose of promoting commercial transactions respecting such deliverables; and Z is labeled as deliverables in the catalogue. Thus, the claim is really to creating a catalog, identifying an individual, and limiting access to data generated as a result of the catalog. Nothing in the claim depends on or enforces the perceptual labels the claim suggests. Mental perceptions of what data represent are non-functional and given no weight. *King Pharms., Inc. v. Eon Labs, Inc.*, 616 F.3d 1267, 1279 (Fed. Cir. 2010) (“[T]he relevant question is whether ‘there exists any new and unobvious functional relationship between the printed matter and the

substrate.” (quoting *In re Gulack*, 703 F.2d 1381, 1386 (Fed. Cir. 1983)); see also *In re Lowry*, 32 F.3d 1579, 1583 (Fed. Cir. 1994) (describing printed matter as “useful and intelligible only to the human mind” (quoting *In re Bernhart*, 417 F.2d 1395, 1399 (CCPA 1969))). Data labels are just examples of such mental perceptions. Data, being a succession of binary digits, are just those digits, not perceptual labels of those digits. The binary digits may impose some functional consequence, but absent some recitation of how so, such consequence is not an issue.

Thus, the claim is really to receiving information and using that information to limit access to data. This process, as such without regard to the particular labels, is anticipated by Bonneau, and, for that matter, any online shopping catalog maintained by someone having write permission access that others do not. It is only in the data labels that novelty is argued. But labels cannot distinguish over the art. *In re Bode*, 550 F.2d 656, 660 (CCPA 1977) (“The specific limitation need not be disclosed in haec verba in the reference”). Also there is no structural or functional difference imparted by labels; they only serve to apply a known process/structure to a specific perceptual context. The art applied, however, is within the scope of even the recited labels.

Further, labels pass the *King Pharmaceuticals* test for non-functional limitations undeserving of weight because none of the labels depends on or affects the functions of creating, establishing, and limiting access, and none of those operations affects or depends on the perceptual labels. The court in *King* held that the policy for giving printed matter no patentable weight

should be extended to other areas meeting the same tests. *See King Pharms., id.*

Although Bonneau anticipates claim 4 when the non-functional limitations are given no weight, the Examiner nevertheless applies Chandler for those non-functional limitations that Bonneau does not describe. The Examiner finds that Chandler describes the motivation for combining the references as better selecting authorized sellers. Final Act. 10–12.

We are not persuaded by Appellants’ argument that “the commerce enhancing vetted-entrepreneurship, authorized-access-only-catalogue landscape which underpins appellants’ invention, as expressed in claim 4, is completely absent from these two references.” App. Br. 15. First, the only part of this limitation deserving of patentable weight is an authorized-access-only-catalogue which Bonneau describes. Second, Chandler describes the equivalent of commerce enhancing vetted-entrepreneurship in using a questionnaire to rate (vet) the entrepreneurial capacity of users, and the claim does not recite any form of landscape.

We are not persuaded by Appellants’ argument that “neither reference teaches or suggests the claimed step of creating appellants’ special limited-network-computer-access type electronic catalogue that will lie under the access control of an entrepreneurially vetted, network-communicant party”; “neither reference teaches or suggests the claimed step of establishing at least one network-communicant affinity-group member, and in particular one such member characterized by possessing, as established by vetting, entrepreneurship talent for promoting commercial transactions regarding the catalogue-contained deliverables”; and “neither reference teaches or

suggests the claimed step of limiting access to deliverables in the catalogue whereby that ‘such a vetted communicant party’ holds the important commercial-transactional-access key to the recited limited-access catalogue.” App. Br. 17 (emphasis omitted).

Appellants only argue procedure, and do not respond to the Examiner’s findings of fact. The arguments simply recite the added limitations and allege they are not found in the cited references. This is insufficient to act as a separate argument under 37 C.F.R. § 41.37. As our reviewing court held,

we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.

In re Lovin, 652 F.3d 1349, 1357 (Fed. Cir. 2011). In any event, as we find *supra*, Bonneau describes a network-computer-access type electronic catalogue that will lie under the access control of a user. The remainder of the first limitation is non-functional and undeserving of weight. Bonneau describes identifying the user to access control. The remainder of the second limitation is non-functional and undeserving of weight. Bonneau describes limiting access to an electronic catalogue to that of control of a user. The remainder of the third limitation is non-functional and undeserving of weight.

CONCLUSIONS OF LAW

The rejection of claim 4 under 35 U.S.C. § 101 as directed to non-statutory subject matter is proper.

The rejection of claim 4 under 35 U.S.C. § 112(a) as not enabling a person of ordinary skill in the art to make and use the claimed subject matter from the original disclosure is improper.

The rejection of claim 4 under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention is improper.

The rejection of claim 4 under 35 U.S.C. § 103(a) as unpatentable over Bonneau and Chandler is proper.

DECISION

The rejection of claim 4 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). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2011).

AFFIRMED