



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/532,673	11/04/2014	Marcia Elaine Walker	2009P-093-US1_ALBR:0446-1	6856

42982                      7590                      02/21/2018  
Rockwell Automation, Inc./FY  
Attention: Linda H. Kasulke E-7F19  
1201 South Second Street  
Milwaukee, WI 53204

EXAMINER
----------

LEROUX, ETIENNE PIERRE

ART UNIT	PAPER NUMBER
----------	--------------

2161

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

02/21/2018

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

howell@fyiplaw.com  
docket@fyiplaw.com  
raintellectualproperty@ra.rockwell.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* MARCIA ELAINE WALKER and PHILIP JOHN KAUFMAN

---

Appeal 2017-009503  
Application 14/532,673<sup>1</sup>  
Technology Center 2100

---

Before THU A. DANG, LARRY J. HUME, and SCOTT B. HOWARD,  
*Administrative Patent Judges.*

HOWARD, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Final Rejection of claims 1–20, which constitute all of the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

---

<sup>1</sup> Appellant identifies the Applicant, Rockwell Automation Technologies, Inc., as the real party in interest. App. Br. 2.

## THE INVENTION

The disclosed and claimed invention is directed to a dynamic sustainability search engine. Spec. ¶ 2.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A sustainability search system, comprising:
  - at least one processor coupled to memory retaining instructions for:
    - a query component that searches at least one target for data elements, wherein the query component is configured to:
      - receive a set of search criteria and a set of sustainability factors, wherein the set of search criteria comprises a process employed by an industrial automation system to produce a product or an article of manufacture, the product made by the process, the article of manufacture of the process, a plant element carrying out the process, or any combination thereof, and wherein the set of sustainability factors comprises one or more measurements of an environmental impact, a socio-environmental impact, or any combination thereof, for the process, the product made by the process, the article of manufacture of the process, the plant element carrying out the process, or any combination thereof;
      - receive a set of weight values wherein each weight value corresponds to one sustainability factor of the set of sustainability factors; and
      - identify one or more data elements based on the set of search criteria and the set of sustainability factors, wherein the one or more data elements comprise data associated with the process, the plant element carrying out the process, or any combination thereof; and
      - an evaluation component configured to analyze the one or more data elements identified by the query component based on a sustainability score associated with each of the one or more data elements, wherein the sustainability score is a quantitative metric of the sustainability of the data elements and

is based at least in part on the set of weight values and on the set of sustainability factors associated with the data elements.

#### REFERENCES

The prior art relied upon by the Examiner as evidence in rejecting the claims on appeal is:

Ohnemus	US 2008/0059457 A1	Mar. 6, 2008
Dilorenzo	US 2008/0059897 A1	Mar. 6, 2008
Djabarov	US 8,010,523 B2	Aug. 30, 2011
Walker	US 8,892,540 B2	Nov. 18, 2014

#### REJECTIONS

Claims 1–20 stand rejected on the ground of non-statutory obviousness-type double patenting over claim 1 of Walker. Final Act. 2–7.

Claims 1–20 stand rejected under 35 U.S.C. § 101 as directed to patent-ineligible subject matter. Final Act. 7–9.

Claims 1–6, 8–10, and 12–20 stand rejected under pre-AIA 35 U.S.C. § 102(b) as being anticipated by Ohnemus. Final Act. 9–16.

Claim 7 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Ohnemus in view of Dilorenzo. Final Act. 16–17.

Claim 11 stands rejected under pre-AIA 35 U.S.C. § 103(a) as being unpatentable over Ohnemus in view of Djabarov. Final Act. 17–18.

#### ANALYSIS

We have reviewed the Examiner’s rejection in light of Appellant’s arguments that the Examiner erred. In reaching this decision, we have considered all evidence presented and all arguments made by Appellant. We are not persuaded by Appellant’s arguments regarding the pending claims.

*Double Patenting Rejection*

Appellant has not identified any errors in the Examiner’s findings regarding the double patenting rejection. “If an appellant fails to present arguments on a particular issue — or, more broadly, on a particular rejection — the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection.” *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential). Accordingly, we summarily affirm the Examiner’s rejection on the ground of non-statutory obviousness-type double patenting.

*Section 101 Rejection*

Patent-eligible subject matter is defined in § 101 of the Patent Act, which recites:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

There are, however, three judicially created exceptions to the broad categories of patent-eligible subject matter in § 101: laws of nature, natural phenomena, and abstract ideas. *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 134 S. Ct. 2347, 2354 (2014); *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70–71 (2012). Although an abstract idea, itself, is patent-ineligible, an application of the abstract idea may be patent-eligible. *Alice*, 134 S. Ct. at 2355. Thus, we must 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.” *Id.* (citing *Mayo*, 132 S. Ct. at 1297–98). The claim must

contain elements or a combination of elements that are “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [abstract idea] itself.” *Id.* (quoting *Mayo*, 132 S. Ct. at 1294).

The Supreme Court set forth a two-part “framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Id.* at 2355.

First, we determine whether the claims at issue are directed to one of those patent-ineligible concepts. [*Mayo*,] 132 S. Ct., at 1296–1297. If so, we then ask, “[w]hat else is there in the claims before us?” *Id.*, at —, 132 S. Ct., at 1297. To answer that question, we 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. *Id.*, at —, 132 S. Ct., at 1298, 1297. We have 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.” *Id.*, at —, 132 S. Ct., at 1294.

*Id.*

“The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas, LLC v. DirectTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016) (quoting *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016)); *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). There is no definitive rule to determine what constitutes an “abstract idea.” Rather, the Federal Circuit has explained that “both [it] and the Supreme Court have found it sufficient to compare claims at issue to

those claims already found to be directed to an abstract idea in previous cases.” *Enfish*, 822 F.3d at 1334; *see also Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (explaining that, in determining whether claims are patent eligible under § 101, “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”).

The Examiner concludes claim 1 is directed to the abstract idea of “collecting data, recognizing certain data within the collected data set, and storing that recognized data in a memory (receive a set of search criteria and a set of sustainability factors).” Final Act. 7; *see also* Ans. 19 (“The concept of the invention as shown below is related to collecting, manipulating and displaying data and is similarly abstract.”). The Examiner further determines “[c]laim 1 is directed to an abstract idea similar to concepts that have been identified by the courts to be an abstract process, such as 1) collecting data, 2) manipulating data and 3) displaying data.” Ans. 19 (citing *Elec. Power*, 830 F.3d at 1353–54).

We agree with the Examiner that the claims are directed to an abstract idea of data gathering and manipulation. In this regard, the claims of the instant application are similar to the claims in *Electric Power*, which did “not go beyond requiring the collection, analysis, and display of available information in a particular field, stating those functions in general terms, without limiting them to technical means for performing the functions that are arguably an advance over conventional computer and network technology.” 830 F.3d at 1351. Specifically, our reviewing court held that “collecting information, including when limited to particular content (which

does not change its character as information), as within the realm of abstract ideas” and that “analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.” *Id.* at 1353–54 (citations omitted). As in *Electric Power*, the combination of various abstract ideas relating to data collection and analysis is itself an abstract idea.

For the reasons discussed below, Appellant does not persuade us that the Examiner erred.

Appellant argues claim 1 is not abstract because the subject matter of the claim is not identified in the list of categories of abstract ideas set forth in the June 25, 2014 Memorandum issued by the Deputy Commissioner for Patent Examination Policy entitled “Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*” (hereinafter “Memorandum”). App. Br. 7–9. However, the Memorandum is not binding on the Board; instead, we follow Supreme Court and Federal Circuit precedent. *See In re Fisher*, 421 F.3d 1365, 1372 (Fed. Cir. 2005) (“The MPEP and Guidelines ‘are not binding on this court.’”) (citations omitted). Appellant has not cited any persuasive legal authority demonstrating that abstract ideas are limited to the four categories set forth in the Memorandum. Instead, as our reviewing court instructs us, we “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*, 841 F.3d at 1294.

Appellant further argues the claim is not directed to an abstract idea because the claim, when taken as a whole, transforms systems and methods to ones “*that are capable of producing useful information related to*



*sustainability of the production methods from the data.*” App. Br. 9.

However, because Appellant’s argument is not commensurate with the scope of the claim, we are not persuaded that the Examiner erred.

Specifically, claim 1 recites a sustainability search system that receives data and then evaluates that data. *See* App. Br. 13 (Claims App.). However, claim 1 does not require the system to do anything with the evaluation. *See Id.* Accordingly, contrary to Appellant’s assertion, the claimed invention does not transform the system from an abstract idea to patent-eligible subject matter.

Two Supreme Court cases discussing patent-eligible subject matter are instructive. In *Parker v. Flook*, the Supreme Court held that because the claim merely calculated an alarm limit—admittedly using a new and presumably better method—it was not directed to patent-eligible subject matter. 437 U.S. 584 (1978). In *Diamond v. Diehr*, the Supreme Court found a process used to operate a rubber-molding press to be directed to patent-eligible subject matter where the process acts to transform “an article, in this case raw, uncured synthetic rubber, into a different state or thing.” 450 U.S. 175, 184 (1981). As the Court recognized, “[t]ransformation and reduction of an article ‘to a different state or thing’ is the clue to the patentability of a process claim that does not include particular machines.” *Id.* (quoting *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972)).

As properly construed, the claims merely evaluate data and do not recite any transformation of material. Accordingly, we determine claim 1 is similar to those in *Flook*, which rely on various unknown variables to compute a value but does not apply that value, and bear little, if any,

similarly to those found patent-eligible in *Diehr*, in which a material was transformed.

Appellant further argues claim 1 is similar to claims found not to encompass an abstract idea in two recent Federal Circuit cases, *Enfish* and *McRo*,<sup>2</sup> App. Br. 10–12; Reply Br. 3–4. However, for the reasons discussed below, we are not persuaded the claimed subject matter in the instant appeal are sufficiently similar to the claims found to be patent-eligible in those cases.

Appellant contends that in *Enfish*, the claims were “directed at a self-referential table that has a specific type of data structure designed to improve the way a computer stores and retrieves data in memory” and “directed to a specific implementation of a solution to a problem in the software arts, and thus are not directed to an abstract idea.” App. Br. 10 (emphasis omitted). Appellant argues that, like the claims in *Enfish*, the claim 1 has a query, data elements, a score, and query results. *Id.* Thus, Appellant argues, the pending claims “are not merely directed to collection of data, but include a specific implementation of a solution employing specific data structures that improve a way that industrial processes may be monitored and/or managed, as in *Enfish*.” *Id.*; *see also* Reply Br. 3.

We disagree. In *Enfish*, the Federal Circuit relied on the distinction made in *Alice* between improvements to computer functionality and uses of existing computers as tools in aid of processes focused on “abstract ideas.” *See Enfish*, 822 F.3d at 1335–36; *see also Alice*, 134 S. Ct. at 2358–59. The present case is different from *Enfish* because the focus of the claims here is

---

<sup>2</sup> *McRo, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299 (Fed. Cir. 2016)

not on an improvement in computers as tools or upon an innovative way to use computers or other devices; but, instead, the claim is directed to an abstract idea that uses generic and routinely used computer equipment as tools. That is, here, the arguably innovative technique of claim 1 is inextricably a part of the abstract idea of manipulating data itself. Moreover, nothing in claim 1, understood in light of the Specification, requires anything other than an off-the-shelf, conventional computer equipment used for collecting and processing/analyzing various information/data.

Appellant further contends the claims “in *McRo* were related to allowing computers to produce ‘accurate and realistic lip synchronization and facial expressions in animated characters’ that were previously produced by human animators.” App. Br. 11 (citing *McRo*, slip op. at 22). According to Appellant:

When determining that the claims at issue were directed to eligible subject matter, the Federal Circuit noted that the process recited in the claims goes beyond merely organizing information into a new form or carrying out a fundamental economic practice. *See* [*McRo*, slip op. at] 25. Indeed, the Federal Circuit focused on the claimed process that uses a *combined order of specific rules that renders information into a specific format that is then used and applied to create desired results. See id.* The Federal Circuit followed stated that the “concern underlying exceptions to section 101 is not tangibility, but preemption.” *Id.* The Federal Circuit then concluded that when looked as a whole, the claims are directed to a patentable, technological improvement over the existing, manual 3-D animation techniques. *See id.*, p. 27.

*Id.* Based on the above analysis of *McRo*, Appellant argues the pending claims are patent eligible because

[the] specific rules set forth in the claims allow for improved management and monitoring of industrial processes, and

mitigate problems related to “vague or ambiguous indicators of a products’ actual environmental or socio-environmental impact,” “undesirable weight to . . . factors that are important to different people and groups,” among other improvements over approaches prior to this application.

*Id.* (citing Spec. ¶ 5); *see also* Reply Br. 4.

We are not persuaded by Appellant’s argument. First, Appellant’s argument is not commensurate with the claims. Although the Specification, discusses how the various rules set forth in the claims can be used, the claims do not recite those uses. *See* App. Br. 13 (Claims App.).

Second, we are not persuaded by Appellant’s argument that there is any similarity between the pending claims and the reason the claims were found not directed to an abstract idea in *McRo*:

Here, the structure of the limited rules reflects a specific implementation not demonstrated as that which “any [animator] engaged in the search for [an automation process] would likely have utilized.” *Myriad*,<sup>[3]</sup> 133 S. Ct. at 2119–20 (quotation marks omitted). By incorporating the specific features of the rules as claim limitations, claim 1 is limited to a specific process for automatically animating characters using particular information and techniques and does not preempt approaches that use rules of a different structure or different techniques. *See Morse*,<sup>[4]</sup> 56 U.S. at 113. When looked at as a whole, claim 1 is directed to a patentable, technological improvement over the existing, manual 3–D animation techniques. The claim uses the limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice. *Alice*, 134 S. Ct. at 2358 (citing *Diehr*, 450 U.S. at 177, 101 S. Ct. 1048).

*McRo*, 837 F.3d at 1316.

---

<sup>3</sup> *Association for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576 (2013).

<sup>4</sup> *O’Reilly v. Morse*, 56 U.S. 62 (1853).

Unlike the claims in *McRo*, claim 1 is not directed to a technological improvement. Instead, claim 1 merely uses a generic computer to manipulate data using conventional processes like those in *Electric Power*.

Appellant also argues the Examiner's comparison of the pending claims to those found to be an abstract idea in *Electric Power* is incorrect. Reply Br. 5–6. Specifically, Appellant argues “the present claims include significantly more than mere collection, analysis, and display of available information in the field of sustainability.” *Id.* at 5. Instead, according to Appellant, the claims “include[] at least an interaction between user and system.” *Id.* (emphasis omitted). Additionally Appellant contends “the evaluation component employing custom sustainability factors and weights are technical means for performing the search that are specific to sustainability factor analysis in industrial production, and thus, are beyond conventional computer and network technology. Accordingly . . . they go beyond routine collection, analysis, and display.” *Id.* at 5–6.

We are not persuaded by Appellant's argument. First, we disagree that the inclusion of user provided rules makes the claim less abstract. In fact, contrary to Appellant's assertion, using a computer to implement human provided rules is an abstract idea. *See SmartGene Inc. v. Adv. Bio. Labs. SA*, 555 Fed. Appx. 950 (Fed. Cir. 2014); *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366 (Fed. Cir. 2011). Moreover, Appellant has not cited any case in which the use of user input has been a critical factor in finding a claim not an abstract idea. Second, we disagree that the use of customizable factors and weights makes the claim any less abstract. Instead, those are merely elements of the abstract idea of evaluating data.

The Examiner further determines that claim 1 does not recite something more to transform the abstract idea into patentable subject matter. *See* Final Act. 8–9; Ans. 20–22. Specifically, the Examiner determines:

Scoring a data element on one or more of a plurality of attributes is well-known and expected in the art and does not qualify as significantly more. Significantly more is not realized when at a high level of generality, a general purpose computer performs generic functions that are well-known, routine and conventional in the technological art, specifically, at least one processor, a memory and a product/article of manufacture.

Final Act. 8–9; *see also* Ans. 21 (determining the claim “merely describ[es] the functions of the abstract idea without particularity. This is not sufficient under step two.”), 21–22 (determining the claims merely recite well-understood, routine, and conventional activity).

Appellant “contend[s] that the present claims include *meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment.*” App. Br. 12. Specifically, Appellant relies on the Federal Circuit’s decision in *Bascom*<sup>5</sup> and *Amdocs* to argue that the pending claims recite something more. *See* App. Br. 12–15; Reply Br. 4–5. For the reasons discussed below, we are not persuaded by Appellant’s arguments. Instead, we agree with and adopt the conclusions and determinations of the Examiner.

Appellant contends that in *Bascom*, “the Federal Circuit noted that the claims do not merely recite the abstract idea of filtering content along with a requirement to perform on generic components.” App. Br. 13 (citing *Bascom*, slip op. at 16). Appellant also contends that Federal Circuit held

---

<sup>5</sup> *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

that the claims did not “preempt all manners to filter content.” *Id.* (citing *Bascom*, slip op. at 16). Based on *Bascom*, Appellant argues that because “[t]he ordered combination of these limitations transforms the alleged abstract idea into a particular application of that idea” and the “claims do not preempt all manners of collecting data,” the claims are patent-eligible. *Id.*

We are not persuaded by Appellant’s argument. The key to the court’s holding in *Bascom* was the claims’ recitation of different elements at specific locations to obtain benefits that could not be achieved by placing the elements at the same location. 827 F.3d at 1350. Specifically, the court held that “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.*

The inventive concept described and claimed in the ‘606 patent is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. BASCOM explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

*Id.* (citations omitted).

Here, unlike in *Bascom*, Appellant has not offered any evidence that the claims recited a “non-conventional and non-generic arrangement of known, conventional pieces.” *See id.* Instead, the claims simply recite a conventional processor programmed to perform various types of conventional data analysis.

Nor are we persuaded by Appellant’s contention the pending claims do not preempt the field. Even if that contention was true, although the

extent of preemption is a consideration, the absence of complete preemption is not dispositive. *See, e.g., Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (“While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.”); *Ultramercial, Inc. v. Hulu LLC*, 722 F.3d 1335, 1346 (Fed. Cir. 2013) (“[T]he Supreme Court has stated that, even if a claim does not wholly pre-empt an abstract idea, it still will not be limited meaningfully if it contains only insignificant or token pre- or post-solution activity—such as identifying a relevant audience, a category of use, field of use, or technological environment.”) (citations omitted), *vacated and remanded, WildTangent, Inv. v. Ultramercial LLC*, 134 S. Ct. 2870 (2014) (remanding for consideration in light of *Alice*, 134 S. Ct. 2347). Based on the totality of the analysis, any lack of preemption is not sufficient to demonstrate that the Examiner erred and that the claims are patent-eligible.

According to Appellant, in *Amdocs*, “the Federal Circuit explained the claims are directed to an unconventional solution to a technological problem and that the fact that the solution requires arguably generic components, the claims’ enhancing limitations requires the generic components to operate in an unconventional manner to achieve the improvement.” App. Br. 13–14 (citing *Amdocs*, slip op. at 22–23). Appellant further explains that, “[a]lthough the Federal Circuit noted that the claimed method involves some arguably conventional components, the claim at issue also recites unconventional solutions to a technology problem involving limitations that, when considered individually and as an ordered combination recite an inventive concept.” *Id.* at 14 (citing *Amdocs*, slip op. at 25).



We are not persuaded by Appellant’s argument. Specifically, in finding the claims in *Amdocs* patent-eligible, the Court held the claim was directed to a technological problem:

In other words, this claim entails an unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases). The solution requires arguably generic components, including network devices and “gatherers” which “gather” information. However, the claim’s enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality.

841 F.3d at 1288. Appellant has not persuasively argued nor presented any evidence to demonstrate that claim 1 is directed to a technological problem. Instead, we agree with the Examiner that processor recited in claim 1 “does not produce a new or improved technological process for producing a sustainability score for a manufactured product because the above features of the search system are well-known and expected in the art.” Ans. 21.

Accordingly, we sustain the Examiner’s rejection of claim 1 as directed to patent-ineligible subject matter, along with the rejection of claims 2–20, which are not separately argued.

#### *Prior Art Rejections*

Appellant argues the Examiner erred in finding Ohnemus discloses “a query component . . . configured to . . . receive a set of search criteria and a set of sustainability factors, wherein the set of search criteria comprises a process employed by an industrial automation system to produce a product or an article of manufacture, the product made by the process, the article of manufacture of the process, a plant element carrying out the process or any

combination thereof,” as recited in claim 1. *See* App. Br. 16–18; Reply Br. 6–7. According to Appellant, “Ohnemus merely discloses a system for producing sustainability ratings for certain legal entities such as companies and governments.” App. Br. 16 (citing Ohnemus ¶ 33); *see also* Reply Br. 6. Appellant further argues “that sustainability ratings for legal entities are not the same as a system capable of evaluating sustainability at the level of” the products or processes recited in claim 1. App. Br. 16–17. Appellant also argues “[t]o the extent that Ohnemus discusses queries that may appear similar to the query recited in the claims, the specification describes a query that retrieve a rating of a legal entity based on product query.” *Id.* at 17; *see also* Reply Br. 6–7. Finally, Appellant argues “while Ohnemus allows a user to *compare two different legal entities* by querying for the products produced by the legal entities, Ohnemus does not anticipate a system that allows a user to *compare two products* based on sustainability of the production process, as the recited claims allow.” App. Br. at 18.

The Examiner finds Ohnemus discloses “company rating system using at least one non-economic factor stored in a database” and that a “similar scoring can be made on the product level.” Final Act. 9–10 (citing Ohnemus ¶¶ 30, 106). More specifically, the Examiner finds Ohnemus discloses,

Search criteria for products:

Paragraph 30: the present invention provides a system for rating the sustainability of legal entities, such as companies and governments, senior executives and products,

Paragraph 106: It can be appreciated that while the foregoing discussion has concerned the rating of companies and industries, a similar scoring can be made at the product level. Thus, if suitable data were gathered and maintained in the data

repository 720 to permit an assessment of the environmental, social, economic, and/or governance impact of manufacturing particular products, say soft drinks, then a sustainability rating can be made on the basis of one product versus another.

Ans. 23.

We are not persuaded by Appellant’s argument the Examiner erred. Instead, we agree with and adopt the Examiner’s findings. Specifically, Ohnemus specifically states that it can be used to determine a suitability for “legal entities, . . . senior executive, *and products.*” Ohnemus ¶ 30 (emphasis added). Ohnemus goes on to state “a similar scoring can be made on a *product level.*” *Id.* ¶ 106 (emphasis added). As an example, Ohnemus states a sustainability score can be generated for a specific product (such as a soft drink) so that two products can be compared to each other “from a level of corporate responsibility rather than on test or price.” *Id.* Therefore, Ohnemus disclose that a sustainability score can be performed and search based on a product.

Accordingly, we sustain the Examiner’s rejection of claim 1, along with the rejection of claims 12 and 17, which are argued on the same reasoning, and dependent claims 2–6, 8–10, 11–16, and 18–20, which are not separately argued.

With respect to dependent claims 7 and 11, Appellant merely contends that, because the additional references used in the rejections of these claims (Dilorenzo and Djebarov) do not cure the shortcomings of the Ohnemus applied against claim 1, the Examiner failed to make a prima facie case of obviousness for these claims. App. Br. 19–20, 21. Because we determine that the rejection of claim 1 is not erroneous for the reasons discussed above, we sustain the rejections of these claims.

Appeal 2017-009503  
Application 14/532,673

DECISION

For the above reasons, we affirm the Examiner's decisions rejecting claims 1–20.

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