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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BRET W. DIXON

Appeal 2017-009641
Application 12/474,497
Technology Center 2100

Before CAROLYN D. THOMAS, LINZY T. McCARTNEY, and
MELISSA A. HAAPALA, *Administrative Patent Judges*.

McCARTNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1–17. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

BACKGROUND

In a prior appeal, we reversed the Examiner's rejection of claims 1–17 under 35 U.S.C. § 103(a) over combinations of Buxton (US 2004/0215998 A1; Oct. 28, 2004), Eisner (US 2007/0180150 A1; Aug. 2, 2007), and Brown (US 2006/0122882 A1; June 8, 2006). Decision on Appeal, mailed October 7, 2015. The Examiner then rejected claims 1–17 under 35 U.S.C. § 101 and entered a new rejection of claims 1–17 under 35 U.S.C. § 103(a). Appellant appeals from these rejections.

Claims 1, 9, and 10 are independent. Claim 1 illustrates the claimed invention:

1. A method for message queue retrieval by selection criteria comprising:

receiving from a requesting application a message retrieval request for a message in a message queue storing a plurality of messages;

determining from the message retrieval request both a template defining fields in the messages, and also selection criteria operable upon content stored in at least one of the fields in the messages;

applying the selection criteria to the messages in the message queue to select a message subset of the messages in the message queue; and

transmitting the message subset to the requesting application.

Appeal Brief (“App. Br.”) 20, filed January 17, 2017.

REJECTIONS

Claims Rejected	Basis	Reference(s)
1–17	§ 101	
1, 4–10, and 13–17 ¹	§ 103	Buxton ² Lambert ³
2, 3, 11, and 12	§ 103	Buxton, Lambert, Brown ⁴

DISCUSSION

For both the § 101 and the § 103 grounds of rejection, Appellant argues claims 1–17 together. *See* App. Br. 4–18. As permitted by 37 C.F.R. § 41.37, we select claim 1 as representative of the rejected claims for both grounds and decide the appeal on these grounds with respect to claim 1. Appellant has waived arguments Appellant failed to timely raise or adequately present. *See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2).

We have considered the Examiner’s rejections in light of Appellant’s arguments, and we disagree with Appellant that the Examiner erred. To the extent consistent with the analysis below, we adopt the Examiner’s findings, reasoning, and conclusions in the Final Office Action mailed August 3, 2016 (pages 2–27) and the Answer mailed May 3, 2017 (pages 3–10).

¹ The header of this rejection indicates claims 1–17 stand rejected over Buxton and Lambert; however, this rejection does not address claims 2, 3, 11, and 12. Claims 2, 3, 11, and 12 stand rejected over Buxton, Lambert, and Brown. *See* Final Act. 11–23. We treat this as a harmless typographical error.

² Buxton et al. (US 2004/0215998 A1; Oct. 28, 2004).

³ Lambert et al. (US 2003/0033349 A1; Feb. 13, 2003).

⁴ Brown et al. (US 2006/0122882 A1; June 8, 2006).

§ 101 Rejection

Under § 101 of the Patent Act, “[w]hoever 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.” 35 U.S.C. § 101. “[T]his 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). The Supreme Court has set forth the following two-step framework for determining whether a patent claim falls within one of these exceptions:

First, we 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, 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. 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.”

Alice, 134 S. Ct. at 2355 (citations omitted) (quoting *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 73, 77–79 (2012)). “In the context of claims that are challenged as containing only abstract ideas, those two stages are typically referred to as the ‘abstract idea’ step and the ‘inventive concept’ step.” *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Applying this framework, the Examiner concluded claim 1 is directed to a patent-ineligible abstract idea. *See* Final Act. 2–4, 6–8. The Examiner found the limitations recited in claim 1 fell within recognized abstract idea

categories such as “organiz[ing], stor[ing], and transmit[ting] information” and “comparing new and stored information [and] using rules to identify options.” Final Act. 2–4. The Examiner concluded claim 1 is “directed to the abstract idea of organizing information through mathematical correlation . . . or such as using categories to organize, store[,] and transmit information in *Cyberfone* or comparing new and stored information and using rules to identify options in *SmartGene*.” Final Act. 7–8. The Examiner also determined that claim 1 does not recite an inventive concept because the claim elements “do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea.” Final Act. 8.

With respect to the “abstract idea” step, Appellant asserts the Examiner described claim 1 “at a high level of abstraction untethered from the language of the claim when determining the focus of the claimed invention” and “doom[ed]” the claim because a general-purpose computer can run the recited method. App. Br. 7. Appellant argues that doing so conflicts with Patent Office practice and Federal Circuit precedent. App. Br. 5–7. Appellant argues the Examiner also violated Patent Office practice by relying on the non-precedential *Cyberfone* and *SmartGene* Federal Circuit decisions. App. Br. 8. Finally, Appellant contends that, when considered in light of paragraphs 17–19 of the written description, claim 1 is directed to an improvement in computer functionality, not an abstract idea. App. Br. 9–11.

Appellant’s arguments have not persuaded us the Examiner erred. As determined by the Examiner, *see* Final Act. 2–4, 7–8, claim 1 recites a collection of recognized abstract processes. Claim 1 recites “[a] method for message queue retrieval by selection criteria” that includes four steps: (1)

receiving a message retrieval request from an application, (2) determining a template and selection criteria from the request, (3) applying the selection criteria to select a subset of messages in a message queue, and (4) transmitting the message subset to the application. *See* App. Br. 20. Claim 1 recites little about *how* the method accomplishes each recited step; the claim instead essentially recites *results* specified at a high level of detail. For example, claim 1 recites what is determined (a template and selection criteria) and from what (the request) but does not recite how the method determines these elements. Similarly, claim 1 requires applying selection criteria to select a message subset but fails to recite how this is done. As written, the claim is so broad as to encompass nearly *any* mechanism or procedure that accomplishes these results, including people performing these steps in their heads or using pen and paper.

The Federal Circuit has determined that similar steps are directed to abstract processes. For example, the Federal Circuit has concluded that collecting data (receiving a message retrieval request) and recognizing data within the collected data set (determining a template and selection criteria from the request) are abstract processes.⁵ Similarly, the Federal Circuit has

⁵ *See, e.g., SmartGene, Inc. v. Advanced Biological Labs., SA*, 555 F. App'x 950, 954–56 (Fed. Cir. 2014) (concluding claims that called for a computing device to perform steps doctors can perform in their heads are directed to an abstract idea); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat. Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (concluding claims focused on collecting data, recognizing data within the collected data set, and storing the recognized data are directed to an abstract idea); *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016) (concluding claims that recited collecting information, analyzing it, and displaying certain results of the collection and analysis are directed to an abstract idea); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1372

concluded that searching and retrieving information (applying the selection criteria to select a subset of messages) and transmitting information (transmitting the message subset) are also abstract processes.⁶ Where, as here, a claim recites a combination of abstract processes, the claim is directed to an abstract idea. *See, e.g., Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“Here, the claims are clearly focused on the combination of those abstract-idea processes. . . . They are therefore directed to an abstract idea.”); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1092–95 (Fed. Cir. 2016) (concluding claims directed to a combination of recognized abstract-idea categories are directed to an abstract idea). And where, as here, a claim recites a series of results without sufficiently reciting how to achieve the results, the claim is directed to an abstract idea. *See, e.g., Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1337–38 (Fed. Cir. 2017) (concluding a claim is directed to an abstract idea when the claim requires functional results without adequately describing how to achieve the results).

(Fed. Cir. 2017) (“[T]he claims are directed to the collection, storage, and recognition of data. We have determined that claims directed to the collection, storage, and recognition of data are directed to an abstract idea.”).⁶ *See, e.g., Cyberfone Sys., LLC v. CNN Interactive Grp., Inc.*, 558 F. App’x 988, 991 (Fed. Cir. 2014) (concluding claims drawn to using categories to collect, organize, and transmit data are directed to an abstract idea); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1313–14 (Fed. Cir. 2016) (concluding claims concerning “filtering files/e-mail” are directed to an abstract idea); *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327–28 (Fed. Cir. 2017) (concluding claims involving creating an index used to search and retrieve information are directed to an abstract idea).

In particular, claim 1 is directed to the abstract idea of using selection criteria for message queue retrieval. On its face, claim 1 is drawn to “[a] method for message queue retrieval by selection criteria.” App. Br. 20. The associated written description also describes embodiments of the “present invention” in a similar manner. *See, e.g.*, Specification (“Spec.”), Abstract, filed May 29, 2009 (“Embodiments of the present invention . . . provide a method . . . for message queue retrieval by selection criteria.”); *see also id.* ¶¶ 7 (“Embodiments of the present invention . . . provide a novel and non-obvious method . . . for message queue retrieval by selection criteria.”), 14 (“Embodiments of the present invention provide a method . . . for message queue retrieval by selection criteria.”). In light of the language of claim 1 and its accompanying written description, claim 1 is drawn to the abstract idea of using selection criteria for message queue retrieval.

Appellant’s arguments do not lead to a different conclusion. First, although we describe the abstract idea differently than the Examiner, we see no error in the Examiner’s characterization of the idea. “An abstract idea can generally be described at different levels of abstraction.” *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240 (Fed. Cir. 2016); *see also id.* at 1240–41 (“As the Board has done, the claimed abstract idea could be described as generating menus on a computer, or generating a second menu from a first menu and sending the second menu to another location. It could be described in other ways, including, as indicated in the specification, taking orders from restaurant customers on a computer.”). The level of abstraction an examiner uses to describe an abstract idea need not—and in this case, does not—“impact the patentability analysis.” *Apple*, 842 F.3d at 1241. Regardless of the level of generality one uses to describe the abstract idea,

the result is the same—claim 1 is directed to an abstract idea. *Cf. Accenture Glob. Servs., GmbH v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344–45 (Fed. Cir. 2013) (“Although not as broad as the district court’s abstract idea of organizing data, it is nonetheless an abstract concept.”).

Second, the Examiner did not improperly “doom” claim 1 because a general-purpose computer can execute the claimed method. Rather, the Examiner compared the claimed method with concepts the Federal Circuit has determined are abstract ideas. *See* Final Act. 2–4, 7–8. This approach is consistent with Patent Office practice and Federal Circuit precedent. *See, e.g.*, Manual of Patent Examining Procedure § 2106.04(a) (explaining that an abstract idea analysis involves “comparing the claimed concept to the concepts previously identified as abstract ideas by the courts to determine if it is similar”); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1334 (Fed. Cir. 2016) (“[B]oth this court 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.”). Although the Examiner responded to Appellant’s arguments by pointing out that a general-purpose computer can perform the limitations recited in claim 1, *see* Final Act. 2–4, this does not mean the Examiner inappropriately “doomed” the claim for that reason.

Third, the Examiner’s reliance on non-precedential decisions does not conflict with Patent Office practice. As asserted by Appellant, the Deputy Commissioner for Patent Examination Policy stated in a November 2016 memorandum that “given the large and ever-increasing number of precedential decisions, examiners should avoid relying upon or citing non-precedential decisions.” Memorandum from Robert W. Bahr, Deputy Commissioner for Patent Policy (“November 2016 Memo”) 4 (Nov. 2,

2016), <https://www.uspto.gov/sites/default/files/documents/McRo-Bascom-Memo.pdf>. But this memorandum does not *prohibit* examiners from relying on these decisions. In fact, the memorandum explicitly contemplates that examiners can rely on non-precedential decisions. The memorandum states that examiner may rely on non-precedential decisions when “the facts of the application under examination uniquely match the facts at issue in the non-precedential decision.” November 2016 Memo 4.

Fourth, both claim 1 and the written description indicate that claim 1 is not directed to an improvement in computer functionality as argued by Appellant. As discussed above, claim 1 recites “[a] method for message queue retrieval by selection criteria” that includes a series of steps described in terms of results. Although a computer may be able to achieve the recited results, the claim does not purport to change (much less improve) how a computer functions.

The written description also does not indicate the claimed invention improves how a computer functions. The written description explains that the claimed invention “can be implemented within a message queuing data processing system” but makes clear that this system encompasses generic computing devices. Spec. ¶ 17. For example, the written description discloses that system includes “client computing devices 210” that runs applications, “computer communications network 220,” and “host computing system 230” that includes “one or more computing servers.” Spec. ¶ 17. Each server in turn can include “memory” and “one or more processors” and can support “the operation of a message queue 250.” Spec. ¶ 17.

There is no indication in the written description that these elements are anything other than generic hardware or software components. In fact, the written description acknowledges that some of these elements were typical and known to those of ordinary skill in the art. For example, in the “Background of the Invention” section, the written description describes “[e]xisting queuing technologies,” which includes client applications retrieving messages from “the typical message queue.” Spec. ¶¶ 3–6. The written description also discloses that a suitable data processing system includes generic components such as “processor[s],” “memory elements,” “[i]nput/output or I/O devices,” and “[n]etwork adapters.” Spec. ¶ 25. The written description further discloses that the message queue data processing system includes a “[m]essage retrieval module 300” that can perform the steps recited in claim 1. *See* Spec. ¶¶ 17–19. The written description discloses that the module “can execute as program code in memory by a processor in the host computing system 230.” Spec. ¶ 18. The written description provides almost no technical details about the module or the program code, other than noting that “[i]n a preferred embodiment, the invention is implemented in software, which includes but is not limited to firmware, resident software, microcode, and the like.” Spec. ¶ 23. These disclosures indicate claim 1 is directed to an abstract idea, not an improvement in computer functionality. *Cf. BSG Tech LLC v. Buyseasons, Inc.*, No. 2017-1980, 2018 WL 3862646, at *3 (Fed. Cir. Aug. 15, 2018) (“If a claimed invention only performs an abstract idea on a generic computer, the invention is directed to an abstract idea at step one.”).

Because we agree with the Examiner that claim 1 is directed to an abstract idea, we next consider whether claim 1 has an “inventive concept”

sufficient to transform the abstract idea into patent-eligible subject matter. With respect to the “inventive concept” step, Appellant argues claim specifies “with particularity exactly *how* the abstract concept of message queue retrieval by selection criteria is achieved *without foreclosing* all possible methodologies for achieving the abstract concept of message queue retrieval by selection criteria.” App. Br. 13–14 (emphases altered). According to Appellant, this distinguishes claim 1 from the patent-ineligible claims discussed in *Internet Patents Corp. v. Active Network, Inc.* App. Br. 14–15. Appellant contends claim 1 recites an inventive concept under the analyses in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, *BASCOM Glob. Internet Services, Inc. v. AT&T Mobility LLC*, and *Ex parte Ismail*. App. Br. 14–15.

We disagree. Whether we consider the recited steps and elements individually or in an ordered combination, they do not recite an inventive concept. For reasons already discussed, Appellant’s written description makes clear that the method recited in claim 1 requires only generic hardware and software. Such claims generally do not recite an inventive concept. *See, e.g., Two-Way Media Ltd.*, 874 F.3d at 1339 (“[M]erely reciting an abstract idea performed on a set of generic computer components, as claim 1 does here, would ‘not contain an inventive concept.’” (citation omitted)). Moreover, even if the generic hardware and software described in the written description could provide an inventive concept, claim 1 does not explicitly recite either. Although we view claims in the light of their associated written description, it is the *claims* that must provide the necessary inventive concept. *See, e.g., Two-Way Media Ltd.*, 874 F.3d at 1338–39 (“The main problem that Two-Way Media cannot

overcome is that the *claim*—as opposed to something purportedly described in the specification—is missing an inventive concept. While the specification may describe a purported innovative ‘scalable architecture,’ claim 1 of the '187 patent does not.” (citation omitted)). And we see nothing in the ordered combination of the recited steps that suggests claim 1 contains an inventive concept.

Appellant’s arguments do not persuade us otherwise. Although claim 1 recites a series of steps, as discussed above, claim 1 does not specify how the recited method achieves the results recited in each step. That is, instead of reciting how the claimed method receives a message retrieval request, determines a template and selection criteria from the request, applies the selection criteria to select a subset of messages, and transmits the message, claim 1 simply recites that the method achieves these results. *See App. Br. 20*. In this sense, contrary to Appellant’s arguments, the recited limitations are similar to the claim limitations at issue in *Internet Patents Corp.* *See, e.g.,* 790 F.3d 1343, 1348 (Fed. Cir. 2015) (“As the district court observed, claim 1 contains no restriction on how the result is accomplished. The mechanism for maintaining the state is not described The court concluded that the claim is directed to the idea itself—the abstract idea of avoiding loss of data.”). Moreover, even if claim 1 does not preempt *every* way of using selection criteria to retrieve messages from a message queue, this fact does not make claim 1 patent eligible. *See 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.”).

The part of *Intellectual Ventures I LLC* discussed by Appellant is not to the contrary. This part of *Intellectual Ventures I LLC* noted that the claims in a different case, *DDR Holdings, LLC v. Hotels.com, L.P.*, “provided an Internet-based solution to solve a problem unique to the Internet that (1) did not foreclose other ways of solving the problem, and (2) recited a specific series of steps that resulted in a departure from the routine and conventional sequence of events after the click of a hyperlink advertisement.” *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1371 (Fed. Cir. 2015). But the next sentence in *Intellectual Ventures I LLC* states that “[t]he patent claims here do not address problems unique to the Internet, so *DDR* has no applicability.” *Id.* The same is true here. And although Appellant asserts that claim 1 recites “a specific series of steps that result in a departure from the routine and conventional sequence of events” as in *DDR*, App. Br. 15, Appellant has not adequately explained why that is the case. Merely asserting that the recited steps depart from the routine and conventional sequence of events does not make it so.

Appellant’s arguments about *BASCOM* and *Ismail* fare no better. In *BASCOM*, the Federal Circuit found an inventive concept “in the non-conventional and non-generic arrangement of known, conventional pieces,” specifically “the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user.” 827 F.3d 1341, 1350 (Fed. Cir. 2016). Appellant has not identified any non-conventional, non-generic arrangement here, and we see nothing in the written description that indicates that claimed invention includes such an arrangement. As for *Ismail*, to the extent the Board “confirmed” the *Intellectual Ventures I LLC* analysis in *Ismail* as asserted by Appellant, App.

Br. 15, that confirmation does not change the result here. But we note that *Ismail* makes no mention of *Intellectual Ventures I LLC* or *DDR*. *Ex parte Ismail*, No. 2014-005477, 2016 WL 3569659, at *1–5 (PTAB June 29, 2016). In any event, *Ismail* is not precedential and therefore does not bind us.

For these reasons, we agree with the Examiner that claim 1 does not recite an inventive concept. Because we agree with the Examiner that claim 1 is directed to an abstract idea and does include an inventive concept, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 101.

§ 103 Rejections

Appellant argues the Examiner’s combination of Buxton and Lambert fails to teach or suggest “determining from the message retrieval request both a template defining fields in the messages, and also selection criteria operable upon content stored in at least one of the fields in the messages” as recited in claim 1. App. Br. 16–18. According to Appellant, the Examiner relies on Lambert’s “GetMessage request” to teach or suggest this limitation but “never attempts to map the determination from the ‘GetMessage Request’ [to] *both a template and also selection criteria*.” App. Br. 18 (emphasis altered). Moreover, Appellant contends that paragraphs 36 and 38 of Lambert do not teach or suggest identifying a template. App. Br. 18. With respect to Buxton, Appellant asserts the Examiner found Buxton inherently discloses the recited “selection criteria” and argues “the inherency . . . is not so specific as to provide for” the recited “determining” step. App. Br. 18. Finally, Appellant contends Buxton does not teach or suggest claim 1’s “applying” step. Reply Br. 8–9.

We disagree. The cited portions of Lambert teach that as part of transmitting a GetMessage request to a vendor, the disclosed invention can call a “DumpToString() method” that requires a template. *See* Lambert ¶¶ 45–48, 70; *see also* Final Act. 5–6 (citing Lambert ¶¶ 46–48, 70). As noted by the Examiner, Lambert explains that “[t]he template is a pattern string showing how the fields item data should be interpreted.” Lambert ¶ 46; Final Act. 12. The Examiner mapped this disclosure to the recited “determining . . . a template.” *See, e.g.*, Final Act. 12. The cited portions of Lambert also disclose that after the vendor receives the GetMessage request, an MQeFilter object within the request “appl[ies] its test condition to its target object (typically a queue) to identify any items within the queue or referenced in the queue which match the test condition.” Lambert ¶ 70. The Examiner mapped this disclosure to the recited “determining . . . selection criteria.” *See, e.g.*, Final Act. 5. Thus, contrary to Appellant’s argument, the Examiner mapped Lambert’s method of processing a GetMessage request to claim 1’s “determining” limitation. And although Appellant contends paragraphs 36 and 38 of Lambert do not teach identifying a template, as noted earlier, the Examiner relied on paragraphs 45–48 of Lambert for this element. *See, e.g.*, Final Act. 5–6, 12. Appellant has not persuasively addressed these paragraphs. For at least these reasons, Appellant has not persuasively explained why this mapping fails to teach or suggest this step.

As for Buxton, the Examiner noted Buxton discloses “using distinct keys that allows a queue manager to selectively access messages in particular.” Answer 8. This finding establishes that Buxton teaches or suggests the recited “selection criteria.” The Examiner did not, as argued by

Appellant, find Buxton alone teaches claim 1’s “determining” step. *See, e.g.*, Final Act. 11–13. Rather, the Examiner concluded this limitation would have been obvious over the *combined* teachings of Buxton and Lambert. *See, e.g.*, Final Act. 11–13. Appellant’s arguments against Buxton alone have not established the Examiner erred in this regard. “[O]ne cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references.” *In re Keller*, 642 F.2d 413, 426 (CCPA 1981).

Finally, Appellant argues for the first time in the Reply Brief that Buxton does not teach claim 1’s “applying” step. Reply Br. 8–9. Appellant has waived this argument by failing to raise it in the Appeal Brief. *See See* 37 C.F.R. §§ 41.37(c)(1)(iv), 41.41(b)(2). In any event, we have reviewed the Examiner’s rejection, and we see no error with respect to this limitation. *See* Final Act. 11–12. For the above reasons, we sustain the Examiner’s rejection of claim 1.

CONCLUSION

Claims Rejected	Basis	Reference(s)	Affirmed	Reversed
1–17	§ 101	N/A	1–17	
1, 4–10, and 13–17	§ 103	Buxton and Lambert	1, 4–10, and 13–17	
2, 3, 11, and 12	§ 103	Buxton, Lambert, and Brown	2, 3, 11, and 12	
Summary			1–17	

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No 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).

AFFIRMED