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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte BO HU, KELLY WINTERS, EVAN SHARP,
and EMILY CLARK WHITE

Appeal 2017-009675¹
Application 13/181,338
Technology Center 3600

Before MAHSHID D. SAADAT, ALLEN R. MacDONALD, and
JOHN P. PINKERTON, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Appellants identify Facebook, Inc., as the real party in interest.

STATEMENT OF CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1, 3–9, 11–15, 22–24, and 26–28.^{2,3} Claims 2, 10, 16–21, and 25 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Illustrative Claim

Illustrative claim 1 under appeal reads as follows;

1. A computer-implemented method comprising:
 - identifying a user of a social networking system for sending information about a deal received from a deal provider;
 - identifying a set of connections of the user, each connection comprising another user with whom the user has established a connection in the social networking system;
 - determining, by a computer, a measure of relevance in the deal for each identified connection based at least in part on actions performed by the identified connection in association with the deal;
 - selecting, by the computer, one or more identified connections based on the determined measure of relevance in the deal;

² The Final Office Action indicates that claims 1–9 and 11–28 are rejected, but claims 2, 10, 16–21, and 25 are cancelled. Final Act. 2.

³ Appellants indicate they are unaware of any other related appeals. *See* App. Br. 1. However, Appeal 2016–008277 (Application 13/289,973), Appeal 2017-007696 (Application 13/181,347), Appeal 2017–009432 (Application 13/181,307), Appeal 2017-009510 (Application 13/167,657), and Appeal 2017-009676 (Application 13/181,344) are all related to this appeal. *See* 37 C.F.R. § 41.37(c)(ii). We respectfully request Appellants and Appellants' counsel review pending and future proceedings before the Board and ensure that all related appeals are identified.

receiving a content associated with the deal posted via the social networking system by the one or more selected connections;

selecting the content associated with the deal posted by a connection from the one or more selected connections; and

sending the selected content associated with the deal posted by the connection to the user for display in connection with the displayed information about the deal.

App. Br. 23 (Claims Appendix).

*Rejections on Appeal*⁴

1. The Examiner rejected claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 101 for being directed to patent-ineligible subject matter.⁵ *See Ans. 3.*

2. The Examiner rejected claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 103(a) as being unpatentable over Dessert et al. (US 2012/0072271 A1; published Mar. 22, 2012) (“Dessert”), Kendall et al. (US 2009/0119167 A1; published May 7, 2009) (“Kendall”), and Kramer et

⁴ The Examiner also rejected claims 1, 3–9 and 11–15 under 35 U.S.C. § 112, first paragraph as failing to comply with the enablement requirement, but withdrew the rejection in the Examiner’s Answer. *See Ans. 7.* Therefore, the rejection of claims 1, 3–9 and 11–15 under 35 U.S.C. § 112, first paragraph is not before us.

⁵ We select claim 1 as representative. Separate patentability, in compliance with 37 C.F.R. § 41.37(c)(iv), is not argued for claims 3–9, 11–15, 22–24, and 26–28. *See App. Br. 5–12; see also Reply Br. 2–8.* Accordingly, except for our ultimate decision, the rejection of claims 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 101 is not discussed further herein.

al. (US 2008/0306826 A1; published Dec. 11, 2008) (“Kramer”).⁶ *See* Final Act. 5–6.

Issues on Appeal

Did the Examiner err in rejecting claim 1 as being directed to patent-ineligible subject matter?

Did the Examiner err in rejecting claims 1 and 6–9 as being obvious?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellants’ arguments that the Examiner has erred. We disagree with Appellants’ contention that the Examiner erred. Instead, we concur with the conclusions reached by the Examiner. Except as noted below, we adopt as our own the reasoning set forth by the Examiner in the Final Office Action and Examiner’s Answer.

A. Section 101 Case Law

Under 35 U.S.C. § 101, a patent may be obtained “for any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” The Supreme Court has “long held that this provision contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable.” *Alice Corp. Pty.*

⁶ The patentability of claims 3–5, 11–15, 22–24, and 26–28 is not separately argued from that of claim 1. *See* App. Br. 18, 22. Accordingly, except for our ultimate decision, the rejection of claims 3–5, 11–15, 22–24, and 26–28 under 35 U.S.C. § 103(a) is not discussed further herein.

Ltd. v. CLS Bank Int'l, 134 S.Ct. 2347, 2354 (2014) (quoting *Ass'n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 589 (2013)). The Supreme Court in *Alice* reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice*, 134 S.Ct. at 2355. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” such as an abstract idea. *Id.* The Court acknowledged in *Mayo* that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 71. Therefore, we look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and otherwise merely recite generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016). If the claims are not directed to an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step, in which the elements of the claims are considered “individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Alice*, 134 S.Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78).

B. *Alice/Mayo* – Step 1

The Examiner determines claim 1 is directed to “an abstract idea of collecting information, analyzing [the collected information], and displaying

certain results of the collection and analysis,” and “[s]imilar claims directed to collecting information, analyzing it, and displaying certain results of the collection and analysis (Electrical Power Group) which has been identified by the courts to be abstract ideas of ‘An Idea Of Itself.’” Ans. 3–4.

Appellants contend claim 1 is not directed to an abstract idea under 35 U.S.C. § 101 because:

[T]he scope of the claims is not “targeted marketing.” The claimed invention concerns deals in social networking systems and in particular to distributing deals via a social networking system from one or more deal providers. . . . Therefore, *even if the claim involves the concept of “targeted marketing[,]” the claim does not preempt the entire field of “targeted marketing.”*

. . . .

Examiner has *simply listed several claim limitations* and made a *conclusory statement that these claim limitations are directed towards “targeted marketing.”* Examiner has provided *no explanation as to why these limitations are directed to targeted marketing.* Furthermore, these generic elements, *dissected from the context of the claim, ignore “their character as a whole.”*

The claimed invention is not merely about “targeted marketing,” as maintained in the Office Action. Instead, the claimed invention *provides a specific approach for sending deals to users of a social networking system and improving users interactions with the deals based on their social information.*

App. Br. 6–8 (emphasis added).

The Examiner responds:

Therefore, *the [E]xaminer’s burden has been met and a proper prima facie case has been made.* In the instant case, similar claims directed to collecting information, analyzing it, and displaying certain results of the collection and analysis (*Electric Power Group*) which *has been identified by the courts to be abstract ideas of “An Idea ‘Of Itself[.]”*

....

While preemption may signal patent ineligible subject matter, ***the absence of complete preemption does not demonstrate patent eligibility***. Where a patent's claims are deemed only to disclose patent ineligible subject matter under the Mayo framework, as they are in this case, preemption concerns are fully addressed and made moot.

Ans. 7–8 (emphasis added).

In response, Appellants continue to contend that claim 1 is not directed to an abstract idea under 35 U.S.C. § 101 because:

Unlike the claims in *Electric Power Group*, ***the present claims do not merely require collection, analysis, and display of available information in a particular field***. Instead, the claims involve ***an advance over conventional computer and network technology***. . . . Therefore, the claims of the present invention are ***unlike the claims of *Electric Power Group* and are not directed towards an abstract idea***.

Reply Br. 2–3 (emphasis added).

We are unpersuaded by Appellants' arguments. Upon review of Appellants' claims and Specification, and consistent with the Examiner's findings, claim 1 is directed to an abstract idea of targeted marketing implemented as a series of steps involving the collection of social network connection data and content associated with a deal, the sending of content associated with the deal based on the collected social network connection data, and the display of content associated with the deal. *See* Ans. 3–4. The targeted marketing involves the collection of content associated with a deal, and the display of the aforementioned content without any asserted inventive technology. *See Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (“The advance they purport to make is a process of gathering and analyzing information of a specified content, then displaying

the results, and not any particular assertedly inventive technology for performing those functions.”)

Appellants’ argument that claim 1 provided a specific approach for sending deals to users of a social network system is not persuasive because the claim does not recite the specific approach argued by Appellants, but instead recites data manipulation steps performed by a generic computer performing generic computer functions. Regarding Appellants’ argument that claim 1 does not preempt the entire field of targeted marketing, this argument is not persuasive, as the Federal Circuit has made clear that “the absence of complete preemption does not demonstrate patent eligibility” of a claim. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). We have considered Appellants’ other arguments (*see* App. Br. 6–9; *see also* Reply Br. 2–5), and we are not persuaded for similar reasons. Thus, we agree with the Examiner’s finding that claim 1 is directed to an abstract idea.

C. *Alice/Mayo* – Step 2

The Examiner determines claim 1 does not include “additional elements that are sufficient to amount to significantly more than the judicial exception because the additional computer elements, which are recited at a high level of generality, provide conventional computer functions that do not add meaningful limits to practicing the abstract idea.” Ans. 3. More specifically, the Examiner found:

In the instant case a majority of the limitations are drawn to what the courts have recognized to be ***computer functions that are well-understood, routine, and conventional functions[.]***

....

The “system,” “computer,” and the “storage medium” are recited at *a high level of generality* and are recited as *performing generic computer functions routinely used in computer applications*. Generic computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to *no more than implementing the abstract idea with a computerized system*. [Appellants’ Specification and Drawings disclose] *the generic nature of the computer implementation of the invention*.

Ans. 5 (emphasis added).

Appellants contend claim 1 recites significantly more than the alleged abstract idea because:

The claims of this application *are analogous to the claims at issue in the DDR Holdings case*, which is specifically mentioned in the December Interim Guidance as an example of “significantly more” than the judicial exception. *DDR Holdings, LLC v. Hotels.com*, No. 2015-1244 (*Fed. Cir. Dec. 5, 2014*).

....

Similar to *DDR Holdings*, the claims of this application *solve a problem that does not have a traditional business analog*. . . . Accordingly, the claimed invention addresses a problem of social networking system by incorporating connections of users with deals and sending the selected content associated with the deal posted by the connection. Thus, the claims *provide the most utility to the social networking system and use features that are unique to social networking systems which is in the realm of computer networks similar to DDR Holdings*.

....

Furthermore, the July Update presents examples of eligible claims, for example, claims directed to “Transmission Of Stock Quote Data” that recite conventional steps of filtering, formatting, transmitting, and so on that *individually may not be significantly more than an abstract idea but when considered as an ordered combination, amount to patentable subject matter*.

....

The cited references do not disclose the claimed invention[.] Accordingly, the claims recite *a novel and non-obvious mechanism*. . . . The ordered combination of the steps of the claim *amounts to significantly more than the fundamental economic practice or abstract idea of targeted marketing*.

App. Br. 9–12 (emphasis added).

The Examiner responds:

The claims do not include limitations that are “significantly more” than the abstract idea because *the claims do not include an improvement to another technology or technical field, an improvement to the functioning of the computer itself, or meaningful limitations beyond generally linking the use of an abstract idea to a particular technological environment* as detailed above. Note that the limitations, in the instant claims, are done by the *generically recited computer*. The limitations *are merely instructions to implement the abstract idea on a computer and require no more than a generic computer to perform generic computer functions that are well-understood, routine and conventional activities previously known to the industry*. Further, *evidence* of the lack of “significantly more” than the abstract idea *includes the fact that in the originally filed application none of the step of the method recited a machine at all and the method was generically described as “computer-implemented[.]”* Further, Appellant’s [S]pecification describes *a general-purpose computing device and a generic implementation* in at least paragraphs [0105-106].

....

Appellant’s invention *is recited in the prior art* as detailed in the rejection under 35 USC 103 detailed in the final office action dated 4/01/2016 and discussed in the response. Further, this is not part of the analysis. Appellant will note that *even very specific novel and unique calculations and formulas have been identified as abstract ideas, even though they could not be rejected under prior art* for example. Specifically, even if

arguendo the claims were found to be novel (which they are not),
novelty does not equate to eligibility.

Ans. 10–11 (emphasis added).

In response, Appellants continue to contend that claim 1 recites significantly more than the alleged abstract idea because:

[T]he claims in this application are not directed to well-understood, routine, and conventional functions. Rather, the claims ***recite steps for a specific way of presenting information along with deals by a social network system.*** For example, connections of users are identified based on the measure of relevance in the deal for each connection of the user and content from the identified users is selected for presenting along with deals to the user. Thus, ***the claims are not directed to well-understood, routine, and conventional functions*** as suggested by the Examiner.

The comparison to the claims in DDR Holdings in the Appeal Brief relate to the idea that the claims of the application ***solve a technical problem that arises in the context of computer networks and does not have a traditional business catalog.*** The [E]xaminer's response regarding whether the claims are implemented via a generic computer are irrelevant to this argument.

The claims are not simply about targeted advertising. The additional features claimed include steps for ***the specific approach for offering deals to users of a social networking system in a way to get more interaction from the user.***

Thus, the only additional feature of the inventive abstract idea ***is not simply a processor,*** as the Examiner asserts, and . . . ***there are additional features of the claims that recite significantly more than the alleged judicial exception.***

Reply Br. 6–8 (emphasis added).

We do not agree with Appellants' arguments. Instead, we agree with the Examiner that claim 1 does not include additional elements that are significantly more than the abstract idea. *See* Ans. 3. More specifically, we agree with the Examiner that claim 1 recites generic computer components (*i.e.*, “computer,” “social networking system”) performing generic computer functions (*i.e.*, “receiving content associated with the deal,” “sending the selected content . . . to the user for display”) that are well-understood, routine and conventional activities, and the claim amounts to no more than implementing the abstract idea with a computerized system. *See* Ans. 5. Consistent with the Examiner's findings, evidence that the recited functions of claim 1 are well-understood, routine and conventional activities is found in Appellants' Specification, which describes that “[t]hese algorithmic descriptions and representations are commonly used by those skilled in the data processing arts to convey the substance of their work effectively to others skilled in the art,” and “[t]hese operations, while described functionally, computationally, or logically, are understood to be implemented by computer programs or equivalent electric circuits, microcode, or the like.” *See* Ans. 5–6 (citing Spec. ¶ 104).

Appellants' argument that claim 1 is similar to the claims in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014), is not persuasive. *See* App. Br. 9–11. In *DDR*, the court determined that the claims at issue were necessarily rooted in computer technology in order to address the Internet-centric problem of how to provide user access to computer-implemented applications over the Internet. *DDR*, 773 F.3d at 1257. In contrast, claim 1 simply provides a specific type of information (*i.e.*, content associated with a deal) to a social media user. Although it may

be beneficial to the social media user to be provided that specific type of information, it is not a fundamentally new or different way to use a computer or the Internet.

Regarding Appellants' argument that the elements of claim 1 are not generic or generally known because the Examiner has supplied no prior art references showing where these elements are taught or suggested (*see* App. Br. 12), this argument is not persuasive either, as the argument conflates the novelty and non-obviousness tests under 35 U.S.C. §§ 102, 103 with the patent-eligibility test under 35 U.S.C. § 101. We are also not persuaded by Appellants' argument that the claims are analogous to the claims described in Example 21 of the Office's "July 2015 Update: Subject Matter Eligibility" memorandum. *See* App. Br. 5, 11. Instead, we agree with the Examiner that claim 1 does not provide for limitations which are significantly more than features that merely require generic computer implementation. *See* Ans. 9–10.

We have considered Appellants' other arguments (*see* App. Br. 9–12; *see also* Reply Br. 5–8), and we are not persuaded for similar reasons. Thus, in light of the above, the Examiner correctly concluded that claim 1 does not amount to significantly more than an abstract idea.

D. Section 103 Arguments

Appellants raise the following argument in contending that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

Dessert does not disclose or suggest “determining, by a computer, a measure of relevance in the deal for each identified connection based on at least in part on actions performed by the identified connection in association with the deal,” and

“selecting, by the computer, one or more identified connections based on the determined measure of relevance in the deal,” as recited in claim 1. . . . Paragraph [0148] of Dessert recites “ . . . having successfully initiated a marketing campaign last time for 15%, Food Co. may give Doug a second discount of 30% off his entire purchase (not just produce) upon his next visit. Further, there may be enhanced discounts for Doug’s friends who join the marketing campaign (e.g., they will receive 15 to 20% discounts on any items purchased instead of 5% to 10% for produce only).” Paragraphs [0134-139] of Dessert describe a process for adding friends to a marketing campaign via a swarm user client. Paragraph [0135] of Dessert provides further details of the process as “Mindy may be able to view the profiles and pictures of her friends via the swarm user client’s 305 user interface[.] The swarm user client 305 may suggest Doug is interested in the marketing campaign because he has "fashion" listed as one of his interests on his Facebook® profile. A visual indicator such a pair of boots or a star may be displayed next to Doug’s profile to visually communicate to Mindy his potential interest in the marketing campaign.” Dessert appears to disclose the connection of Mindy has the potential interested in the marketing campaign based on the profile of the connection. However, the cited portions of Dessert do not disclose that the actions performed by the connection itself are in association with the deal. Thus, Dessert does not disclose or suggest the above limitations in claim 1.

Kendall does not disclose or suggest “determining, by a computer, a measure of relevance in the deal for each identified connection based on at least in part on actions performed by the identified connection in association with the deal,” and “selecting, by the computer, one or more identified connections based on the determined measure of relevance in the deal,” as recited in claim 1. . . . Paragraph [0068] of Kendall recites “[a] member may have affinities for other members, types of actions, types of objects, and content. Accordingly, the affinity score may be based on a weighted function that takes into account the set of affinities for the particular member for each type of data field that is in a candidate story. . . . An affinity . . . but rather it may merely be a correlation between something in the candidate story

and some information stored in connection with that member, whether is an action taken by the member, a communication involving the member, a characteristic, feature or expressed interest in the member's profile." *In contrast*, claim 1 recites "determining, by a computer, a measure of relevance in the deal for each identified connection based on at least in part on **actions performed by the identified connection in association with the deal.**" [] Paragraph [0069] of Kendall recites "if a member has a high affinity score for John Smith or Bob Roberts and for being invited to events, the example story would tend to have a relatively high affinity score." *In contrast*, claim 1 recites "selecting, by the computer, **one or more identified connections** based on the determined measure of relevance in the deal." [] The above limitation is distinct from the cited portion of the reference.

Kramer does not remedy the above-identified deficiencies of Dessert and Kendall. *Kramer does not disclose or suggest "receiving a content associated with the deal posted via the social networking system by the one or more selected connections, "selecting the content associated with the deal posted by a connection from the one or more selected connections," and "sending the selected content associated with the deal posted by the connection to the user for display in connection with the displayed information about the deal," as recited in claim 1.* The Office Actions cites to paras. [0032, 0040, 0099-99, 0496] of Kramer as teaching above limitations of claim 1. The Office Action points out "in [0040] Kramer discloses comments, photos and specials associated with a nightclub and in [0032] Kramer discloses that this information about the nightclub helps members to get a better sense of the club atmosphere." However, the cited portions of Kramer do not disclose or suggest that the information about the nightclub *is associated with the connections of the user*. Therefore, the cited portions of Kramer fail to teach above limitations of claim 1.

App. Br 15–18 (Appellants' emphasis and citations omitted; panel emphasis added); *see also* Reply Br. 8–12.

We are not persuaded by this argument. A claim under examination is given its broadest reasonable interpretation consistent with the underlying specification. *See In re American Acad. of Science Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Though understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. *See SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004). Consistent with the Examiner’s findings, the claimed “actions performed by the identified connection in association with the deal” broadly, but reasonably, read on actions performed by a social network member’s connection regarding a transaction that is relevant to a current marketing campaign or social advertisement, as disclosed in both Dessert and Kendall. *See* Final Act. 6–7 (citing Dessert ¶¶ 134–139, 148, 161–164); *see also* Ans. 11. Thus, we agree with the Examiner that both Dessert and Kendall teach or suggest “determining, by a computer, a measure of relevance in the deal for each identified connection based at least in part on actions performed by the identified connection in association with the deal,” and “selecting, by the computer, one or more identified connections based on the determined measure of relevance in the deal,” as recited in claim 1. *See* Final Act. 6–7; *see also* Ans. 11–12.

Also consistent with the Examiner’s findings, the claimed “content associated with the deal,” broadly, but reasonably, reads on the content posted by a social network member regarding a nightclub, where a promotion regarding the same club is offered to another social network member, as disclosed in Kramer. *See* Ans. 12 (“[T]he content only need[s] to be broadly associated with a deal.”); *see also* Final Act. 9 (citing Kramer

¶¶ 32, 40, 98–99, and 496); *see also* Ans. 12–13. Thus, we also agree with the Examiner that Kramer teaches or suggests “receiving a content associated with the deal posted via the social networking system by the one or more selected connections,” “selecting the content associated with the deal posted by a connection from the one or more selected connections,” and “sending the selected content associated with the deal posted by the connection to the user for display in connection with the displayed information about the deal,” as recited in claim 1. *See* Final Act. 9; *see* Ans. 12–13.

Accordingly, Appellants have not shown the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a).

Appellants also raise the following argument in contending that the Examiner erred in rejecting claim 6 under 35 U.S.C. § 103(a).

Claim 6 recites “[t]he computer-implemented method of claim 1, wherein the measure of relevance is determined by weighing an action based on a type of the action.” In rejecting claim 6, the Office Action states that the combination of Dessert and Kendall does not specifically disclose that measuring the interest is determined by weighing an action based on a type of the action and cites to paragraphs [0040-42] and [0068-72] of Kramer as teaching the limitations of claim 6. Kramer paragraphs [0040-42] disclose that “the weighting factors may be set by the member to indicate the relative importance of a portion of the data[.]” Kramer paragraphs [0068-72] disclose information supplied by users for creating a user account and reward points for a successful registration. ***Nowhere does Kramer disclose or suggest the weighting factors are based on a type of the action as claimed.***

App. Br 18–19 (Appellants’ emphasis and citations omitted; panel emphasis added); *see also* Reply Br. 12–13.

We are not persuaded by this argument. We agree with the Examiner that both Dessert and Kendall teach or suggest measuring a relevance of a deal or promotion based on a type of action performed by an identified connection. *See* Ans. 13–14 (citing Dessert ¶¶ 35, 134–139; Kendall ¶¶50, and 67–73); *see also* Final Act. 11–12. We further agree with the Examiner that Kramer discloses ranking and weighing offers based on a “mood,” where a “mood” is defined by a behavior of a connection, and thus, Kramer teaches or suggests determining weights by types of actions. *See* Ans. 13 (citing Kramer ¶¶ 41-43); *see also* Final Act. 12.

Thus, consistent with the Examiner’s findings, the combination of Dessert, Kendall, and Kramer teaches or suggests “wherein the measure of relevance is determined by weighing an action based on a type of the action,” as recited in claim 6. Accordingly, Appellants have not shown the Examiner erred in rejecting claim 6 under 35 U.S.C. § 103(a).

Appellants further raise the following argument in contending that the Examiner erred in rejecting claim 7 under 35 U.S.C. § 103(a).

Claim 7 recites “[t]he computer-implemented method of claim 6, wherein a type of action comprising purchase of a particular deals is considered more significant than commenting on that particular deal.” In rejecting claim 7, the Office Action states that the combination of Dessert and Kendall does not specifically disclose that a type of action comprising purchase of a particular deal is considered more significant than commenting on that particular deal and cites to paragraphs [0040–42] and [0068–72] of Kramer as teaching the limitations of claim 7. Kramer paragraphs [0040–42] disclose that “the weighting factors may be set by the member to indicate the relative importance of a portion of the data[.]” Kramer paragraphs [0068–72] disclose information supplied by users for creating a user account and reward points for a successful registration. However, *these cited portions do not disclose or suggest, wherein a type of action*

comprising purchase of a particular deal is considered more significant than commenting on that particular deal as claimed. The Office Action further cites [0216–0403] of Kramer as disclosing that weights may be associated with the ranking criteria. ***Even if the cited portion discloses that “weights may be associated with the ranking criteria,” this disclosure would be distinct from the claim limitation that recites wherein a type of action comprising purchase of a particular deal is considered more significant than commenting on that particular deal as claimed. Accordingly, nowhere does Kramer disclose or suggest the weighting factors are based on a type of the action, wherein a type of action comprising purchase of a particular deal is considered more significant than commenting on that particular deal as claimed.***

App. Br 19–20 (Appellants’ emphasis and citations omitted; panel emphasis added); *see also* Reply Br. 13–14. Appellants further raise similar arguments in contending that the Examiner also erred in rejecting claims 8 and 9 under 35 U.S.C. § 103(a). *See* App. Br 20–22; *see also* Reply Br. 14–15.

We are not persuaded by these arguments. We agree with the Examiner that: (a) Kramer discloses a finite number of combinations of weighting factors that can be set in order to indicate a relative importance of data; (b) each of claims 7–9 recite weighting a type of action higher than another type of action; and (c) it would have been obvious to try weighting certain actions higher than other actions. *See* Final Act. 13–17; *see also* Ans. 14–15. Accordingly, Appellants have not shown the Examiner erred in rejecting claims 7–9 under 35 U.S.C. § 103(a).

CONCLUSIONS

(1) The Examiner has not erred in rejecting claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 101.

(2) The Examiner has not erred in rejecting claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 103(a).

(3) Claims 1, 3–9, 11–15, 22–24, and 26–28 are not patentable.

DECISION

We affirm the Examiner’s rejections of claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 101.

We affirm the Examiner’s rejections of claims 1, 3–9, 11–15, 22–24, and 26–28 under 35 U.S.C. § 103(a).

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

AFFIRMED