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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte CHRISTOPHER A. GUINEY¹

Appeal 2017-010029
Application 14/166,087
Technology Center 3600

Before CAROLYN D. THOMAS, NABEEL U. KHAN, and
SHARON FENICK, *Administrative Patent Judges*.

THOMAS, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant seeks our review under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1–16, all the pending claims in the present Application (*see* Claims Appendix). We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We AFFIRM.

The present invention relates generally to awarding time-based incremental rewards for a payment transaction (*see* Abstract).

¹Appellant names MasterCard International Incorporated as the real party in interest (App. Br. 2).

Independent claim 1, reproduced below, is representative of the appealed claims:

1. A computer-implemented method for awarding time-based incremental rewards for a payment transaction, comprising:
 - storing, in a reward database device of computer system, a reward rule, wherein the reward rule includes at least a reward base amount, an increase amount, and a predetermined period of time;
 - storing, in a transaction database device of the computer system, a first transaction data entry of a consumer, wherein the first transaction data entry includes data related to a completed transaction including at least a transaction time and/or date of the completed transaction;
 - receiving, by a receiving device of the computer system, from a payment network, transaction data for a payment transaction between the consumer and a merchant, wherein the transaction data includes at least a time and/or date of the payment transaction;
 - determining, by a processing device of the computer system, whether the time and/or date in said received transaction data is within the predetermined period of the transaction time and/or date included in the first transaction data entry of the consumer stored in the transaction database device; and
 - when it is determined that the time and/or date in said received transaction data is within the predetermined period of the transaction time and/or date included in the first transaction data entry of the consumer stored in the transaction database device, identifying, by the processing device of the computer system, a reward amount for the payment transaction by incrementing the reward base amount by said increase amount, included in the reward rule.

Appellant appeals the following rejections:

R1. Claims 1–16 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to patent-ineligible subject matter (Final Act.

2–5); and

R2. Claims 1–16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shum (US 2012/0166264 A1, June 28, 2012) and Sheley (US 8,676,642 B1, Mar. 18, 2014) (Final Act. 7–18).

We review the appealed rejections for error based upon the issues identified by Appellant, and in light of the arguments and evidence produced thereon. *Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential).

ANALYSIS

Rejection under § 101

An invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with the framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”). For example, concepts determined to be abstract ideas, and

thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 69 (1972)).

Recently, the USPTO published revised guidance on the application of 35 U.S.C. § 101. USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”). Under the Revised Guidance “Step 2A,” the office first looks to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes); and

(2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)). Revised Guidance, 84 Fed. Reg. at 51–52, 55.

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, does the Office then (pursuant to the Revised Guidance “Step 2B”) look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. Revised Guidance, 84 Fed. Reg. at 56.

Step 2A, Prong 1 (Does the Claim Recite a Judicial Exception?)

With respect to independent method claim 1, and similarly, system claim 9, the Examiner determines that the claims are directed to “a process of awarding time-based incremental rewards for a payment transaction wherein the reward amount is based on at least the base amount and increase amount included in the reward rule” (Final Act. 3), which the Examiner concludes “is a manner of organizing human activities and mathematical formulas, organizing information through mathematical correlations (i.e., computer instructions)” (*id.*).

For at least the following reasons, we are persuaded that representative claim 1 recites plural abstract ideas: (1) *certain methods of organizing human activity*, i.e., fundamental economic principles and/or commercial interactions including sales activities or behaviors; and (2) *mental process* i.e., observing and evaluating information and making a judgment based thereon. Combining abstract ideas does not render the combination any less abstract. *Cf. Shortridge v. Found. Constr. Payroll Serv., LLC*, No. 14-CV-04850-JCS, 2015 WL 1739256 (N.D. Cal. Apr. 14, 2015), *aff'd*, No. 2015-1898, 2016 WL 3742816 (Fed. Cir. July 13, 2016).

For example, the Specification discloses:

However, as more and more payment cards begin to offer rewards for their use, such reward programs may no longer be attractive enough to consumers to influence payment card use due to the similarities between programs offered by each payment card. As a result, issuers may be interested in additional methods for incentivizing use of a payment card. Thus, the present inventor believes there is a need for additional systems and methods for providing incentives to consumers for use of a payment card.

(Spec. ¶ 3).

The present disclosure provides a description of systems and methods for awarding time-based incremental rewards for a payment transaction.

(*Id.* ¶ 4).

Claim 1 recites at least the following limitations: (1) “storing . . . a reward rule,” (2) “storing . . . a first transaction data entry of a consumer,” (3) “receiving . . . transaction data for a payment transaction between the consumer and a merchant,” (4) “determining . . . whether the time and/or date in said received transaction data is within the predetermined period,” and (5) “identifying . . . a reward amount for the payment transaction.”

These limitations, under their broadest reasonable interpretation, recite fundamental economic principles or practices and/or commercial interactions including sales activities or behaviors because the limitations all recite operations that would ordinarily take place in a commercial environment. *Alice*, 573 U.S. at 219–20 (concluding that use of a third party to mediate settlement risk is a “fundamental economic practice” and, thus, an abstract idea); *id.* (describing the concept of risk hedging identified as an abstract idea in *Bilski* as “a method of organizing human activity”); *Bilski*, 561 U.S. at 611–12 (concluding that hedging is a “fundamental economic practice” and, therefore, an abstract idea); *Bancorp Servs., L.L.C. v. Sun Life Assur. Co.*, 687 F.3d 1266, 1280 (Fed. Cir. 2012) (concluding that “managing a stable value protected life insurance policy by performing calculations and manipulating the results” is an abstract idea); *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378–79 (Fed. Cir. 2017) (holding that concept of “local processing of payments for

remotely purchased goods’” is a “fundamental economic practice, which *Alice* made clear is, without more, outside the patent system.”); *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (concluding that claimed concept of “offer-based price optimization” is an abstract idea “similar to other ‘fundamental economic concepts’ found to be abstract ideas by the Supreme Court and this court”).

Additionally, under their broadest reasonable interpretation, the limitations also recite mental processes that can be performed in the human mind or using a pen and paper. *See, e.g., CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (determining that a claim whose “steps can be performed in the human mind, or by a human using a pen and paper” is directed to an unpatentable mental process). This is true even if the claim recites that a generic computer component performs the acts. *See, e.g., Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306, 1335 (Fed. Cir. 2015) (“Courts have examined claims that required the use of a computer and still found that the underlying, patent-ineligible invention could be performed via pen and paper or in a person’s mind.”); *see also* Revised Guidance, 84 Fed. Reg. at 52 n.14 (“If a claim, under its broadest reasonable interpretation, covers performance in the mind but for the recitation of generic computer components, then it is still in the mental processes category unless the claim cannot practically be performed in the mind.”).

In this case, these limitations encompass acts people can perform using their minds or pen and paper because people can perform the “storing” steps by writing the information on paper and the “receiving” step by simply looking at transaction data. People can also perform the “determining” and

“identifying” steps by observing the time and/or date relevant to each transaction and evaluating a reward based thereon.

Appellant challenges the Examiner’s determinations on the ground that “the Examiner provides no . . . accurate summarization or characterization of the claims” (App. Br. 7), but instead “has oversimplified independent claim 1” (*id.* at 9).

We find the Examiner properly and reasonably found that claim 1 is directed to at least methods of “organizing human activities” (*see* Final Act. 3), which recites an abstract idea. The Examiner condensed the claims to “a process of awarding time-based incremental rewards for a payment transaction wherein the reward amount is based on at least the base amount and increase amount included in the reward rule” (*id.*), but this is simply a higher level of abstraction. *Apple, Inc. v. Ameranth, Inc.*, 842 F.3d 1229, 1240–41 (Fed. Cir. 2016) (“An abstract idea can generally be described at different levels of abstraction. 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.”) We supplement the Examiner’s characterization with our own aforementioned interpretation of the claims by illustrating how the claimed limitations are operations that would ordinarily take place in a commercial environment.

Therefore, for at least the aforementioned reasons, we agree with the Examiner that claim 1 recites an abstract idea, which we conclude is “a fundamental economic practice” and/or “commercial interactions,” which are *certain methods of organizing human activity and/or mental processes*.

Step 2A—Prong 2 (integration into Practical Application)²

Under the Revised Guidance, we now must determine if additional elements in the claims integrate the judicial exception into a **practical application** (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

We discern no additional element (or combination of elements) recited in Appellant’s representative claim 1 that integrates the judicial exception into a practical application. *See* Revised Guidance, 84 Fed. Reg. at 54–55 (“Prong 2”). For example, Appellant’s claimed additional elements (e.g., “reward database,” “transaction database,” “receiving device,” “payment network,” and “processing device”) do not: (1) improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for a generic computer); (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any meaningful way beyond generally linking the use of the judicial exception to a particular technological environment, such that the claim as a whole is more than a drafting effort designed to monopolize the exception. *See* MPEP §§ 2106.05(a)–(c), (e)–(h).

Appellant contends “[a]nalogous to *McRO*, Appellant’s [S]pecification teaches . . . a unique and novel mechanism for calculating rewards for payment transactions by using a specific type of rule” (App. Br.

² We acknowledge that some of the considerations at Step 2A, Prong 2, properly may be evaluated under Step 2 of *Alice* (Step 2B of the Office revised guidance). For purposes of maintaining consistent treatment within the Office, we evaluate them under Step 1 of *Alice* (Step 2A of the Office revised guidance). *See* Revised Guidance, 84 Fed. Reg. at 55 n.25, 27–32.

11), and “[s]imilar to *Enfish*, the instant claims are defined by [a] ‘logical structure’” (*id.*).

However, Appellant’s Specification states:

The reward processor 112 may include a processing unit 204. The processing unit 204 may be configured to identify the data included in the reward information and store the data in a reward database 208 as a reward rule 210. The reward rule 210 may include at least the base amount, increase amount, and predetermined period of time, and may further include any other suitable information regarding the associated reward. For example, the reward rule 210 may further include a maximum amount . . . a time limit . . . a transaction limit . . ., etc.

(Spec. ¶ 35.)

The data may be configured in any type of suitable database configuration, such as a relational database, a structured query language (SQL) database, a distributed database, an object database, etc. Suitable configurations and storage types will be apparent to persons having skill in the relevant art.

(*Id.* ¶ 65.)

In other words, Appellant’s Specification merely describes a rule having numerous parameters, such as a base amount, an increase amount, and a predetermined period of time, being stored in any suitable configuration.

In *McRO*, the Federal Circuit concluded that the claim, when considered as a whole, was directed to a “technological improvement over the existing, manual 3-D animation techniques” through the “use[of] limited rules . . . specifically designed to achieve an improved technological result in conventional industry practice.” *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1316 (Fed. Cir. 2016). Specifically, the Federal Circuit found that the claimed rules allow computers to produce accurate and

realistic lip synchronization and facial expressions in animated characters that previously could only be produced by human animators; and the rules are limiting because they define morph weight sets as a function of phoneme sub-sequences. *Id.* at 1313 (citations omitted). In contrast, here, Appellant has not identified any analogous improvement attributable to the claimed invention. Although providing rewards based on rules that have parameters such as the base amount, increase amount, and a predetermined period of time may provide incentives for using a payment card, it does not achieve an improved technological result. We see no parallel between the limiting rules described in *McRO* and the results-based rules recited in Appellant’s claims.

Additionally, the claims at issue in *Enfish* were directed to a specific type of data structure, i.e., a self-referential table for a computer database, designed to improve the way a computer carries out its basic functions of storing and retrieving data. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016). In rejecting a § 101 challenge, the court in *Enfish* held that “the plain focus of the claims is on an improvement to computer functionality itself, not on economic or other tasks for which a computer is used in its ordinary capacity.” *Id.* at 1336.

Here, Appellant does not point to anything in the claim that resembles the inventive self-referential data structure at issue in *Enfish*. Appellant also does not direct our attention to anything in the Specification to indicate that the invention provides an improvement in the computer’s technical functionality.

Instead, the claimed data structure improves economic tasks, i.e., incentives to consumers for using a payment card. That is, here the arguably innovative technique of the appealed claims is inextricably a part of the

abstract idea of awarding time-based incremental rewards for a payment transaction. Moreover, nothing in the claims, understood in light of the Specification, requires anything other than an off-the-shelf, conventional computer used for collecting and processing/analyzing various information/data. Therefore, unlike *Enfish*, the claims are directed not to improvement in computer capabilities, but to the results of applying an abstract idea.

Appellant also contend that “the . . . claims do not create a risk for preemption of any of the alleged abstract ideas” (App. Br. 16). Although pre-emption “might tend to impede innovation more than it would tend to promote it, ‘thereby thwarting the primary object of the patent laws’” (*Alice*, 573 U.S. at 216 (citing *Mayo*, 566 U.S. at 71)), “the absence of complete preemption does not demonstrate patent eligibility” (*Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). Moreover, because we find the claimed subject matter covers patent-ineligible subject matter, the pre-emption concern is necessarily addressed (*see* Ans. 7). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, . . . preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics*, 788 F.3d at 1379.

For at least the reason noted *supra*, we determine that claim 1 (1) recites a judicial exception and (2) does not integrate that exception into a practical application.

Alice/Mayo—Step 2 (Inventive Concept)
Step 2B identified in the Revised Guidance

Turning to the second step of the *Alice* inquiry, we now look to whether claim 1 contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. at 216. As recognized by the Revised Guidance, an “inventive concept” under *Alice* step 2 can be evaluated based on whether an additional element or combination of elements:

- (1) “[a]dds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present;” or
- (2) “simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.”

See Revised Guidance, 84 Fed. Reg. at 56; *see* MPEP § 2106.05(d).

Appellant contends “the present claims provide an inventive concept by virtue of the *non-conventional arrangement and configuration* of devices (and communication) of the electronic/computer system . . . *e.g.*, the ability of computer system to increment reward amounts on a basis of specified time constraints between electronic transactions, within a financial transaction system” (App. Br. 20).

Appellant’s Specification discloses:

The present disclosure relates to the awarding of time-based incremental rewards for a payment transaction, specifically the incremental acceleration of points or other rewards for a payment transaction based on time elapsed since previous transactions.

(Spec. ¶ 1.)

As a result, issuers may often try and provide incentives for consumers to use payment cards that they have issued. One such incentive is the use of reward points, cash back, or other type of currency that may be redeemed by the consumer, that may be awarded for eligible purchases made using associated payment cards.

(Spec. ¶ 2.)

Examples of networks or systems configured to perform as payment networks include those operated by MasterCard®, VISA®, Discover®, American Express®, PayPal®, etc.

(*Id.* ¶ 15.)

For example, if the predetermined period of time is 24 hours, then the processing unit 204 may identify if any eligible transactions were conducted within the previous 24 hours to the present payment transaction.

(*Id.* ¶ 38.)

In other words, Appellant's Specification highlights that it is conventional to provide incentives, i.e., reward points and cash back, to consumers for using payment cards, using conventional payment networks such as MasterCard®. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) ("Whether something is well-understood, routine, and conventional to a skilled artisan at the time of the patent is a factual determination.").

Here, the present invention merely seeks to "accelerat[e]" this conventional reward process (*see* Spec. ¶ 1) by using a computer to impose time-constraints, e.g., 24 hours, on the purchase actions in order to get incremental rewards. However, Appellant is reminded that "relying on a computer to perform routine tasks more quickly or more accurately is insufficient to render a claim patent eligible." *OIP Techs., Inc. v.*

Amazon.com, Inc., 788 F.3d 1359, 1363 (Fed. Cir. 2015) (citing *Alice*, 573 U.S. at 224 (“[U]se of a computer to create electronic records, track multiple transactions, and issue simultaneous instructions” is not an inventive concept.)).

Thus, we find no element or combination of elements recited in Appellant’s claim 1 that contains any “inventive concept” or adds anything “significantly more” to transform the abstract concept into a patent-eligible application. Further, Appellant has not adequately explained how claim 1 is performed such that it is not a routine and conventional function of a generic computer. Although the second step in the *Mayo/Alice* framework is termed a search for an “inventive concept,” the analysis is not an evaluation of novelty or nonobviousness, but, rather, is a search for “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*, 573 U.S. at 216. “Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.” *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013). A novel and non-obvious claim directed to a purely abstract idea is, nonetheless, patent-ineligible. *See Mayo*, 566 U.S. at 90; *see also Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (“The ‘novelty’ of any element or steps in a process, or even of the process itself, is of no relevance in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.”).

Because Appellant’s independent claim 1 is directed to a patent-ineligible abstract concept, does not include additional elements that integrate the judicial exception into a practical application, and does not add

a specific limitation beyond the judicial exception that is not “well-understood, routine, and conventional,” we sustain the Examiner’s rejection of the claims 1–16 under 35 U.S.C. § 101 as being directed to non-statutory subject matter in light of *Alice*, its’ progeny, and the Revised Guidance.

Rejection under § 103(a)

Appellant contends that “*Sheley* does not specify whether the transaction date and/or time falls within a predetermined period of time of a **previously completed transaction**” (App. Br. 24), because *Sheley* “discloses only that a bank may **prioritize** transactions that have been made **during a particular period of time**” (*id.*). Appellant further contends that none of the cited paragraphs in *Sheley* disclose anything “about a time period **between** transactions” (*id.* at 25).

In response, the Examiner notes various portions of *Sheley* which the Examiner finds teaches and/or suggests the aforementioned claimed limitations (*see* Ans. 8 (citing *Sheley* 2:44–65, 13:1–26, 17:16–45, 20:4–17)). However, we agree with Appellant that none of these cited portions of *Sheley* appear to teach and/or suggest the transaction time and/or date is within the predetermined period of the transaction time and/or date included in the first transaction (e.g., within a predetermined time from a previously completed transaction).

Instead, *Sheley* merely discloses: “A bank or sponsor utilizing the systems and methods described herein may prioritize or order all customer transactions (e.g., by date or time . . .)” (2:44–55); “For example, the list may include the transactions in order by date or time” (13:22–23); and “[t]hus, a customer may be limited to a predetermined number of

transaction[s] or reward selections over a predetermined period of time, such as annually or monthly, for example” (17:32–35). At best, *Sheley* teaches ordering transactions by date or time. However, we find that such teachings are distinguishable from the claimed *determining . . . whether the time and/or date in said received transaction data is within the predetermined period of the transaction time and/or date included in the first transaction, e.g., within a predetermined period of time from a previous transaction.*

Additionally, Appellant contends “because **neither** document establishes a relationship between (i) periods of time between transaction and (ii) reward amounts (e.g., incrementing reward amounts), a combination of *Shum* and *Sheley* would not result in such a relationship” (App. Br. 27). Again, we agree with Appellant.

Claim 1 requires *identifying . . . a reward amount when* it is determined that the time and/or date in the received payment transaction is within the predetermined period from the completed first transaction (*see* claim 1). Although *Shum* discloses “financial institutions can reward their customers for more involved interactions and uses of the financial institution, including customers’ use of multiple accounts . . . or for meeting or exceeding threshold levels of activity with the financial institution” (§ 10), *Shum*, like *Sheley*, fails to teach identifying a reward when the time and/or date of the received transaction is within the predetermined period of the previously completed first transaction.

Thus, we disagree with the Examiner’s finding that the combined teachings of *Shum* and *Sheley* the aforementioned limitations, as recited in each of the independent claims. Because we agree with at least one of the arguments advanced by Appellant, we need not reach the merits of

Appeal 2017-010029
Application 14/166,087

Appellant's other arguments. Accordingly, we will *not* sustain the Examiner's obviousness rejection of the claims.

DECISION

We affirm the Examiner's § 101 rejection.

We reverse the Examiner's § 103(a) rejection.

Because at least one rejection encompassing all claims on appeal is affirmed, the decision of the Examiner is affirmed.

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

AFFIRMED