



UNITED STATES PATENT AND TRADEMARK OFFICE

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

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
13/797,287	03/12/2013	Seth Priebatsch	SCV-002/7312932001	8652
23517	7590	03/27/2019	EXAMINER	
MORGAN, LEWIS & BOCKIUS LLP (BO) 1111 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20004 UNITED STATES OF AMERICA			CHOO, JOHANN Y	
			ART UNIT	PAPER NUMBER
			3685	
			NOTIFICATION DATE	DELIVERY MODE
			03/27/2019	ELECTRONIC

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

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

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

katalano@morganlewis.com  
patents@morganlewis.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

*Ex parte* SETH PRIEBATSCH and CHARLES CARTER JERNIGAN

---

Appeal 2017-010503<sup>1</sup>  
Application 13/797,287<sup>2</sup>  
Technology Center 3600

---

Before NINA L. MEDLOCK, PHILIP J. HOFFMANN, and  
TARA L. HUTCHINGS, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1–22 and 25–28. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

---

<sup>1</sup> Our decision references Appellants’ Appeal Brief (“App. Br.,” filed February 10, 2017) and Reply Brief (“Reply Br.,” filed August 3, 2017), and the Examiner’s Answer (“Ans.,” mailed June 5, 2017) and Final Office Action (“Final Act.,” mailed July 12, 2016).

<sup>2</sup> Appellants identify SCVNGR, Inc. as the real party in interest. App. Br. 2.

## CLAIMED INVENTION

Appellants' claimed invention relates to "distributed authenticity verification for consumer payment transactions" (Spec. Title).

Claims 1 and 16 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A method of electronically processing a transaction among a consumer, a merchant point-of-sale system and a transaction-processing entity over a communication network, the method comprising:

[(a)] generating a token encrypted with data identifying the consumer and trust data for the consumer and at least one individual with whom the consumer is associated;

[(b)] receiving, via the network, and storing the token by a device of the consumer;

[(c)] reading and decrypting, by the merchant system, the token upon presentation thereof by the consumer's device in connection with the transaction;

[(d)] authorizing, by the merchant system, the transaction based on (i) successful decryption of the token and (ii) the trust data of the consumer and the at least one associated individual;

[(e)] subsequent to authorization of the transaction by the merchant system, communicating, by the merchant to the transaction-processing entity via a communication network, a record of the transaction and authorization thereof; and

[(f)] following the communication from the merchant system to the transaction-processing entity, completing the authorized transaction by causing funds to be transferred from the consumer's financial account to the merchant.

## REJECTIONS

Claims 1–22 and 25–28 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–22 and 25–28 are rejected under 35 U.S.C. § 112(b) as indefinite for failing to particularly point out and distinctly claim the subject matter that Appellants regard as the invention.

Claims 1, 2, 5, 7, 9, 15, 16, 18, 21, 22, 27, and 28 are rejected under 35 U.S.C. § 103 as unpatentable over Calman (US 2014/0025585 A1, pub. Jan. 23, 2014), Kortina et al. (US 2011/0137789 A1, pub. June 9, 2011) (“Kortina”), and Franklin et al. (US 6,000,832, iss. Dec. 14, 1999) (“Franklin”).<sup>3</sup>

Claims 3, 4, 6, 17, 19, and 20 are rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, and Purdy et al. (US 2010/0192210 A1, pub. July 29, 2010) (“Purdy”).

Claim 8 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, and Graylin (US 2013/0054336 A1, pub. Feb. 28, 2013).

Claim 10 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, Flitcroft et al. (US 2003/0028481 A1, pub. Feb. 6, 2003) (“Flitcroft”), and Sampson (US 2004/0073621 A1, pub. Apr. 15, 2004).

---

<sup>3</sup> We treat the Examiner’s omission of claim 5 in the rejection heading at page 9 of the Final Office Action as inadvertent in light of its treatment at pages 12–13.

Claim 11 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, Flitcroft, Sampson, and Capps et al. (US 2013/0317923 A1, pub. Nov. 28, 2013) (“Capps”).

Claim 12 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, Flitcroft, Sampson, and Schmidt et al. (US 2011/0071986 A1, pub. Mar. 24, 2011) (“Schmidt”).

Claim 13 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, Flitcroft, Sampson, and Monaco (WO 01/77851 A1, pub. October 18, 2001).

Claim 14 is rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, and Flitcroft.

Claims 25 and 26 are rejected under 35 U.S.C. § 103 as unpatentable over Calman, Kortina, Franklin, Flitcroft, and Murakami et al. (US 4,680,757, iss. July 14, 1987).

## ANALYSIS

### *Patent-Ineligible Subject Matter*

Appellants argue the pending claims as a group (App. Br. 7–14). We select claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 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. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

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 Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* (quoting *Mayo*, 566 U.S. at 79, 78).

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, the Federal Circuit has instructed that claims are to be considered in their entirety to determine “whether their character as a whole is directed to excluded subject matter.” *McRO, Inc. v. Bandai Namco Games Am., Inc.*, 837 F.3d 1299, 1312 (Fed. Cir. 2016) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)).

Focusing on step one of the *Mayo/Alice* framework, we are not persuaded, as an initial matter, by Appellants’ argument that the Examiner erred in determining that claim 1 is directed to an abstract idea (App. Br. 9-10). The Federal Circuit has explained that “the ‘directed to’ inquiry applies a stage-one filter to claims, considered in light of the [S]pecification,

based on whether ‘their character as a whole is directed to excluded subject matter.’” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (quoting *Internet Patents Corp.*, 790 F.3d at 1346). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification, including the claim language, that the claims focus on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is entitled “DISTRIBUTED AUTHENTICITY VERIFICATION FOR CONSUMER PAYMENT TRANSACTIONS,” and discloses that, in one aspect, the invention “pertains to a method of processing a transaction among a consumer, a merchant point-of-sale system, and a transaction processing entity” (Spec. ¶ 5). The Background section of the Specification describes that it is common practice for consumers to pay a merchant electronically for goods or services, and notes that systems that allow consumers to pay for a transaction at the point-of-sale, using a mobile device to display a token, are becoming widely accepted (*id.* ¶ 1). These mobile device tokens typically contain static information that must be transmitted to a centralized payment processing system for authentication and payment authorization (*id.*); if, however, the centralized payment processing system loses network access, the Specification describes that the token cannot be used for payment “without significant risk of fraud” (*id.* ¶ 2). The claimed invention is intended to address this problem by encrypting a payment token, for display on a consumer’s mobile device, with dynamic trust data (e.g., transaction history and/or token generation

date) along with the financial account information; an approach that, according to the Specification, “enables the merchant system to make an informed decision about whether to accept payment without communication with the central processing system” and “protects the consumer’s account information from theft” (*id.* ¶ 4).

Understood in light of the Specification, claim 1 is directed to a method for verifying a payment transaction using a mobile device token by (1) encrypting the token with consumer identifying information and trust data and storing the encrypted token on a mobile device, i.e., “generating a token encrypted with data identifying the consumer and trust data for the consumer and at least one individual with whom the consumer is associated” and “receiving . . . and storing the token by a device of the consumer” (steps (a) and (b)); (2) decrypting the token upon presentation of the mobile device in connection with a purchase transaction, i.e., “reading and decrypting, by the merchant system, the token upon presentation thereof by the consumer’s device in connection with the transaction” (step (c)); (3) authorizing the transaction if the decryption is successful, i.e., “authorizing, by the merchant system, the transaction based on (i) successful decryption of the token and (ii) the trust data” (step (d)); and (4) transmitting a record of the transaction and authorization to a transaction processing entity to complete the transaction, i.e., “subsequent to authorization of the transaction by the merchant system, communicating, by the merchant to the transaction-processing entity . . . a record of the transaction and authorization thereof” and “following the communication from the merchant system to the transaction-processing entity, completing the authorized transaction by causing funds to be transferred from the consumer’s financial

account to the merchant” (steps (e) and (f)). Simply put, claim 1 is directed to receiving, analyzing, and transmitting data to verify a payment card transaction — to a commercial interaction, which is a method of organizing human activity, and, therefore, an abstract idea. *See* 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“Revised Guidance”).

The Federal Circuit has held that abstract ideas include receiving and sending information over a network with no further details or specification, *see, e.g., buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350 (Fed. Cir. 2014) (“That a computer receives and sends the information over a network — with no further specification—is not even arguably inventive.”), and that abstract ideas also include collecting data, analyzing the data, and displaying the results of the collection and analysis, including when limited to particular content. *See, e.g., Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017) (identifying the abstract idea of collecting, displaying, and manipulating data); *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas). Data encryption/decryption also is an abstract idea. *See, e.g., Personalized Media Commc’ns, LLC v. Amazon.com, Inc.*, 161 F. Supp. 3d 325, 337 (D. Del. 2015), *aff’d*, 671 F. App’x 777 (Mem) (Fed. Cir. 2016) (“decryption” is an abstract idea). And the court held, in *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1370 (Fed. Cir. 2011), that verifying Internet credit card transactions by determining whether an

Internet address relating to a particular transaction is consistent with other previously used Internet addresses is abstract.

We find no indication in the Specification, nor do Appellants direct us to any indication, that the operations recited in claim 1 invoke any assertedly inventive programming, require any specialized computer hardware or other inventive computer components, i.e., a particular machine, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”). The Specification, in fact, suggests just the opposite, i.e., that the claimed invention may be implemented using only generic computer components (*see, e.g.*, Spec. ¶¶ 19, 20).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes an improvement in computer technology and/or functionality to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the Revised Guidance.<sup>4</sup>

---

<sup>4</sup> We note that Appellants’ briefs were filed, and the Examiner’s Answer mailed, before the USPTO issued the Revised Guidance, which, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. In accordance with the Revised Guidance, a claim is generally considered “directed to” an abstract idea if (1) the claim recites subject matter falling within one of the following

Citing *Enfish*, Appellants argue that the pending claims are “directed to the technical problem of reliably concluding a transaction in the absence of network connectivity between the point-of-sale system and the transaction processing entity,” and that the claims recite a technical solution, i.e., using a token encrypted with trust data specific to the consumer, that “overcomes what may be a momentary glitch or a catastrophic network failure” (App. Br. 10). Appellants maintain that the pending claims, like those in *Enfish*, thus, “recite a specific implementation of a solution to a problem in the art of network-based electronic commerce” (App. Br. 10). But, we do not agree that claim 1 is analogous to the claims in *Enfish*.

The Federal Circuit, in *Enfish*, rejected a § 101 challenge at the step one stage of the *Mayo/Alice* analysis because the claims at issue focused on “a specific type of data structure [i.e., a self-referential table for a computer database] designed to improve the way a computer stores and retrieves data in memory.” *Enfish*, 822 F.3d at 1339. Based on the “plain focus of the

---

groupings of abstract ideas: (a) mathematical concepts; (b) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or legal interactions; and (c) mental processes, and (2) the claim does not integrate the abstract idea into a practical application, i.e., apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception. *See* Revised Guidance, 84 Fed. Reg. at 54–55. The Revised Guidance references MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) §§ 2106.05(a)–(c) and (e)–(h) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. *Id.* at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

claims,” the court, thus, held that the claims were directed to “a specific improvement to the way computers operate, embodied in the self-referential table,” and, as such, were more than a mere abstract idea. *Id.* at 1336. We find no parallel here between claim 1 and the claims in *Enfish* nor any comparable aspect in claim 1 that represents an improvement to computer functionality.

Turning to the second step of the *Mayo/Alice* framework, Appellants argue that “[e]ven if the present claims are considered to be directed to ‘abstract’ subject matter under the first *Alice* test, they clearly qualify as patentable under the second step of the analysis” (App. Br. 10). Citing the Federal Circuit decision in *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014), Appellants maintain that the claims address a problem that is network-centric in nature, and that, in encrypting both identifying information and trust data within a token stored electronically in a mobile device, the claims “clearly recite a ‘solution that is necessarily rooted in’ the new medium within the meaning of *DDR*” (App. Br. 12).

There is no dispute that claim 1 addresses the problem of preventing fraud in electronic transactions. Yet, although these transactions may be network-centric, preventing fraud and authenticating transactions are not problems rooted in technology or arising out of computer networks, like those in *DDR Holdings*. Instead, these are business problems that existed before, and still exist, outside the realm of computers and computer networks.

The court, in *DDR Holdings*, held that the claims distinguished over patent-ineligible claims that “broadly and generically claim ‘use of the Internet’ to perform an abstract business practice (with insignificant added

activity),” because they “specify how interactions with the Internet are manipulated to yield a desired result — a result that overrides the routine and conventional sequence of events ordinarily triggered by the click of a hyperlink.” *Id.* Here, we do not find, and Appellants do not identify, any analogous modification to the routine and conventional functioning of computer network technology. At best, the claimed invention appears to use generic computer components (e.g., a consumer device, a POS system, a communication network (claim 1)) to perform an abstract business practice (i.e., payment card verification).

Appellants’ reliance on *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) is similarly misplaced. In *BASCOM*, the court determined that claims described an inventive concept in the non-conventional and non-generic arrangement of known, conventional pieces. *BASCOM*, 827 F.3d at 1350. Specifically, the Federal Circuit determined that the claimed installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *Id.*

Appellants ostensibly maintain here that the claims describe an inventive concept in the non-conventional arrangement of a merchant system, a transaction server, and a consumer device (App. Br. 13). But we do not agree that *BASCOM* is sufficiently analogous so to control the outcome here.

In *BASCOM*, the Federal Circuit held that the second step of the *Mayo/Alice* framework was satisfied because the claimed invention

“represents a ‘software-based invention[ ] that improve[s] the performance of the computer system itself.’” *BASCOM*, 827 F.3d at 1351 (stating that like *DDR Holdings*, where the patent “claimed a technical solution to a problem unique to the Internet,” the patent in *BASCOM* claimed a “technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems . . . making it more dynamic and efficient”) (citations omitted). We are not persuaded that a comparable situation is presented here.

We also are not persuaded of Examiner error to the extent Appellants maintain the claims are patent-eligible because the claims would not preempt other ways to verify payments (App. Br. 13–14; *see also* Reply Br. 4–5). Although the Supreme Court has described “the concern that drives [the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption,” *Alice Corp.*, 573 U.S. at 216, characterizing preemption as a driving concern for patent eligibility is not the same as characterizing preemption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) (citing *Alice Corp.*, 134 S. Ct. at 2354). “[P]reemption may signal patent ineligible subject matter, [but] the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellants also misapprehend the controlling precedent to the extent that Appellants maintain that the claims are patent-eligible, i.e., that the claims include limitations that are not well-understood, routine, and

conventional, because the claims allegedly are novel and/or non-obvious in view of the prior art (App. Br. 14; *see also* Reply Br. 4). Neither a finding of novelty nor a non-obviousness determination automatically leads to the conclusion that the claimed subject matter is patent-eligible.

“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.”).

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 2–22 and 25–28, which fall with claim 1.

#### *Indefiniteness*

Appellants do not provide any response to the Examiner’s rejection of claims 1–22 and 25–28 under 35 U.S.C. § 112(b). Therefore, the rejection is summarily sustained.

#### *Obviousness*

*Independent Claims 1 and 16 and Dependent Claims 2, 5, 7, 9, 15, 18, 21, 22, 27, and 28*

We are persuaded by Appellants’ argument that the Examiner erred in rejecting independent claims 1 and 16 under 35 U.S.C. § 103(a) because

none of Calman, Kortina, and Franklin, individually or in combination, discloses or suggests “generating a token encrypted with data identifying the consumer and trust data for the consumer,” as recited in claim 1, and similarly recited in claim 16 (App. Br. 14–20).

In rejecting claims 1 and 16 under § 103(a), the Examiner cites Calman as disclosing substantially all the elements of the claims, including “generating a token encrypted” (Final Act. 11). But, the Examiner acknowledges that Calman does not specifically disclose that the token is encrypted with “data identifying the consumer and trust data for the consumer,” as called for in claims 1 and 16 (*id.*). And the Examiner relies on Franklin and Kortina to cure the deficiency of Calman (*id.* at 11–12 (citing Franklin as disclosing data identifying the consumer and Kortina as disclosing trust data for the consumer)).

Appellants do not object to the Examiner’s reliance on Franklin. However, Appellants maintain that the combination of Calman and Kortina is improper and could only be based on impermissible hindsight (App. Br. 15–20). We agree.

Kortina is directed to a trust-based transaction system, and discloses that users input personal and financial information into the system, which validates the information to generate trusted financial profiles (Kortina Abstract). Each user can establish trusted financial links with other users who have accounts within the trust based transaction system (*id.*; *see also id.* ¶ 57). These trusted financial links then provide a mechanism by which one user (e.g., user A) may allow another user (e.g., user B) to withdraw money from the link provider account within the limits set by user A or the system (*id.*). Kortina further discloses that, in one embodiment, users may access

trust graph data, e.g., a financial focused trust graph, to examine the trustworthiness of individuals on an absolute basis and relative to a wider group (*id.* ¶ 87)

In rejecting claim 1 and 16, the Examiner cites paragraphs 111 and 113 of Kortina, where Kortina discloses that the trust based system analyzes transaction details of users in the system with the trust graph to determine whether a particular transaction is valid by assigning a percentage likelihood of confidence level in the transaction, e.g., on a scale of 1% to 100%, and describes that one criterion for assigning a confidence level is to analyze a historical number of transactions or percentage of transactions initiated by a user, which were ultimately deemed fraudulent (Final Act. 11–12). The Examiner concludes that it would have been obvious to a person of ordinary skill in the art at the time of Appellants’ invention to “combine the teachings of using a trust values tied to accounts as disclosed by Kortina to the teachings of using various account/merchant/transaction terms in creating tokens for use in transaction[s] as disclosed by the combination of Calman and Franklin” in order to “further ensure that transactions are authorized and will be processed without error” (*id.* at 12).

We agree with Appellants that the Examiner does not adequately explain why a person of ordinary skill in the art would have had an apparent reason, in view of Kortina, to encrypt a token with trust data, as called for in the claims (App. Br. 15–20). As Appellants observe, Kortina does not involve the generation or communication of tokens; nor does it involve commercial transactions; instead, Kortina’s system depends on a web of trust and relationships supported by a social network (*id.* at 15). The Examiner asserts that combining the teachings of Kortina with those of

Calman and Franklin would “further ensure that transactions are authorized and will be processed without error” (Final Act. 12). Yet, in determining that there is an apparent reason to combine applied references, the Examiner’s analysis must be explicit and “cannot be sustained by mere conclusory statements.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007).

The Examiner has not articulated a rational apparent reason to combine Calman and Kortina to arrive at Appellants’ claimed invention, and has thereby failed to establish a prima facie case of obviousness. *See KSR*, 550 U.S. at 418 (holding that a prima facie case of obviousness requires showing that one of ordinary skill in the art would have had both an apparent reason to modify the prior art and predictability or a reasonable expectation of success in doing so). Therefore, we do not sustain the Examiner’s rejection of independent claims 1 and 16 under 35 U.S.C. § 103(a). For the same reasons, we also do not sustain the Examiner’s rejection of dependent claims 2, 5, 7, 9, 15, 18, 21, 22, 27, and 28. *Cf. In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992) (“dependent claims are nonobvious if the independent claims from which they depend are nonobvious”).

*Dependent Claims 3, 4, 6, 8, 10–14, 17, 19, 20, 25, and 26*

The Examiner’s rejections of dependent claims 3, 4, 6, 8, 10–14, 17, 19, 20, 25, and 26 do not cure the deficiency in the Examiner’s rejection of independent claims 1 and 16. Therefore, we do not sustain the Examiner’s rejections of dependent claims 3, 4, 6, 8, 10–14, 17, 19, 20, 25, and 26 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1–22 and 25–28 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–22 and 25–28 under 35 U.S.C. § 112(b) is affirmed.

The Examiner's rejections of claims 1–22 and 25–28 under 35 U.S.C. § 103(a) are reversed.

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