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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JONATHON CONNOLLY,
CAROLINE DOWLING,
TOM FLETCHER,
EDWARD M. HANCOCK,
EOGHAN MAHER,
AKHIL OLTIKAR, and
PAYTON PATTERSON

Appeal 2017-010556
Application 13/630,153¹
Technology Center 3600

Before HUBERT C. LORIN, BIBHU R. MOHANTY, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL
STATEMENT OF THE CASE

Jonathon Connolly, et al. (Appellants) seek our review under 35 U.S.C. § 134(a) of the Final Rejection of claims 1, 5–10, 12–19, and 21–27. We have jurisdiction under 35 U.S.C. § 6(b).

¹ The Appellants identify Elementum SCM, Incorporated as the real party in interest. App. Br. 1.

SUMMARY OF DECISION

We AFFIRM.

THE INVENTION

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A computer-based supply chain management system, comprising:

a memory including non-transitory machine-readable instructions which when executed by a processor cause performing:

using an integration layer in the memory comprising a set of the instructions and in operative communication with a first trading partner, obtaining, from the first trading partner, asynchronous supply chain snapshot data regarding the first trading partner at a first time, receiving, from a second trading partner, asynchronous supply chain snapshot data regarding the second trading partner at a second time, and supply chain flow data exchanged between the first trading partner and a second trading partner corresponding to a transaction involving exchange of resources between the first trading partner and the a second trading partner;

using a data aggregation layer in the memory comprising a second set of the instructions, analyzing the supply chain snapshot data, wherein the analysis of the supply chain snapshot data and the supply chain flow data comprises identifying, in the supply chain snapshot data, duplicate, mismatched, or omitted data based on a change in a supply chain status of at least one of the first trading partner or the second trading partner between the first time and the second time;

using the data aggregation layer, determining that the supply chain flow data is indicative of the duplicate,

mismatched, or omitted data and accounts for inventory in transit between the first trading partner and the second trading partner;

using the data aggregation layer, modifying at least a portion of the supply chain snapshot data based on the inventory in transit between the first trading partner and the second trading partner accounted for by the supply chain flow data, resulting in validated supply chain status data; and

using a management layer in the memory comprising a third set of the instructions to present the validated supply chain status data to a user.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Mamou	US 2005/0240592 A1	Oct. 27, 2005
Cova	US 2011/0050397 A1	Mar. 3, 2011

The following rejections are before us for review:

1. Claims 1, 5–10, 12–19, and 21–27 are rejected under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.
2. Claims 1, 5–10, 12–19, and 21–27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cova and Mamou.

ISSUES

Did the Examiner err in rejecting claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter?

Did the Examiner err in rejecting claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 103(a) as being unpatentable over Cova and Mamou?

FINDINGS OF FACT

We rely on the Examiner’s factual findings stated in the Answer. Additional findings of fact may appear in the Analysis below.

ANALYSIS

The rejection of claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 101 as being directed to judicially-excepted subject matter.

The Appellants argued these claims as a group. *See* App. Br. 7–26. We select claim 1 as the representative claim for this group, and the remaining claims 5–10, 12–19, and 21–27 stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(iv).

Alice Corp. Proprietary Ltd. v. CLS Bank International, 134 S. Ct. 2347 (2014) identifies a two-step framework for determining whether claimed subject matter is judicially-excepted from patent-eligibility under 35 U.S.C. § 101.

According to *Alice* step one, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

In that regard, the Examiner determined that

[c]laims 1, 5-10, 12-19, and 21-27 are directed to an abstract idea of an idea of itself (e.g., [i] *Digitech [Image Technologies, LLC v. Electronics for Imaging, Inc.]*, 758 F.3d 1344 (Fed. Cir. 2014)) involving supply chain logistics. . . . [C]laims 1, 5-10, 12-19, and 21-27 are directed to a judicial exception (i.e., law of nature, natural phenomenon, or abstract idea), specifically

the abstract idea involving supply chain logistics. This is similar to *Digitech* where the court found the claim to be an abstract idea because it describes a process of organizing information through mathematical correlations and is not tied to a specific structure or machine. Here, the claims describe a process of organizing supply chain management information through mathematical correlations of data aggregations and is not tied to a specific structure or machine since a generic processor and memory are used.

Final Act. 5.

The Appeal Brief begins with a section entitled “1. THE OFFICE ACTION FAILS TO STATE A *PRIMA FACIE* CASE OF INELIGIBILITY UNDER THE OFFICE'S OWN GUIDANCE.” App. Br. 7. This section, which stretches for 10 pages, challenges the rejection mainly on procedural grounds; that is, the Examiner did not satisfy his burden under the Office’s “JULY 2015 UPDATE: SUBJECT MATTER ELIGIBILITY (‘July 2015 Update’)”. We disagree with that assessment.

35 U.S.C. § 132 sets forth a more general notice requirement whereby the applicant is notified of the reasons for a rejection together with such information as may be useful in judging the propriety of continuing with prosecution of the application. *See, e.g., In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011); *see also* July 2015 Update 6 (setting forth a general notice requirement whereby the Examiner should “clearly articulat[e] the reason(s) why the claimed invention is not eligible” when rejecting on under 35 U.S.C. § 101); May 2016 Memorandum 2 (“the rejection . . . must provide an explanation . . . which . . . [is] sufficiently clear and specific to provide applicant sufficient notice of the reasons for ineligibility.”) In this case, the Examiner has provided more than an adequate explanation to meet said

notice requirement. The Examiner provided a full and detailed explanation as to why he believed, via the step one determination, that the claims are directed to an abstract idea (and why, via the step two determination, that the additional claim elements do not provide meaningful limitations to transform the abstract idea into a patent eligible application of the abstract idea). *See* Final Act. 5–6. We are satisfied that the Appellants were put on notice of the Office’s position and were given ample reasoning to be placed in a position to fully respond.

For their part, the Appellants do not clearly explain why the Examiner’s characterization of the concept the claims are directed to (i.e., supply chain logistics) is in error or, if the characterization is accurate, why said concept is not an abstract idea.

This section of the Appeal Brief argues that (a) it has not been shown that “the asserted abstract idea is closely similar to an adjudicated abstraction from a prior case” (App. Br. 9) and (b) the asserted abstract idea does not fall into the categories of fundamental economic practices, certain methods of organizing human activity, an idea of itself, and mathematical relationships or formulas, which “[t]he Guidance Update recognizes [as being the] only . . . categories in which claims have been held ineligible” (App. Br. 9).

As for argument (a), we agree with the Examiner in that we see little difference between the abstract nature of “supply chain logistics” and “organizing information through mathematical correlations” that *Digitech* held to be an abstract idea. *Return Mail, Inc. v. United States Postal Service, United States*, 868 F.3d 1350 (Fed. Cir. 2017) is also applicable.

Claim 1 involves 4 types of data: (1) “asynchronous supply chain snapshot data regarding . . . [a] first trading partner at a first time;” (2) “asynchronous supply chain snapshot data regarding . . . [a] second trading partner at a second time;” (3) “supply chain flow data exchanged between . . . [a] first trading partner and a second trading partner corresponding to a transaction involving exchange of resources between the first trading partner and the a second trading partner;” and, (4) “supply chain status data.”

According to claim 1, data (1), (2), and (3) are analyzed — which “comprises identifying, in the supply chain snapshot data [i.e., data (1) and (2)], duplicate, mismatched, or omitted data based on a change in a supply chain status of at least one of the first trading partner or the second trading partner between the first time and the second time.” According to claim 1, the supply chain flow data (i.e., data (3)) is determined to be “indicative of the duplicate, mismatched, or omitted data and accounts for inventory in transit between the first trading partner and the second trading partner.” Then, according to claim 1, “at least a portion of the supply chain snapshot data [(i.e., data (3)) is modified] based on the inventory in transit between the first trading partner and the second trading partner accounted for by the supply chain flow data, resulting in validated supply chain status data [(i.e., data (4))].” Finally, according to claim 1, “the validated supply chain status data [(i.e., data (4)) is presented] to a user.”

To put it more succinctly, claim 1 is directed to a scheme whereby data (1) and (2) are collected; certain data therein are identified as duplicate, mismatched, or omitted data; data (3) is determined to be indicative of the

data identified as duplicate, mismatched, or omitted data; and, data (4) results from modifying data (3) which is then presented to a user.

In that regard,

[t]hese steps are analogous to the steps of “collecting data,” “recognizing certain data within the collected data set,” and “storing that recognized data in memory,” which we found to be abstract under Step 1 in *Content Extraction & Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014), *cert. denied*, . . . 136 S.Ct. 119, 193 L.Ed.2d 208 (2015). And “[t]he mere combination of data sources [similarly] . . . does not make the claims patent eligible.” *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097 (Fed. Cir. 2016).

Return Mail, 868 F.3d at 1368. “The ‘abstract idea’ step of the inquiry calls upon us to look at the ‘focus of the claimed advance over the prior art’ to determine if the claim’s ‘character as a whole’ is directed to excluded subject matter.” *Affinity Labs of Texas v. DirectTV, LLC*, 838 F.3d 1253, 1257–58 (Fed. Cir. 2016) (*quoting Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *see also Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016)). When, as here, “[t]he focus of the asserted claims” is “on collecting information, analyzing it, and displaying certain results of the collection and analysis,” the claims are directed to an abstract idea. *Elec. Power Grp.*, 830 F.3d at 1353.

We recognize that data (1)–(4) carry different and particular types of information about a supply chain, but that does not affect the abstract character of the scheme (or logistics) that claim 1 is directed to. *Cf. Elec. Power Grp.*, 830 F.3d at 1353 (“collecting information, including when limited to particular content (which does not change its character as information), . . . [is] within the realm of abstract ideas.”

We should point out that our overview above of the scheme that claim 1 is directed to is consistent with the Appellants' own view of what the claims are directed to. *See, e.g.*, page 20 (emphasis added):

the claims relate to features which are unique and specific to problems found when certain company computers within an organization are used to manage the supply chain data to for example, *identify, determine and modify, in the supply chain flow data*, the items that are indicate of the duplicate, mismatched or omitted accounts for inventory in transit between the first trading partner and the second trading partner.

Notwithstanding that claim 1 makes no mention of synchronizing, *see also* App. Br. 17 (“The proposed approach allows, among other things, for a synchronized identification/determination/modification of the supply chain flow data that is indicative of the duplicate, mismatched or omitted accounts for inventory in transit between the trading partners”) as well as App. Br. 21:

In this case, the independent claims are directed to a process which includes, among other things, synchronized identification/determination/modification of supply chain flow data that is indicative of duplicate, mismatched or omitted account data for inventory items that are in transit between computers of trading partners in a distributed transaction.

See App. Br. 23 for a similar statement.

Thus, argument (a) is unpersuasive as to error in the Examiner's determination under *Alice* step one.

Argument (b) is mooted by the legal precedent discussed above. “Instead of a definition [of an ‘abstract idea’], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Israel) Limited v. Openet Telecom*,

Inc., 841 F.3d 1288, 1294 (Fed. Cir. 2016). For the reasons given for finding argument (a) unpersuasive in light of, for example, *Return Mail*, 868 F.3d at 1368, argument (b) is necessarily unpersuasive as to error in the Examiner’s determination under *Alice* step one.

We now turn to step two of the *Alice* framework.

Step two is “a search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 72–73).

In that regard, the Examiner determined that

In this case, the machine and manufacture each at most comprise *inter alia* a processor, and a memory including non-transitory machine-readable instructions which when executed by the processor cause performing using an integration layer in the memory comprising a set of the instructions and in operative communication with at least a first trading partner obtaining from the first trading partner supply chain snapshot data, using a data aggregation layer . . . analyzing the supply chain snapshot data and the supply chain flow data, and using a management layer . . . to present the validated supply chain status data to a user. Taken individually, the processor and a memory including non-transitory machine-readable instructions executed by the processor cause performing using an integration layer, using a data aggregation layer and using a management layer in the memory comprising sets of instructions each are generically recited and thus does not add significantly more to the respective limitations, and the receive from the first trading partner supply chain snapshot data, analyze the supply chain snapshot data and the supply chain flow data, and present the validated supply chain status data to a user each do not add significantly more since each is directed

to elements of the abstract idea involving supply chain logistics. Taken as an ordered combination, the limitations are directed to limitations referenced in *Alice Corp.* that are not enough to qualify as significantly more when recited in a claim with an abstract idea include, as a non-limiting or non-exclusive examples: (i) mere instructions to implement the idea on a computer, and/or (ii) recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the pertinent industry. The dependent claims do not cure the above stated deficiencies, and in particular, the dependent claims further narrow the abstract idea without providing significantly more than the abstract idea. Since there are no elements or ordered combination of elements that amount to significantly more than the judicial exception, the claims are not eligible subject matter under 35 USC § 101. Further, the specification at ¶0078 states “one or more of the layers described respect FIG. 7 may be executed by a common processor such that a single processor in operative communication with the single memory may execute one or more the layers described respect FIG. 7.” Viewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself.

Final Act. 5–6.

In response, the Appellants reproduce much of what is claimed and then state that the claims have “additional elements that have details that tie the limitations to a specific application; therefore, these limitations are ‘significantly more’ and not ‘generic computer functions.’” App. Br. 16. The Appellants variously argue that the claims “provide an improved technical process for extracting meaning from supply chain data” (App. Br. 13); “claims recite computer operations that are not ‘well-understood, routine or conventional’” (App. Br. 12); and the claims “provide a fast and

efficient way for operating a supply chain event if the organization fazes [sic, faces] complex supply chain management issues” (App. Br. 17). These arguments are repeated in the section entitled “2. THE CLAIMS RECITE ADDITIONAL LIMITATIONS THAT ARE INVENTIVE AND AMOUNT TO SIGNIFICANTLY MORE THAN AN ABSTRACT IDEA.” App. Br. 17. For the next seven pages, the Appellants seek to make the case that “the claims recite features that are directed to improvements to another technology or technical field” (App. Br. 20) (emphasis omitted); for example, according to the Appellants, they recite improvements that depend “not only upon the invention's distributed architecture, but also upon network devices working together in a distributed manner as claimed” (App. Br. 21). Paragraphs 29 and 46 of the Specification are said to describe such a technical solution to the problem. App. Br. 21–23. According to the Appellants,

the claimed approach offers the benefit of greatly reducing the volume of data that needs to be otherwise exchanged between partner computers if the supply chain flow data was not modified to eliminate the duplicate or mismatched data. Without the claimed approaches, user computers and company computers would have to individually request data checks and data validation. This would cause additional data traffic and consumption of bandwidth in the computer networks that connect the partners. However, with the claimed approach, because the company computers are able to detect/determine/modify the supply chain flow data that indicate of duplicate, mismatched or omitted accounts for inventory in transit between the entities, the amount of data that the computer servers actually transmit can be reduced.

Without the benefit of the recited approach, computers at distributed supply chain partner locations would have to establish many more data connections and sessions. They

would also have to put heavier demands on networks and infrastructure resources. Thus, the features of the claims can improve the efficiency of the functioning of the computer technology as in [*McRO, Inc. v Bandai Namco Games America*, 837 F.3d 1299 (Fed. Cir. 2016).]

App. Br. 23.

We do not find the Appellants' arguments persuasive as to error in the Examiner's determination under *Alice* step two.

The arguments fail at the outset because they are not commensurate in scope with what is claimed. For example, there is no limitation in claim 1 that suggests the use of a distributed architecture. All that claim 1 requires is a memory.

The discussion about problems associated with the volume of data that may be faced; computers and company computers that have to individually request data checks and data validation; computer servers; and, networks is similarly unavailing since the subject matter of claim 1 is not so limited. “[T]he name of the game is the claim.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998). *See also In re Warmerdam*, 33 F.3d 1354, 1360 (Fed. Cir. 1994) (“The problem with Warmerdam’s argument is that the claims here do not have that [argued-over] effect. It is the claims which define the metes and bounds of the invention entitled to the protection of the patent system.”)

Furthermore, claim 1 covers using a generic computer. Paragraphs 29 and 46 of the Specification do not say otherwise. Notwithstanding that we “must focus on the language of the [a]sserted [c]laims themselves,” and “complex details from the specification cannot save a claim directed to an abstract idea that recites [e.g.,] generic computer parts” (*Synopsys, Inc. v.*

Mentor Graphics Corp., 839 F.3d 1138, 1149 (Fed. Cir. 2016)), we do not see there any indication that something more than a generic computer would be needed to practice the invention as claimed.

We agree with the Examiner that the disclosure in the Specification at paragraph 78 states that “a common processor” can be employed to execute the layers described in Figure 7 — and Figure 7 was relied on by the Appellants as showing the claimed subject matter (*see* App. Br. 2–3). This supports the view that a generic computer is sufficient to practice the claim steps, individually and in the order combination as claimed. The disclosure at paragraph 78 of the Specification belies the Appellants’ argument that the claimed subject matter does not merely use generic computers as a tool or that their functioning is improved by the claimed scheme.

We are not persuaded by the Appellants’ arguments that claim 1 is focused on any specific asserted improvement in computer capabilities. *Cf. Enfish*, 822 F.3d at 1335–36 (“whether the focus of the claims is on the specific asserted improvement in computer capabilities . . . or, instead, on a process that qualifies as an ‘abstract idea’ for which computers are invoked merely as a tool.”)

The combined steps of collecting data (1) and (2); identifying certain data therein as duplicate, mismatched, or omitted data; determining data (3) to be indicative of the data identified as duplicate, mismatched, or omitted data; and, modifying data (3) is a result-oriented scheme; that is, it achieves data (4) for presentation to a user. What the Appellants are urging as patent-eligible subject matter is, as presently claimed, a result-oriented solution and one that is absent any technical detail for practicing it. It is a broad solution

that is not circumscribed by technical detail. *Cf. Credit Acceptance Corp. v. Westlake Services, LLC*, 859 F.3d 1044, 1057 (Fed. Cir. 2017):

Significantly, the claims do not provide details as to any non-conventional software for enhancing the financing process. *See Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1342 (Fed. Cir. 2017) (explaining that “[o]ur law demands more” than claim language that “provides only a result-oriented solution, with insufficient detail for how a computer accomplishes it”); [*Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016)]; (explaining that claims are directed to an abstract idea where they do not recite “any particular assertedly inventive technology for performing [conventional] functions”).

At best, claim 1 calls for using a generic computer. But, “the use of a computer in an otherwise patent-ineligible process for no more than its most basic function—making calculations or computations—fails to circumvent the prohibition against patenting abstract ideas and mental processes” (*Bancorp Services, L.L.C. v. Sun Life Assur. Co. of Canada (U.S.)*, 687 F.3d 1266, 1278 (Fed. Cir. 2012)). “Taking the claim elements separately, the function performed by the computer at each step of the process is ‘[p]urely conventional.’ *Alice*, 134 S. Ct. at 2359 (citing *Mayo*, 566 U.S. at 79). “Considered ‘as an ordered combination,’ the computer components of petitioner’s method ‘ad[d] nothing . . . that is not already present when the steps are considered separately.” *Alice*, 134 S. Ct. at 2359 (internal citation omitted).

For the foregoing reasons, the Examiner was not in error in determining that claim 1 did not include an element or combination of elements sufficient to ensure that the claimed subject matter in practice

amounted to significantly more than to be on the patent-ineligible abstract idea (i.e., “supply management logistics”) itself.

We have considered all of the Appellants’ remaining arguments both in the Appeal and Reply Briefs and have found them unpersuasive. Accordingly, we find no error in the Examiner’s determinations that the subject matter of claim 1 — as well as claims 5–10, 12–19, and 21–27 that stand or fall with it — are directed to an abstract idea and do not present an “inventive concept.” Accordingly, we sustain the Examiner’s determination that they are directed to patent ineligible subject matter under 35 U.S.C. § 101. *Cf. LendingTree, LLC v. Zillow, Inc.*, 656 Fed.Appx. 991, 997 (Fed. Cir. 2016) (“We have considered all of LendingTree’s remaining arguments and have found them unpersuasive. Accordingly, because the asserted claims of the patents in suit are directed to an abstract idea and do not present an ‘inventive concept,’ we hold that they are directed to ineligible subject matter under 35 U.S.C. § 101”).

The rejection of claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 103(a) as being unpatentable over Cova and Mamou.

The Examiner’s position with respect to claim 1 is that Cova discloses all that there is claimed, but for the integration layer limitation and “using the data aggregation layer, determining that the supply chain flow data is indicative of the duplicate, mismatched, or omitted data and accounts for inventory in transit between the first trading partner and the second trading partner” (claim 1), for which Mamou is relied upon. Final Act. 7–8.

The Examiner found that paragraph 86 of Cova discloses “using the data aggregation layer, modifying at least a portion of the supply chain

snapshot data based on the inventory in transit between the first trading partner and the second trading partner accounted for by the supply chain flow data, resulting in validated supply chain status data” (claim 1). Final Act. 7. However, we do not see there any disclosure of modifying data, let alone modifying the type of data claimed “based on the inventory in transit between the first trading partner and the second trading partner accounted for by the supply chain flow data” (claim 1).

Accordingly, a prima facie case of obviousness for the subject matter of claim 1 has not been established in the first instance by a preponderance of the evidence. The rejection as to claim 1 and the claims depending therefrom is not sustained. The other independent claims — claims 14 and 21 — contain similar “modifying” limitations for which the Examiner takes the same position vis-à-vis Cova. *See* Final Act. 10. Accordingly, for the same reasons, their rejection and the rejection of the claims depending therefrom, are also not sustained.

CONCLUSIONS

The rejection of claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 101 as being directed to judicially-expected subject matter is affirmed.

The rejection of claims 1, 5–10, 12–19, and 21–27 under 35 U.S.C. § 103(a) as being unpatentable over Cova and Mamou is reversed.

DECISION

The decision of the Examiner to reject claims 1, 5–10, 12–19, and 21–27 is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED