UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte SAM SHANK

———————

Appeal 2017-010599
Application 11/422,066
Technology Center 2400

———————

Before MAHSHID D. SAADAT, CARLA M. KRIVAK, and
STACY B. MARGOLIES, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant[1] appeals under 35 U.S.C. § 134(a) from the Final Rejection
of claims 1, 6, 8, 15, 17, 18, 21, and 23–29, which are all the claims pending
in this application.[2] We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] According to Appellant, the real party in interest is Kayak Software
Corporation. App. Br. 2.

[2] Claims 2–5, 7, 9–14, 16, 19, 20, 22 have been canceled.

STATEMENT OF THE CASE

Introduction

Appellant's disclosure describes "[a] method, apparatus and system for compiling and filtering user ratings of products." Spec. ¶ 28.

Exemplary claim 1 under appeal reads as follows:

1.   A method executed by a computer system for providing hotel information to a user of a website, the method comprising:

using the computer system to perform:

receiving a request for hotel information obtained based on input provided by the user of the website, the request including a location specified by the user;

identifying a plurality of hotels based on their physical location relative to the location specified by the user;

receiving a review filtering criteria selected by the user, the review filtering criteria including at least one review filtering parameter by which reviews from users of the website that stayed at the identified hotels are filtered, the at least one review filtering parameter including a travel budget, a purpose for staying at a hotel, and/or a rate paid for staying at a hotel;

for each identified hotel:

accessing reviews submitted by users of the website for the hotel;

filtering, based at least in part on the travel budget, the purpose for staying at the hotel, and/or the rate paid for staying at the hotel, the reviews accessed for the hotel to produce a filtered set of reviews, wherein the filtered set of reviews includes only those reviews that meet the review filtering criteria and excludes reviews that do not meet the review filtering criteria such that the filtered set of reviews is smaller in number than the reviews accessed; and

generating a score for the hotel based on the hotel's
filtered set of reviews; and presenting a list of the identified
hotels to the user via the website, the list sorted based on the
score generated for each hotel.

The References and Rejections[3]

Claims 1, 6, 8, 15, 17, 18, 21, and 23–29 stand rejected under
35 U.S.C. § 101 as directed to patent-ineligible subject matter. *See* Final
Act. 3–5, Ans. 3–5.

Claims 1, 6, 8, 18, 21, 23, and 24 stand rejected under 35 U.S.C.
§ 103(a) as unpatentable over Schneider (US 5,832,452, iss. Nov. 3, 1998),
Floss (US 2002/0147619 A1, pub. Oct. 10, 2002), Calabria (US
2006/0143068 A1, pub. June 29, 2006), and Clendinning (US 2002/0107861
A1, pub. Aug. 8, 2002). *See* Final Act. 8–15, Ans. 7–15.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as unpatentable
over Schneider, Floss, Calabria, Clendinning, and Gerace (US 5,991,735;
iss. Nov. 23, 1999). *See* Final Act. 15–17, Ans. 15–17.

Claim 17 stands rejected under 35 U.S.C. § 103(a) as unpatentable
over Schneider, Calabria, and Clendinning. *See* Final Act. 17–22, Ans. 17–
21.

Claims 25, 28, and 29 stand rejected under 35 U.S.C. § 103(a) as
unpatentable over Schneider, Robinson (US 5,790,426; iss. Aug. 4, 1998),
Calabria, and Clendinning. *See* Final Act. 22–33, Ans. 22–33.

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[3] The Examiner has withdrawn the rejection of claims 8, 23, and 24 under
35 U.S.C. § 112(d) or pre-AIA 35 U.S.C. § 112, 4th paragraph, as being of
improper dependent form for failing to further limit the subject matter of the
claim upon which it depends, or for failing to include all the limitations of
the claim upon which it depends. *See* Ans. 37, Final Act. 2–3.

Claims 26 and 27 stand rejected under 35 U.S.C. § 103(a) as
unpatentable over Schneider, Robinson, Calabria, Clendinning, and Gerace.
See Final Act. 34–36, Ans. 34–36.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellant's
arguments in the Briefs. For the reasons discussed below, we are not
persuaded by Appellant's arguments that the Examiner erred in rejecting
claims 1, 6, 8, 15, 17, 18, 21, and 23–29 under 35 U.S.C. § 101 and
35 U.S.C. § 103(a). Unless otherwise indicated, we incorporate by reference
herein, and adopt as our own, the findings and reasons set forth by the
Examiner in the Office Action from which this appeal is taken and in the
Examiner's Answer in response to Appellant's Appeal Brief. *See* Final Act.
3–36, Ans. 37–54. We also concur with the conclusions reached by the
Examiner. For emphasis, we consider and highlight specific arguments as
presented in the Briefs.

A. Rejection under § 101
Principles of Law

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."
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." *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S.
Ct. 2347, 2354 (2014) (internal quotation marks and citation omitted).

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, 75–77 (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 the analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* For example, abstract ideas include, but are not limited to, fundamental economic practices, methods of organizing human activities, an idea of itself, and mathematical formulas or relationships. *Id.* at 2355–57. The "directed to" inquiry asks not whether "the claims *involve* a patent-ineligible concept," but instead whether, "considered in light of the specification, . . . 'their character as a whole is directed to excluded subject matter.'" *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016) (internal citations omitted). In that regard, we determine whether the claims "focus on a specific means or method that improves the relevant technology" or are "directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery." *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016).

If, in applying the first step of the *Alice* analysis, we conclude that the claims are not directed to a patent-ineligible concept, they are considered patent eligible under § 101 and the inquiry ends. *Rapid Litig. Mgmt. Ltd. v. CellzDirect, Inc.*, 827 F.3d 1042, 1047 (Fed. Cir. 2016).

If the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "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." *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 566 U.S. at 79, 78). In other words, the second step is to "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.'" *Id.* (brackets in original) (quoting *Mayo*, 566 U.S. at 72–73). The prohibition against patenting an abstract idea "'cannot be circumvented by attempting to limit the use of the formula to a particular technological environment' or adding 'insignificant post solution activity.'" *Bilski v. Kappos*, 561 U.S. 593, 610–11 (2010) (internal citation omitted).

Mayo/Alice Step One

The Examiner determines the following:

> The claim(s) is/are directed to the abstract idea of "filtering products/services based on product/service related information (e.g. location, price, reviews, etc.), compiling the results, and producing a sorted list of products/services based on product/service related information (e.g. location, price, reviews, ratings, ranking, etc.)" ((i) a fundamental economic practice, (ii) a method of organizing human activities, and/or (iii) an idea of itself). The additional element(s) or combination of elements in the claim(s) other than the abstract idea per se amount(s) to no more than: (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 in the art.

Final Act. 3–4; Ans. 3–4.

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Appellant contends the Examiner's assessment that the claims are directed to an abstract idea is in error. App. Br. 10.[4] Appellant argues:

> The present claims are not directed to an abstract idea because the present claims are directed to improvements to computer-related technology. *See Enfish*; *see also DDR Holdings, LLC v. Hotels.com et al.*, 773 F.3d 1245 at 1257 (Fed. Cir. 2014) ("these claims stand apart because they do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claimed solution is necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks."). The present claims are necessarily rooted in computer technology and overcome a problem specifically arising in the realm of the **human-computer interface**. The present claims thus set forth systems and methods to improve the human-computer interface.

Id. In this regard, Appellant further argues different aspects of a human-computer interface (HCI) and asserts the appealed claims "set forth tools that improve the efficiency with which a user can locate desired information and that improve the relevancy of the information presented to the user." *See id.* at 10–13. Appellant points to the recited sorting/filtering method based on filtering the user reviews according to specific criteria that meet the user request for information, which would not be possible using conventional sorting/filtering techniques. *See id.* at 13–16.

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[4] Independent claims 1, 17, and 25 recite methods, independent claims 18 and 28 recite systems, and independent claims 21 and 29 recite computer program products. Appellant argues claims 1, 6, 8, 15, 17, 18, 21, and 23–29 as a group. App. Br. 10–20. We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(l)(iv).

Appellant's arguments do not persuade us of Examiner error. The claims are not directed to improvements to computer-related technology, as in *Enfish* and *DDR Holdings*. Rather, the claims are directed to filtering and sorting information based on input from a user. Appellant fails to point to any language in the claims directed to improving the technology of, for example, the user interface. We agree with the Examiner's analysis on pages 38–40 of the Answer that the claims are not directed to a specific asserted improvement in computer capabilities and that the claims are directed to using a computer merely as a tool. Implementing an abstract idea using a "physical machine" does not impart patent eligibility. *See Mayo*, 566 U.S. at 84; *see also* Ans. 2–3. "[N]ot every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry." *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016). The inability of a human to accomplish each step "does not alone confer patentability." *See FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016). In *Alice*, for example, "[a]ll of the claims [we]re implemented using a computer." 134 S. Ct. at 2353, 2360.

Additionally, Appellant's argument that the claims recite "tools that improve the efficiency with which a user can locate desired information and that improve the relevancy of the information presented to the user" (App. Br. 13) is not persuasive because Appellant has not demonstrated that the purported advantages shown in Figures 6 and 7 are tied to an improvement in computer-related technology. *See* App. Br. 13–16 (relying on Figures 6 and 7 as allegedly illustrating the technical advantages provided by the claimed subject matter). Although a computer and its related components, such as a processor, a network interface, and a storage, are used to achieve

the recited process of receiving a hotel information, filtering reviews of the hotel, and generating a score for the hotel, those process steps are nonetheless directed to an abstract idea that, in essence, is a fundamental economic and business practice. Final Act. 3–4. Similar to the computer-based anonymous loan shopping system in *Mortgage Grader Inc. v. First Choice Loan Services Inc.*, 811 F.3d 1314, 1324–25 (Fed. Cir. 2016), the claims here are not directed to specific improvements in the way computers and networks carry out their basic functions, but rather merely are directed to filtering products/services based on product/service related information and producing a sorted list of products/services, which constitute a fundamental economic practice. Although this filtering technique may be beneficial, a claim for a useful or beneficial abstract idea is still an abstract idea. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379–80 (Fed. Cir. 2015).

As the Examiner explains, the claims are directed to "a process that qualifies as an 'abstract idea' for which computers are invoked merely as a tool" in order "to provide hotel information to a user via a website by filtering and sorting such information based on input provided by the user." Ans. 38. Therefore, we agree with the Examiner that claim 1 is directed to the abstract idea of filtering products/services based on product/service-related information, compiling the results, and producing a sorted list of products/services based on product/service-related information. Final Act. 3–5; Ans. 3–5, 37–39.

Mayo/Alice Step Two

The Examiner determines:

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The claims are directed to an abstract idea and do not
recite any additional elements that amount to significantly more
than an abstract idea. The claims require no more than a generic
computer to perform generic computer functions that are well-
understood, routine and conventional activities previously
known in the industry and amount to no more than generally
linking the use of the particular judicial exception (the abstract
idea of filtering/compiling/sorting products/services based on
product/service related information) to a particular
technological environment or field of use (e-commerce).

Final Act. 4; Ans. 4. The Examiner further determines that carrying out the

claimed steps requires no more than the existing computers with no need for

"new mechanism." Final Act. 4; Ans. 4. According to the Examiner, the

claimed process merely requires routine process of filtering

products/services based on some type of information, compiling the results,

and producing a sorted list, which constitute "well-understood, routine and

conventional activity." Final Act. 4–5; Ans. 4–5.

Appellant contends that "[e]ven if the claims are determined to be

accurately directed to this purported abstract idea, the claims nevertheless

amount to significantly more than this purported abstract idea." App. Br. 17.

Appellant points to the holdings in *BASCOM Global Internet Services, Inc.

v. AT&T Mobility LLC*, 827 F.3d 1341, 1350 (Fed. Cir. 2016) and *Enfish* and

argues that a claim reciting generic components can nonetheless be

considered to amount to significantly more than an abstract idea. App. Br.

18. Appellant asserts:

[T]he present claims set forth "filtering . . . **reviews**" (the
alleged product/service related information) "accessed for the
hotel" based on varying user details (e.g., travel budget,
purpose for staying at the hotel, rate paid for staying at the
hotel, demographic data, etc.), "generating a score for the hotel"
(the alleged product/service) "based on the hotel's filtered set of

reviews", and "presenting a list of the identified hotels . . . sorted based on the score." Filtering product/service related information in order to sort products rather than filtering products/services is an example of claiming beyond well-understood, routine and conventional activity.

App. Br. 19. Appellant further argues: "[C]onventional ranking of products/services take account of all reviews (e.g., from business people and families alike). The present claims introduce the unconventional step of filtering reviews to provide accurate representations of hotels for a particular user." *Id.*

Appellant's assertions do not persuade us of Examiner error. As the Examiner explains, the claims are directed to filtering products/services based on product/service-related information (e.g. location, price, reviews, etc.), which include using a generic computer system for performing receiving a request, receiving a review filtering criteria, and accessing previously submitted reviews. *See* Ans. 40–41. The purported "unconventional" filtering is not claimed (or even described) as an improvement in the way a computer operates, as in *Enfish*. *See Enfish*, 822 F.3d at 1336, 1339 (concluding that the self-referential table recited in the claims is designed to improve the way a computer stores and retrieves data in memory). *BASCOM* similarly is distinguishable because, in determining that BASCOM had adequately alleged that the claims pass step two of *Alice's* two-part framework, the Federal Circuit concluded that the claimed invention "provid[es] individualized filtering at the ISP server" and is directed to improving the performance of the computer system itself. *BASCOM*, 827 F.3d at 1351, 1352. Here, Appellant fails to point to any language in the claims directed to improving the way the computer system

operates. Rather, claim 1 broadly recites "receiving a request . . .,
identifying a plurality of hotels . . ., receiving a review filtering criteria . . .,
and accessing reviews . . . ," "filtering," and "generating a score" with the
generic, programmed computer system. *See* Spec. ¶¶ 29, 32, 34, 51
(describing the processor's role).

We agree with the Examiner that the recited subject matter is similar
to the concepts found to be patent-ineligible in *Electric Power Group, LLC
v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016). *See* Ans. 42. Similar to the
claimed subject matter in *Electric Power Group*, the claims' invocation of a
computer system (or a processor, a network interface and a storage medium)
here does not transform the claimed subject matter into patent-eligible
applications. *Electric Power Grp.*, 830 F.3d at 1355. Nothing in the claims,
understood in light of the specification, requires anything other than off-the-
shelf, conventional computer technology for performing the claimed
filtering. *See id.*; Spec. ¶¶ 32–40, 61.

In summary, the claimed subject matter does not transform the
abstract idea into a patent-eligible invention.

Preemption

Appellant argues that (1) "[t]he present claims . . . do not preempt the
use of the purportedly abstract idea the examiner asserts, namely 'filtering
products/services based on product/service related information (e.g. location,
price, reviews, etc.), compiling the results, and producing a sorted list of
products/services based on product/service related information' in all
fields;" and (2) "[t]here are infinite other applications of 'filtering
products/services,'" such as filtering products/services without filtering
reviews. App. Br. 16–17. Appellant further asserts "the claims do not seek

to tie up any judicial exception such that other[s] cannot practice it." App. Br. 17.

Appellant's arguments do not persuade us of Examiner error. *See* Ans. 43 (addressing monopolization and preemption). While preemption may denote patent ineligibility, its absence does not demonstrate patent eligibility. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility."); *FairWarning, IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1098 (Fed. Cir. 2016).

Summary

For the reasons discussed above, Appellants' arguments have not persuaded us of any error in the Examiner's findings or conclusions under *Mayo/Alice* step one or step two. Hence, we sustain the § 101 rejection of claims 1, 6, 8, 15, 17, 18, 21, and 23–29.

B. Rejections under 35 U.S.C. § 103(a)

Independent Claim 1

In rejecting claim 1, the Examiner relies on Schneider as disclosing the recited computer system for receiving a request for hotel information, identifying a plurality of hotels, and receiving a review filtering criteria. *See* Final Act. 7–9; Ans. 8–9. The Examiner further finds Floss discloses the recited review filtering criteria as the personal travel advice provided to a user based on user-specific data. *See* Final Act. 9–10; Ans. 9–10. Additionally, the Examiner relies on Calabria as disclosing the recited process of receiving a review filtering criteria, accessing reviews, and

filtering the reviews to produce a filtered set of reviews, and generating a score for the hotel to be presented to the user. *See* Final Act. 11–13; Ans. 11–12. Lastly, the Examiner finds Clendinning teaches collecting and displaying information on a product website. *See* Final Act. 13–14; Ans. 13–14. The Examiner concludes it would have been obvious to one of ordinary skill in the art to combine the teachings of Schneider with Floss, Calabria, and Clendinning in order to take into account the requested and filtered information and provide the most relevant information to a user. *See* Final Act. 10–14; Ans. 12–14.

Appellant contends the proposed combination is improper because Paragraph 27 of Calabria "describes a system 'to provide an ordered list of reviews based on the stored reviews relating to the subject as **ordered by** a social distance as calculated in the review engine 38,'" and that "**ordering** a list of reviews does not disclose or suggest **filtering** reviews." App. Br. 21. Appellant argues Calabria also fails to disclose or suggest "generating a score for something **other than** reviews based on filtered reviews" and thus fails to disclose or suggest the claimed generating a score **for the hotel**. App. Br. 22. Additionally, Appellant contends the other applied references in general, and Clendinning in particular, fail to teach the recited filtering the reviews and "generating a score for the hotel based on the hotel's **filtered** set of reviews." App. Br. 23. Appellant specifically argues "*Clendinning* fails to disclose or suggest 'generating a score for the hotel based on the hotel's filtered set of reviews'" because the "'composite user rating 40' is [not] generated for the product based on a **filtered** set of the 'user ratings 45.'" *Id.*

In response, the Examiner finds the cited portions of Calabria teach filtering the reviews based on a specific subject or category to produce a filtered set of reviews that fits the filtering criteria and generating a score for the hotel based on the hotel's filtered set of reviews. Ans. 48–49, 51–52 (citing Calabria at Abstract, Fig. 13, ¶¶ 5, 26, 27, 39, 65, 67, 68, 71, 78, 83). The Examiner further explains

> Calabria clearly discloses using the exemplary social network information as above, whenever a user requests reviews for a given subject, the computer review system 10 executes an exemplary process as shown in FIG. 6. *After starting the process enacts step 110 where a user requests reviews for a given subject. All reviews pertaining to the given subject (excepting those that may be filtered as disclosed later) are selected in step 112.* In step 114 it is determined if the user is known and signed in. If the user is registered and signed in and the user's userID becomes available to the review-provider as part of the query, either through a cookie or any other means, *the "social distance" of each selected review is calculated in step 116 with respect to the user; the reviews are displayed in sorted order and using privacy settings that include "social distance" in step 118.* If the user's userID cannot be determined, step 120 is enacted where the reviews are displayed in sorted order and using privacy settings that do not include "social distance." *It is noted that other embodiments of this process 108, particularly with regard to the sequence (for example, the retrieval and reviews and the computation of "social distance" can occur nearly simultaneously), and that there are many ways that the "social distance" can be used to influence the sort order and/ or the privacy settings of the reviews.* (Calabria; paragraph [0039]) *(emphasis added).*

Ans. 49–50. The Examiner further points to paragraphs 71 and 78 of Calabria as disclosing the recited filtering of the reviews. Ans. 50–51.

The Examiner also finds "Calabria clearly discloses generating a rank and rate (score) for a product/service (something other than a review) and

generating a rate and rank (score) for the subject (i.e. product, service, etc.)(hotel) based on the subject's (i.e. product's, service's, etc.)(hotel's) filtered set of reviews." Ans. 52. The Examiner correctly explains that Calabria discloses that the rate and rank engine assigns an overall rating number to each subject (i.e., product, service, etc.) and that overall rating number is based in part on a filtered set of reviews. Ans. 51–52; *see also id.* at 50 (quoting Calabria ¶ 71).

    We are unpersuaded by Appellant's contentions and agree with the Examiner that Calabria relates to a system for sorting any type of review based on the user's interest, categories, and other relational features. *See* Calabria ¶¶ 5–7. As the Examiner finds (*see above*), Calabria teaches receiving a user request for reviews of a given subject after the reviews are filtered and sorted (see ¶ 39) based on review filtering criteria set by the user (see ¶¶ 65–67). We also agree with the Examiner's finding that paragraph 71 of Calabria discloses filtering the reviews and meets the filtering criteria, whereas paragraph 78 further teaches additional criteria set by the user, which are used to select the reviews that are more relevant to the user's request. We further agree with the Examiner that Calabria discloses generating a score for something other than a review and that score is based in part on reviews. *See* Ans. 51–52. Specifically, Calabria discloses the following:

> The rate and rank engine 42 provides the function of assigning
> an overall rating number to each subject. This would allow
> users to quickly rank the providers in a given category, if such a
> ranking were desired. The overall rating number is computed
> individually for each user that utilizes the review-provider
> system, using metrics that include the "social distance" (as
> already disclosed) between the reader/user and the aggregate of

all authors that have written reviews applicable to that subject.
Other metrics that may be used in conjunction with the "social
distance" include the rating assigned by each author . . . .

Calabria ¶ 71.

We also disagree with Appellant's contentions regarding the teachings

of Clendinning and that the reference does not teach or suggest the

generating and presenting steps. *See* App. Br. 22–23. First, this argument is

unpersuasive because Appellant is arguing the references individually,

whereas the Examiner's rejection is based upon the teachings of a

combination of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097

(Fed. Cir. 1986). The test for obviousness is whether the combination of

references, taken as a whole, would have suggested the patentee's invention

to a person having ordinary skill in the art. *In re Keller*, 642 F.2d 413, 425

(CCPA 1981). *See also* Ans. 53. Calabria was relied on for disclosing

generating a score for the hotel based on the hotel's filtered set of reviews,

whereas Clendinning was relied on for disclosing "presenting a list of the

identified hotels (*products, services, etc.*) to the user via the website, the list

sorted based on the score (*rating, ranking, etc.*) generated for each hotel

(*products, services, etc.*)." Ans. 53 (citing Clendinning ¶¶ 76, 79). The

Examiner correctly concludes the proposed combination

> would have been obvious to one of ordinary skill in art to
> incorporate the manner of presentation based on rating, ranking,
> etc. (score), as taught by[] Clendinning into the system of
> Calabria for the purpose of providing product/service
> information to users (Clendinning; abstract), thereby allowing
> users to make a selection based on ranking/reviews.

Id. We are not persuaded the Examiner errs in relying on this combination.

Additionally, we note that, consistent with the guidelines stated in *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), the Examiner's proposed combination of Calabria's sorted list of information related to products and services based on a generated rating, ranking, etc. (score) with Clendinning's presentation of the sorted hotel list "involves nothing more that [sic] simple substitution of one known element (generated score related to a product/ service) for another (another generated score related to a product/ service) to obtain predictable results (i.e. the presentation of a sorted list)." Ans. 53–54.

In view of our discussion above, we are unpersuaded of Examiner error in rejecting claim 1.

Remaining Independent Claims

Appellant argues the patentability of claims 17, 18, 21, 25, 28, and 29 based on the same reasoning presented for claim 1. App. Br. 23–27. In view of our discussion above, we are unpersuaded of Examiner error in rejecting claims 17, 18, 21, 25, 28, and 29.

CONCLUSION

As discussed herein, Appellant's arguments have not persuaded us the Examiner erred in finding the claims are directed to patent-ineligible subject matter. Accordingly, we sustain the Examiner's rejection of claims 1, 6, 8, 15, 17, 18, 21, and 23–29 under 35 U.S.C. § 101.

Similarly, Appellant's arguments have not persuaded us that the Examiner erred in finding the combination of Schneider with Floss, Calabria, and Clendinning teaches or suggests the disputed limitations of claims 1, 17, 18, 21, 25, 28, and 29. Accordingly, we sustain the 35 U.S.C. § 103(a) rejections of independent claims 1, 17, 18, 21, 25, 28, and 29, as

well as dependent claims 6, 8, 15, and 23, 24, 26, and 27 which are not argued separately.

DECISION

The decision of the Examiner rejecting claims 1, 6, 8, 15, 17, 18, 21, and 23–29 under 35 U.S.C. § 101 is affirmed.

The decision of the Examiner rejecting claims 1, 6, 8, 15, 17, 18, 21, and 23–29 under 35 U.S.C. § 103 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