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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JOHN GAMEL and MICHAEL BERRY

Appeal 2017-010705
Application 14/207,870
Technology Center 3600

Before ST. JOHN COURTENAY III, LARRY J. HUME, and
JOYCE CRAIG, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants¹ appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection² of claims 1, 3–10, and 12–20, which constitute all the claims pending in this application. Claims 2 and 11 are cancelled. We have jurisdiction over the pending claims under 35 U.S.C. § 6(b).

We reverse.

¹ According to Appellants, the real party in interest is MasterCard International Inc. App. Br. 1.

² Herein, we refer to the Specification, filed Mar. 13, 2014 (“Spec.”); Final Office Action, mailed Sept. 29, 2016 (“Final Act.”); Appeal Brief, filed Mar. 15, 2017 (“App. Br.”); Examiner’s Answer, mailed June 14, 2017 (“Ans.”); and the Reply Brief, filed Aug. 14, 2017 (“Reply Br.”).

STATEMENT OF THE CASE

Embodiments of Appellants' invention relate to "processing payment transactions, and more specifically to applying a reward to an account associated with a cardholder based on a comparison of prices for a product in a geographic region." Spec. ¶ 1.

Exemplary Claim

1. A computer-implemented method for providing a reward based on a price differential for a product, said method implemented using a computing device in communication with one or more memory devices, said method comprising:

initiating a transaction at a location of a first merchant using a payment card of a cardholder account associated with a cardholder;

receiving, by the computing device, a reward determination request message including an identification of the first merchant and product data for a product purchased in the transaction by the cardholder from the first merchant, the reward determination request message based on an authorization request message sent from an electronic device of the first merchant;

determining, by the computing device, a location of the first merchant;

determining, using the one or more memory devices, the price differential between a first price for the product from the first merchant and at least a second price for the product from at least a second merchant within a predetermined geographic distance of the location of the first merchant; and

applying, in response to the reward determination request message, a reward to the cardholder account, wherein the reward is based on the determination of the price differential by the computing device.

App. Br. 18 (Claims App'x) (Contested § 103 limitation emphasized).

Rejections

- A. Claims 1, 3–10, and 12–20 are rejected under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more. Final Act. 2.
- B. Claims 1, 3, 5–10, 12, 13, and 15–20 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Sharma et al. (US 9,105,022 B1, issued Aug. 11, 2015) (hereinafter “Sharma”), and Litle (US 8,892,468 B1, issued Nov. 18, 2014). Final Act. 6.
- C. Claims 4 and 14 are rejected under 35 U.S.C. § 103 as being obvious over the combined teachings and suggestions of Sharma, Litle, and Shuster (US 8,577,698 B2, issued Nov. 5, 2013). Final Act. 16.

Issues on Appeal

- A. Did the Examiner err in rejecting claims 1, 3–10, and 12–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more?
- B. Did the Examiner err in rejecting claims 1, 3, 5–10, 12, 13, and 15–20, under 35 U.S.C. § 103, as being obvious over the cited combination of prior art?
- C. Did the Examiner err in rejecting claims 4 and 14 under 35 U.S.C. § 103, as being obvious over the cited combination of prior art?

ANALYSIS

We have considered all of Appellants’ arguments and any evidence presented. We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection A under 35 U.S.C. § 101

Principles of Law

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. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 70 (2012) (brackets in original) (citing *Diamond v. Diehr*, 450 U.S. 175, 185 (1981)).

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*. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 217–18 (2014) (citing *Mayo*, 566 U.S. at 75–77). In accordance with that 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.”).

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)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding of rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 193 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 182 n.7 (quoting *Corning v. Burden*, 56 U.S. 252, 267–68 (1854))); and manufacturing flour (*Benson*, 409 U.S. at 69 (citing *Cochrane v. Deener*, 94 U.S. 780, 785 (1876))). In *Diehr*, the claim at issue recited a mathematical formula, but the Supreme Court held that “[a] claim drawn to subject matter otherwise statutory does not become nonstatutory simply because it uses a mathematical formula.” *Diehr*, 450 U.S. at 187; *see also id.* at 191 (“We view respondents’ claims as nothing more than a process for molding rubber products and not as an attempt to patent a mathematical formula.”). Having said that, the Supreme Court also indicated that a claim “seeking patent protection for that formula in the abstract . . . is not accorded the protection of our patent laws, . . . and this principle cannot be circumvented by attempting to limit the use of the formula to a particular technological environment.” *Id.* (citing *Benson* and *Flook*); *see, e.g., id.* at 187 (“It is now commonplace that an *application* of a law of nature or mathematical formula to a known structure or process may well be deserving of patent protection.”).

If the claim is “directed to” an abstract idea, we turn to the second step of the *Alice* and *Mayo* framework, where “we must examine the elements of the claim to determine whether it contains an ‘inventive concept’ sufficient to ‘transform’ the claimed abstract idea into a patent-eligible application.” *Alice*, 573 U.S. at 221 (quotation marks omitted). “A

claim that recites an abstract idea must include ‘additional features’ to ensure ‘that the [claim] is more than a drafting effort designed to monopolize the [abstract idea].’” *Id.* (quoting *Mayo*, 566 U.S. at 77). “[M]erely requir[ing] generic computer implementation[] fail[s] to transform that abstract idea into a patent-eligible invention.” *Id.*

USPTO Patent Subject Matter Eligibility 2019 Revised Guidance

The USPTO recently published revised policy guidance on the application of § 101. *See* 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (hereinafter “2019 Revised Guidance”). *This revised guidance is applied in this opinion.* Under the 2019 Revised Guidance, we first look to whether the claim recites:

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

(2) additional elements that integrate the judicial exception into a practical application (*see* Manual of Patent Examining Procedure (“MPEP”) §§ 2106.05(a)–(c), (e)–(h)).³ 2019 Revised Guidance, 84 Fed. Reg. at 51–52, 55.

A claim that integrates a judicial exception into a practical application applies, relies on, or uses the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a

³ All references to the MPEP are to the Ninth Edition, Revision 08–2017 (rev. Jan. 2018).

drafting effort designed to monopolize the judicial exception. 2019 Revised Guidance at 54. When the judicial exception is so integrated, then the claim is not directed to a judicial exception and is patent eligible under § 101. *Id.*

Only if a claim: (1) recites a judicial exception, and (2) does not integrate that exception into a practical application, do we then evaluate whether the claim provides an inventive concept. 2019 Revised Guidance, 84 Fed. Reg. at 56; *Alice*, 573 U.S. at 217-18. For example, we 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, and conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. 2019 Revised Guidance, 84 Fed. Reg. at 56.

Because there is no single definition of an “abstract idea” under *Alice* step 1, the PTO has recently synthesized, for purposes of clarity, predictability, and consistency, key concepts identified by the courts as abstract ideas to explain that the “abstract idea” exception includes the following three groupings:

1. Mathematical concepts—mathematical relationships, mathematical formulas or equations, mathematical calculations;
2. Mental processes—concepts performed in the human mind (including an observation, evaluation, judgment, opinion); and
3. Certain methods of organizing human activity—fundamental economic principles or practices (including hedging, insurance, mitigating risk); commercial or legal interactions (including

agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations); managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions).

According to the 2019 Revised Guidance, “claims that do not recite [subject] matter that falls within these enumerated groupings of abstract ideas should not be treated as reciting abstract ideas,” except in rare circumstances. Even if the claims recite any one of these three groupings of abstract ideas, these claims are still not “directed to” a judicial exception (abstract idea), and thus are patent eligible, if “the claim as a whole integrates the recited judicial exception into a practical application of that exception.” 2019 Revised Guidance, 84 Fed. Reg. at 53.

For example, additional limitations that **are** indicative of “integration into a practical application” include:

1. Improvements to the functioning of a computer, or to any other technology or technical field – *see* MPEP § 2106.05(a);
2. Applying the judicial exception with, or by use of, a particular machine – *see* MPEP § 2106.05(b);
3. Effecting a transformation or reduction of a particular article to a different state or thing – *see* MPEP § 2106.05(c); and
4. Applying or using the judicial exception in some other 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(e).

In contrast, additional limitations that are **not** indicative of “integration into a practical application” include:

1. Adding the words “apply it” (or an equivalent) with the judicial exception, or merely include instructions to implement an

- abstract idea on a computer, or merely uses a computer as a tool to perform an abstract idea – *see* MPEP § 2106.05(f);
2. Adding insignificant extra-solution activity to the judicial exception – *see* MPEP § 2106.05(g); and
 3. Generally linking the use of the judicial exception to a particular technological environment or field of use – *see* MPEP 2106.05(h).

See 2019 Revised Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”).

The Examiner’s Rejection A under 35 U.S.C. § 101

The Examiner concludes claims 1, 3–10, and 12–20 recite “a method for rewarding a user based on a price differential between two merchants for the same product which is an abstract idea.” Final Act. 2. The Examiner further concludes *the abstract idea is a method of organizing human activities comprising advertising and marketing.*” *Id.* (emphasis added).

The Examiner finds: “the computing device and the memory recited in the claims and identified as additional elements are generic computing devices . . . that are performing the recited claim limitations in a routine manner.” (emphasis omitted). Final Act. 4.

The Examiner concludes the additional elements do not: (1) improve another technology or technical field, (2) improve the functioning of the computer itself, (3) add a specific limitation other than what is well-understood, routine, and conventional in the field, and (4) add meaningful limitations that amount to more than generally linking the use of the exception to a particular technological environment. *See* Final Act. 4–5.

For the aforementioned reasons, the Examiner concludes that claims 1, 3–10, and 12–20 are not patent eligible under 35 U.S.C. § 101.

The Judicial Exception

Under the 2019 Revised Guidance (1), we consider whether the claims are directed to any judicial exceptions, including certain groupings of abstract ideas, in particular: (a) mathematical concepts, (b) mental steps, and (c) certain methods of organizing human activities.

In considering Appellants' independent claim 1 as a whole, and also the language of independent claims 10 and 19, we note Appellants' invention recites **a fundamental economic practice under the 2019 Revised Guidance** (emphasized below in italics):

A computer-implemented method for providing a reward based on a price differential for a product, said method implemented using a computing device in communication with one or more memory devices, said method comprising:

initiating a transaction at a location of a first merchant using a payment card of a cardholder account associated with a cardholder;

receiving, by the computing device, a reward determination request message including an identification of the first merchant and product data for a product purchased in the transaction by the cardholder from the first merchant, the reward determination request message based on an authorization request message sent from an electronic device of the first merchant;

Claim 1 (emphasis added). Similar language of commensurate scope is recited in independent claims 10 and 19.⁴

⁴ We give the contested claim limitations the broadest reasonable interpretation ("BRI") consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

For example, economic transactions (**sales activities**) using payment cards (e.g., credit or debit cards) that may offer various types and levels of reward incentives typically occur whenever a person pays with a card instead of using cash or a check. Rewards provide a **marketing incentive** for a customer to use a particular brand of credit card over other competing brands. Reward incentives are often used to promote and **advertise** credit card brands to new potential customers. Appellants' independent claims apply a reward if a lower price for a product purchased with a payment card from a first merchant is found available for the same product that is offered by a second merchant located "within a predetermined geographic distance of the location of the first merchant." Claim 1.

In applying the 2019 Revised Guidance, it is our view that the Examiner did not err in concluding that each of claims 1, 3–10, and 12–20 on appeal **recites** an abstract idea that falls into the category of "a method of organizing human activities comprising advertising and marketing" (Final Act. 2), which we conclude is a certain method of organizing human activities, i.e., a fundamental economic practice, including advertising, marketing or sales activities, as set forth under the 2019 Revised Guidance.

Integration of the Judicial Exception into a Practical Application

MPEP § 2106.05(e) Other Meaningful Limitations [R-08.2017].

This section of the MPEP guides:

Diamond v. Diehr provides an example of a claim that recited meaningful limitations beyond generally linking the use of the judicial exception to a particular technological environment. 450 U.S. 175, 209 USPQ 1 (1981). In *Diehr*, the claim was directed to the use of the Arrhenius equation (an abstract idea or law of

nature) in an automated process for operating a rubber-molding press. 450 U.S. at 177-78, 209 USPQ at 4. The Court evaluated additional elements such as the steps of installing rubber in a press, closing the mold, constantly measuring the temperature in the mold, and automatically opening the press at the proper time, and found them to be meaningful because they **sufficiently limited the use of the mathematical equation to the practical application of molding rubber products**. 450 U.S. at 184, 187, 209 USPQ at 7, 8. In contrast, the claims in *Alice Corp. v. CLS Bank International* did not meaningfully limit the abstract idea of mitigating settlement risk. 573 U.S. 134 S. Ct. 2347, 110 USPQ2d 1976 (2014). In particular, the Court concluded that the additional elements such as the data processing system and communications controllers recited in the system claims *did not meaningfully limit* the abstract idea because they *merely linked the use of the abstract idea to a particular technological environment (i.e., “implementation via computers”) or were well-understood, routine, conventional activity...*

MPEP § 2106.05(e) (emphasis added).

We find MPEP § 2106.05(e) is dispositive in this appeal, regarding the rejection under 35 U.S.C. § 101.

If the claims recite an abstract idea, as we conclude above, we proceed to the “practical application” step in our analysis under the 2019 Revised Guidance, in which we determine whether the recited judicial exception is *integrated into a practical application* of that exception by: (a) identifying whether there are any additional elements recited in the claim beyond the judicial exception(s); and (b) evaluating those additional elements individually and in combination to determine whether they *integrate the exception into a practical application*.

Regarding (a), in addition to the abstract limitations identified above, claim 1 recites steps of: (1) “**determining**, *using the one or more memory devices, the price differential between a first price for the product from the*

*first merchant and at least a second price for the product from at least a second merchant within a predetermined geographic distance of the location of the first merchant,” and, (2) “**applying**, in response to the reward determination request message, **a reward** to the cardholder account, wherein the reward is based on the determination of the price differential by the computing device.” (emphasis added).*

As to claim 1’s specific limitations (1) and (2), we conclude these additional limitations integrate the judicial exception into a “practical application” because they fall into the MPEP § 2106.05(e) category of “other meaningful limitations.” Considering the claim as a whole, we conclude the “determining” and “applying” steps apply or use the abstract idea in a meaningful way such that the claim as a whole is more than a drafting effort designed to monopolize the exception.

In particular, we conclude **the abstract idea is integrated into a practical application**, because of the convenience of the payment card to the user, who no longer has to survey the competitive market to compare prices for the same product as offered (with possibly lower prices) by other nearby merchants (i.e. “a second merchant located within a predetermined geographic distance of the location of the first merchant.”). Claim 1.

In accordance with Appellants’ claimed invention, if another merchant (located within a predetermined geographic distance from the first merchant) offers the same product for a lower price, the customer *will receive a payment card reward based on the price difference*. Claim 1.

We conclude this convenience is a useful practical application to the payment card owner who receives assurance of potentially receiving a reward if a lower price for the same product is available from a second

merchant who is located within a predetermined geographic distance of the location of the first merchant. Thus, we conclude the **abstract idea is applied in a meaningful way that integrates the abstract idea into a practical application.**

Because claim 1 integrates the recited judicial exception into a practical application, it is not “directed to” a judicial exception under the 2019 Revised Guidance and, therefore, our inquiry ends.

For these reasons, and under the 2019 Guidance, we are persuaded the Examiner erred in concluding claims 1, 3–10, and 12–20 are patent ineligible.

Accordingly, under the 2019 Guidance, we reverse the Examiner’s § 101 Rejection A of independent claims 1, 10, and 19, as well as the Examiner’s Rejection A of dependent claims 3–9, 12–18, and 20, which stand with the respective independent claim from which they depend.

Rejection B under 35 U.S.C. § 103

Independent Claim 1

Issues: Under 35 U.S.C. § 103, did the Examiner err by finding the cited combination of Sharma and Litle would have taught or suggested the contested limitation:

applying, in response to the reward determination request message, a reward to the cardholder account, wherein the reward is based on the determination of the price differential by the computing device [,]

within the meaning of representative claim 1? ⁵ (emphasis added).

⁵ See *supra*, n.4.

We have reviewed Appellants' arguments in the Briefs, the Examiner's obviousness rejections, and the Examiner's response to Appellants' arguments. The Examiner finds Sharma (at Fig. 1, Col. 8, ll. 25–35, Col. 4, ll. 15–17, and Col. 8, ll. 25–35) teaches or suggests the contested limitation of claim 1. *See* Final Act. 7.

Appellants disagree with the Examiner's findings, and contend: [N]either of the cited references, individually or in combination, teaches or suggests all of the limitations of the pending claims. App. Br. 12.

Appellants note “**Sharma** teaches a system where a price differential is only applied to a customer *after the customer submits a claim form, after a transaction has been completed, and then only if the customer himself/herself discovers the price differential and submits the claim.*” App. Br. 12–13 (citing Sharma at col. 4, lines 4-17) (emphasis added).

Appellants note **Litle** teaches a system where a refund for a purchase may be electronically authorized to a customer, *but only after “the purchase is authorized,” and then the customer “contact[s] the merchant first to attempt to resolve the dispute” over the authorized purchase.* App. Br. 13 (citing Litle at column 2, lines 12-16) (emphasis added).

Thus, Appellants urge that all of the language of the claims has not been given full patentable consideration, nor have the limitations been considered within the context of the claims considered as a whole. App. Br. 12–13 (emphasis added).

In response, the Examiner further explains the basis for the rejection:

The Examiner asserts that the claims do not explicitly exclude the customer from interacting with the system. The remarks are improperly inserting words into the claims that are more limiting than the recited claims. *The cardholder not needing to*

expend time or energy to shop for a better price is not recited in the claims and therefore not considered in view of the combination of prior art references.

Ans. 7 (emphasis added).

Based upon our review of the record, including the Specification, we conclude the Examiner's mapping of the disputed claim limitation of "applying, *in response to the reward determination reward message*, a reward to the cardholder account, wherein the reward *is based on the determination of the price differential by the computing device*" is not fully developed by the Examiner in the record. Claim 1 (emphasis added).⁶ On this record, we find some degree of speculation would be required to affirm the Examiner. We decline to engage in speculation.⁷

The Examiner's statement is accurate that "[t]he cardholder not needing to expend time or energy to shop for a better price is not recited in the claims." (Ans. 7). The Examiner thus interprets the claims as not precluding the cardholder from expending time or energy to shop for a better price for the same product at a nearby competing merchant. However, we

⁶ See the mapping rule: 37 C.F.R. § 1.104(c)(2) ("When a reference is complex or shows or describes inventions other than that claimed by the applicant, *the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.*" (emphasis added).

⁷ "A rejection . . . must rest on a factual basis." *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967). "The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis." *Id.*

conclude that reading such affirmative cardholder interaction into the claims is unreasonable and inconsistent with the Specification, because that is exactly the problem found in the prior art that the invention is addressing.⁸

Contrary to the Examiner's claim interpretation, we conclude the broadest reasonable interpretation of claim 1 does not contemplate requiring a cardholder to spend time and effort to shop for a lower price for the same item from a nearby merchant.⁹

Instead, the computer-implemented method of claim 1 avoids such affirmative cardholder interaction by interacting with "a reward

⁸ For example, *see* Spec. ¶ 2 "BACKGROUND":

In many instances, the same product may be sold by two or more merchants for different prices. For example, within a city, multiple gas stations may sell the same grade of gasoline for different prices. As another example, the same model of computer may be sold by two or more different merchants at different prices. *Accordingly, a consumer may spend time and effort comparing prices for the same product from the different merchants, in order to find the best price for the product.* In many instances, the time and effort involved in comparing prices for the product outweighs any cost savings resulting from purchasing the product from a merchant who sells the product at a lower price than another merchant.

(emphasis added).

⁹ For example, *see* Spec. ¶ 15.

For example, if the reward determination system determines from the transaction that the cardholder purchased ten gallons of gas at \$3.50 per gallon at the first gas station, and the second gas station offers the same grade of gasoline for \$3.47, the reward determination system is configured to apply a credit of \$0.30 to the cardholder's account. Accordingly, in such implementations, the cardholder effectively receives the lower price of gas from the second gas station, without having to actually purchase the gasoline from the second gas station.

determination request message based on an authorization request message sent from an electronic device of the first merchant” regarding the sale (i.e., first) price of the product, and determines . . . “the price differential between a first price for the product from the first merchant and at least a second price for the product from at least a second merchant within a predetermined geographic distance of the location of the first merchant.” Claim 1.

Thus, the claimed invention enables the cardholder to avoid the time and effort of surveying the competitive market to shop for a lower price for the same item, as *may* be available from a second merchant located within a predetermined geographic distance from the first merchant.

Based upon our review of the record, we find a preponderance of the evidence supports Appellants’ contentions that the disputed limitation is not taught or suggested by the cited references, which teach the cardholder must expend time and energy by submitting forms (Sharma, col 2, ll. 14–15), or must initiate disputes by phone, or by using a website, (Litle, col. 4, ll. 26–29), to receive a refund based upon a price differential.

Therefore, Appellants have persuaded us the Examiner erred in concluding that the cited combination of Sharma and Litle renders obvious Appellants’ independent claim 1.

Accordingly, we are constrained on this record to reverse the Examiner’s § 103 Rejection B of independent claim 1, and for the same reasons, we also reverse Rejection B of remaining independent claims 10 and 19, which recite the contested limitation using similar language of commensurate scope. Because we have reversed the obviousness rejection of all independent claims on appeal, we reverse the Examiner’s § 103

rejection of all dependent claims 3, 5–9, 12, 13, 15–18, and 20, which were also rejected under Rejection B.

Rejection C under 35 U.S.C. § 103

Regarding the remaining dependent claims 4 and 14, rejected under § 103 Rejection C, the Examiner has cited one additional reference, Shuster, in addition to Sharma and Litle, which were cited as evidence in support of Rejection B. On this record, we find the Examiner has not shown how Shuster overcomes the deficiencies of the Sharma and Litle combination, as discussed above regarding Rejection B of independent claims 1, 10, and 19. Therefore, we are constrained on this record to also reverse § 103 Rejection C of remaining dependent claims 4 and 14.

CONCLUSIONS

The Examiner erred in rejecting claims 1, 3–10, and 12–20 under 35 U.S.C. § 101, as being directed to a judicial exception, without significantly more.

The Examiner erred in rejecting claims 1, 3, 5–10, 12, 13, and 15–20 under 35 U.S.C. § 103, as being obvious over the cited combination of Litle and Sharma.

The Examiner erred in rejecting claims 4 and 14 under 35 U.S.C. § 103, as being obvious over the cited combination of Litle, Sharma and Shuster.

Appeal 2017-010705
Application 14/207,870

DECISION

We reverse the Examiner's decision rejecting claims 1, 3–10, and 12–20 under 35 U.S.C. § 101.

We reverse the Examiner's decision rejecting claims 1, 3–10, and 12–20 under 35 U.S.C. § 103.

REVERSED