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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GILLIES PRODHOM, BERNHARD TEUPE,
ALAN GREENBURG, and MAURY ZIVITZ

Appeal 2018-000752
Application 13/803,465¹
Technology Center 1600

Before ELENI MANTIS MERCADER, CATHERINE SHIANG, and
LINZY T. McCARTNEY, *Administrative Patent Judges*.

SHIANG, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–28, 31, 34, and 37–39, which are all the claims pending and rejected in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

¹ Appellants identify Roche Diabetes Care, Inc. and Roche Diagnostics International AG as the real parties in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

The present invention relates to regulating blood glucose in diabetic patients, and in particular relates to detecting and treating hypoglycemia in diabetic patients. *See* Spec. 1–2. Claims 1 and 3 are exemplary:

1. A computerized method of detecting and treating hypoglycemia, comprising:

detecting hypoglycemia in a patient with a computing device based at least on the patient having a symptom of hypoglycemia;

receiving with the computing device a blood glucose measurement of the patient;

computing a recommended carbohydrate amount to ingest by the patient with the computing device in response to said detecting the hypoglycemia, wherein the recommended carbohydrate amount is based at least in part on the blood glucose measurement of the patient; and

outputting the recommended carbohydrate amount with the computing device to provide the patient with a visual representation of a recommendation to treat hypoglycemia and return a blood glucose level of the patient back to a non-hypoglycemic level in a manner that assists with reducing the length of or eliminating hypoglycemia and ensures resolution of hypoglycemic events.

3. A computerized method of detecting and treating hypoglycemia, comprising:

receiving with a computing device a blood glucose measurement of a patient;

computing a recommended carbohydrate amount to ingest by the patient with the computing device, wherein the recommended carbohydrate amount is based at least on the blood glucose measurement of the patient, wherein said computing the recommended carbohydrate amount includes adjusting the recommended carbohydrate amount based on an

amount of carbohydrates consumed by the patient during a timeframe;

outputting the recommended carbohydrate amount with the computing device to provide the patient with a visual representation of a recommendation to treat hypoglycemia and return a blood glucose level of the patient back to a non-hypoglycemic level; and

performing hypoglycemia surveillance with a the computing device after a delay period to determine whether the recommended carbohydrate amount remedied the hypoglycemia, wherein the recommendation and the surveillance after the delay period assists with reducing the length of or eliminating hypoglycemia and ensures resolution of hypoglycemic events.

Rejection²

Claims 1–28, 31, 34, and 37–39 stand rejected under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. Final Act. 2–5.

ANALYSIS

Claims 3–28, 31, 34, and 37–39

We have reviewed the Examiner’s rejection in light of Appellants’ contentions and the evidence of record. We concur with Appellants’ contention that the Examiner erred in this case.

² Throughout this opinion, we refer to the (1) Final Office Action dated September 21, 2016 (“Final Act.”); (2) Appeal Brief dated April 27, 2017 (“App. Br.”); (3) Examiner’s Answer dated August 31, 2017 (“Ans.”); and (4) Reply Brief dated October 30, 2017 (“Reply Br.”).

Section 101 of the Patent Act provides “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” 35 U.S.C. § 101. However, the Supreme Court has long interpreted 35 U.S.C. § 101 to include implicit exceptions: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014) (internal quotation marks and citation omitted).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with 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, 67 (1972)). Concepts determined to be patent eligible include physical and chemical processes, such as “molding rubber products” (*Diamond v. Diehr*, 450 U.S. 175, 191

(1981)); “tanning, dyeing, making water-proof 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 (citation 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.*

The PTO recently published revised guidance on the application of § 101. USPTO, 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Guidance”). Under the guidance set forth in the Guidance, we first look to whether the claim recites:

- (1) any judicial exceptions, including certain groupings of abstract ideas (i.e., mathematical concepts, certain methods of organizing human activity such as a fundamental economic practice, or mental processes) (Step 2A, Prong 1); 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)) (9th Ed., Rev. 08.2017, 2018) (Step 2A, Prong 2).

Only if a claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

- (3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or
- (4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception. (Step 2B.)

See Guidance, 84 Fed. Reg. at 54–56.

Turning to Guidance Step 2A, Prong 1 (*Alice* step one), we agree with Appellants that the Examiner has failed to identify a patent-ineligible abstract idea. *See* App. Br. 10–13. The Federal Circuit explains the “directed to” inquiry looks at the claims’ “character as a whole,” and is not simply asking whether the claims involve a patent-ineligible concept:

The “directed to” inquiry [] cannot simply ask whether the claims *involve* a patent-ineligible concept, because essentially every routinely patent-eligible claim involving physical products and actions *involves* a law of nature and/or natural phenomenon—after all, they take place in the physical world. *See Mayo*, 132 S.Ct. at 1293 (“For all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.”). Rather, the “directed to” inquiry applies a stage-one filter to claims, considered in light of the specification, based on whether “their character as a whole is directed to excluded subject matter.”

Enfish, LLC v. Microsoft Corp., 822 F.3d 1327, 1335 (Fed. Cir. 2016); *see also Diehr*, 450 U.S. at 188 (“In determining the eligibility of respondents’ claimed process for patent protection under § 101, their claims must be considered as a whole.”); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) (the question is whether the claims as a whole “focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery”).

Considering the claims as a whole, we determine each of claims 3–28, 31, 34, and 37–39 is directed to a method of treating hypoglycemia by ingesting a recommended carbohydrate amount (“invented treatment method”). Our determination is supported by the Specification, which describes the shortcomings of existing hypoglycemia treatment methods and the resulting need for the invented treatment method. *See Spec.* 1–5.

In light of the Guidance, because the invented treatment method is not a mathematical concept, an identified method of organizing human activity, or a mental process, we conclude the claims are not directed to an abstract idea. *See Guidance*, 84 Fed. Reg. at 52; *id.* at 53 (“Claims that do not recite matter that falls within these enumerated groupings of abstract ideas should

not be treated as reciting abstract ideas, except” in rare circumstances.); *Vanda Pharmaceuticals Inc. v. West-Ward Pharmaceuticals*, 887 F.3d 1117, 1135 (Fed. Cir. 2018) (holding “the . . . claims are directed to a method of using iloperidone to treat schizophrenia” and are patent eligible).

In particular, the invented treatment method is not a mathematical concept, because it is not a mathematical relationship, mathematical formula or equation, or mathematical calculation. *See* Guidance, 84 Fed. Reg. at 52. Further, it is not an identified method of organizing human activity, as it is not (i) a fundamental economic principle or practice (including hedging, insurance, mitigating risk), (ii) a commercial or legal interaction (including agreements in the form of contracts; legal obligations; advertising, marketing or sales activities or behaviors; business relations), or (iii) managing personal behavior or relationships or interactions between people (including social activities, teaching, and following rules or instructions). *See* Guidance, 84 Fed. Reg. at 52. In addition, the invented treatment method is not a mental process, as it is not a concept performed in the human mind (including an observation, evaluation, judgment, opinion). *See* Guidance, 84 Fed. Reg. at 52.

Because claims 3–28, 31, 34, and 37–39 are not directed to an abstract idea, we do not sustain the Examiner’s rejection of claims 3–28, 31, 34, and 37–39 under 35 U.S.C. § 101.

Claims 1 and 2

We disagree with Appellants’ arguments. To the extent consistent with our analysis below, we adopt the Examiner’s findings and conclusions

in (i) the action from which this appeal is taken (Final Act. 2–5) and (ii) the Answer (Ans. 5–11).

The Examiner rejects claims 1 and 2 under 35 U.S.C. § 101 because they are directed to patent-ineligible subject matter. *See* Final Act. 2–4, 6; Ans. 5–8. In particular, the Examiner concludes the claimed processes can be performed by a human using a pen and paper. *See* Final Act. 6; Ans. 7. The Examiner determines the claims do not identify an inventive concept to transform the nature of the claims into a patent-eligible application. *See* Final Act. 4–5; Ans. 8–11. Appellants argue the Examiner erred. *See* App. Br. 6–17; Reply Br. 2–10.

Appellants have not persuaded us of error. Turning to Step 2A, Prong 1 of the Guidance, we agree with the Examiner that the rejected claims are patent ineligible because they are directed to functions that can be performed by a human using a pen and paper. *See* Final Act. 6; Ans. 7. Claims 1 and 2 (with emphases) recite:

1. A computerized method of detecting and treating hypoglycemia, comprising:
 - detecting hypoglycemia in a patient with a computing device based at least on the patient having a symptom of hypoglycemia;*
 - receiving with the computing device a blood glucose measurement of the patient;*
 - computing a recommended carbohydrate amount to ingest by the patient with the computing device in response to said detecting the hypoglycemia, wherein the recommended carbohydrate amount is based at least in part on the blood glucose measurement of the patient; and*
 - outputting the recommended carbohydrate amount with the computing device to provide the patient with a visual representation of a recommendation to treat hypoglycemia and return a blood glucose level of the patient back to a non-*

hypoglycemic level in a manner that assists with reducing the length of or eliminating hypoglycemia and ensures resolution of hypoglycemic events.

2. The method according to claim 1, *wherein said computing the recommended carbohydrate amount includes adjusting the recommended carbohydrate amount based on amount of carbohydrates consumed by the patient during a timeframe.*

Each of claims 1 and 2 recites “a computing device” for performing the above italicized functions. However, because all of the italicized functions can be otherwise performed by a human using a pen and paper, they are like the mental processes in *CyberSource* and *Synopsys*.³ See *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372–73 (Fed. Cir. 2011) (“All of claim 3’s method steps can be performed in the human mind, or by a human using a pen and paper. . . . Such a method that can be performed by human thought alone is merely an abstract idea and is not patent-eligible under § 101.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1146 (Fed. Cir. 2016) (“[W]e continue to ‘treat[] analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category.’”) (citation omitted).

Appellants’ arguments that “[in claim 1,] measuring of a person’s blood glucose (bG) via a computing device as a particular machine” (App. Br. 10) and “the present independent claim[] 1 . . . involve[s] measuring a

³ As a result, Appellants’ assertions that “the recited steps [are] impossible for a person to perform mentally” (App. Br. 10) and “the present claims recite a concept inextricably tied to a particular computing device” (App. Br. 16) are unpersuasive.

person’s blood glucose (bG)” (Reply Br. 2) are not commensurate with the scope of the claim, as claim 1 merely recites “receiving . . . a blood glucose measurement” and does not require “measuring a person’s blood glucose.” Likewise, Appellants’ argument that “the present claims are tied to a specific machine and recites additional hardware beyond a generic computer” (App. Br. 10) is not commensurate with the scope of claims 1 and 2, as each claim merely recites “a computing device”—not “additional hardware beyond a generic computer,” as Appellants assert (App. Br. 10). Our determination is consistent with the Specification, which explains “computer 102 is illustrated as a single computing device” and “the computer 102 includes at least one processor that executes software and/or firmware code stored in memory of computer 102.” Spec. 15. As a result, we conclude claims 1 and 2 are directed to mental processes, and thus an abstract idea. *See* Guidance, Step 2A, Prong 1 (Groupings of Abstract Ideas).

Appellants’ assertion regarding pre-emption (App. Br. 16–17; Reply Br. 9–10) is unpersuasive, because “[w]hile preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility Where a patent’s claims are deemed only to disclose patent ineligible subject matter under the *Mayo* framework, as they are in this case, preemption concerns are fully addressed and made moot.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015); *see also OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1362–63 (Fed. Cir. 2015) (“that the claims do not preempt all price optimization or may be limited to price optimization in the e-commerce setting do not make them any less abstract”).

Turning to Step 2A, Prong 2 of the Guidance, contrary to Appellants’

assertion (App. Br. 6–17; Reply Br. 2–10), the rejected claims do not recite additional elements that integrate the judicial exception into a practical application. In particular, Appellants’ argument that the “claims recite . . . a new technique for analysis” (Reply Br. 8) is unpersuasive because “a claim for a *new* abstract idea is still an abstract idea.” *Synopsys*, 839 F.3d at 1151. “[U]nder the *Mayo/Alice* framework, a claim directed to a newly discovered law of nature (or natural phenomenon or abstract idea) cannot rely on the novelty of that discovery for the inventive concept necessary for patent eligibility” *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (citations omitted).

Appellants’ reliance on *SiRF Technology, Inc. v. International Trade Commission*, 601 F.3d 1319 (Fed. Cir. 2010) and *Cyberfone Systems, LLC v. CNN Interactive Group, Inc.*, 558 Fed. Appx. 988 (Fed. Cir. 2014) (unpublished) (App. Br. 10–11) is unpersuasive. Both cases predate *Alice* and do not employ the *Alice* two-step inquiry.⁴ In any event, Appellants’ arguments that under *SiRF* and *Cyberfone*, “a process is [] patent-eligible if it is ‘tied to particular machine or apparatus’ or ‘transforms a particular article into a different state or thing’” (App. Br. 10–11) is unhelpful. As discussed above, Appellants have not shown claims 1 and 2 recite processes

⁴ Appellants also cite two district court cases about claims reciting (i) “‘using a central broadcast server’ to package and transmit ‘data from an online information source to remote computing devices’” and (ii) “a game server, a display system having primary display means, handheld game controllers, communication controller” (App. Br. 10), but do not persuasively explain why such claims are analogous to claims 1 and 2. Nor do Appellants persuasively explain why “a digital image processing hypothetical claim” from “EXAMPLE 3 of the July 2015 Update Appendix 1 of the 2014 Interim Guidance” (App. Br. 16) is analogous to claims 1 and 2.

that are tied to particular machine or apparatus. Further, contrary to Appellants' argument, the rejected claims do not recite processes that “transform[] a particular article into a different state or thing” (App. Br. 10–11). To the contrary, both the claimed “blood glucose measurement” and “recommended carbohydrate amount” are data—not “different state[s] or thing[s]” (App. Br. 10–11).⁵

Appellants assert “by reciting additional hardware beyond a computer, the courts have viewed such language as transforming the recited processor/computer into a non-generic computer” (App. Br. 10), but do not persuasively explain why that assertion—regardless of whether it is true—renders claims 1 and 2 patent eligible. In any event, as discussed above, Appellants have not shown claims 1 and 2 “recit[e] additional hardware beyond a computer,” as Appellants assert (App. Br. 10).

Further, Appellants' argument about the absence of a prior art rejection (App. Br. 15; Reply Br. 4–5, 8) is unpersuasive, because a prior art rejection is determined under 35 U.S.C. §§ 102 and 103, which are different statutory requirements. As the Supreme Court emphasizes: “[t]he ‘novelty’ of any element or steps in a process, or even of the process itself, is of *no relevance* in determining whether the subject matter of a claim falls within the § 101 categories of possibly patentable subject matter.” *Diamond v. Diehr*, 450 U.S. 175, 188–89 (1981) (emphasis added). Our reviewing court further guides that “[e]ligibility and novelty are separate inquiries.” *Two-Way Media Ltd. v. Comcast Cable Commc’ns, LLC*, 874 F.3d 1329, 1340 (Fed. Cir. 2017).

⁵ As a result, “EXAMPLE 25 of the July 2015 Update Appendix 1 of the Interim Guidelines” (App. Br. 11) is inapplicable here.

Contrary to Appellants' arguments (App. Br. 12–17; Reply Br. 4–10), the claims are similar to the claims of *Synopsisys* and do not contain the requisite inventive concept. *See Synopsisys*, 839 F.3d at 1152. To the extent the claims add anything to the abstract idea (such as “a computing device”), such additions “merely aid in mental [processes] as opposed to computer efficacy, are not an inventive concept that takes the . . . [c]laims beyond their abstract idea.” *Id.* Similar to the claims of *Synopsisys* and contrary to Appellants' arguments (App. Br. 12–17; Reply Br. 4–10), the rejected claims “do not introduce a technical advance or improvement. They contain nothing that ‘amounts to significantly more than a patent upon the [abstract idea] itself.’” *Synopsisys*, 839 F.3d at 1152 (citation omitted).

Appellants also cite *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016) (App. Br. 15; Reply Br. 5), but do not persuasively explain why that case is similar to the present case. In *BASCOM*, the court determined that at the pleading stage and construed in favor of the nonmovant,

The inventive concept described and claimed . . . *is the installation of a filtering tool at a specific location, remote from the end-users, with customizable filtering features specific to each end user. This design gives the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server.* *BASCOM* explains that the inventive concept rests on taking advantage of the ability of at least some ISPs to identify individual accounts that communicate with the ISP server, and to associate a request for Internet content with a specific individual account.

Id. at 1350 (emphasis added).

Unlike the claims of *BASCOM*, claim 1 is not directed to an “installation of a filtering tool at a specific location, remote from the end-

users, with customizable filtering features specific to each end user” or similar improvements. *Id.* at 1350. Nor does claim 1 “give[] the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server” or provide similar benefits. *Id.* Therefore, *BASCOM* is inapplicable here.

In addition, contrary to Appellants’ assertion (App. Br. 15–16; Reply Br. 8–9), *Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016) is inapplicable here. In *Amdocs*, the court determined:

claim 1 of the ’065 patent is tied to a specific structure of various components (network devices, gatherers, ISMs, a central event manager, a central database, a user interface server, and terminals or clients). It is narrowly drawn to not preempt any and all generic enhancement of data in a similar system, and does not merely combine the components in a generic manner, but instead purposefully *arranges the components in a distributed architecture to achieve a technological solution to a technological problem specific to computer networks.*

. . . claim 1 of the ’065 patent depends upon a specific enhancing limitation that *necessarily incorporates the invention’s distributed architecture—an architecture providing a technological solution to a technological problem.* This provides the requisite ‘something more’ than the performance of “well-understood, routine, [and] conventional activities previously known to the industry.”

Amdocs, 841 F.3d at 1301 (citation omitted, emphases added).

Amdocs is inapplicable here because unlike the claims of *Amdocs*, claim 1 does not “necessarily incorporate[] the invention’s distributed architecture—an architecture providing a technological solution to a technological problem” or provide similar technological solutions. *Id.* at 1301. To the contrary and as discussed above, claim 1 is directed to a new

abstract idea.

As a result, we conclude claims 1 and 2 do not recite additional elements that integrate the judicial exception into a practical application. *See* Guidance, Step 2A, Prong 2.

Turning to Step 2B of the Guidance, Appellants do not persuasively argue any specific limitation is not well-understood, routine, or conventional in the field. Nor do Appellants persuasively argue the Examiner erred in that aspect. In particular, Appellants' argument about the lack of a prior art rejection (App. Br. 14–15; Reply Br. 4–5, 8) is unpersuasive. As discussed above, a prior art rejection is determined under 35 U.S.C. §§ 102 and 103, which are different statutory requirements. As a result, Appellants have not persuaded us the Examiner erred with respect to the Guidance's Step 2B analysis. *See* Guidance, Step 2B.

Because Appellants have not persuaded us the Examiner erred, we sustain the Examiner's rejection of claims 1 and 2 under 35 U.S.C. § 101.

DECISION

We affirm the Examiner's decision rejecting claims 1 and 2.

We reverse the Examiner's decision rejecting claims 3–28, 31, 34, and 37–39.

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-IN-PART