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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/224,129	03/25/2014	Gil Don	PIS-PU-002-US2	2296
60956	7590	10/31/2019	EXAMINER	
Professional Patent Solutions P.O. BOX 654 HERZELIYA PITUACH, 46105 ISRAEL			OYEBISI, OJO O	
			ART UNIT	PAPER NUMBER
			3697	
			NOTIFICATION DATE	DELIVERY MODE
			10/31/2019	ELECTRONIC

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte GIL DON, ALON FEIT, and
VICTORIA NIEL KRAINE

Appeal 2018-001052
Application 14/224,129
Technology Center 3600

Before JAMES R. HUGHES, JOHN D. HAMANN, and
ALEX S. YAP, *Administrative Patent Judges*.

YAP, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the final rejection of claims 1–13 and 17–24.¹ June 25, 2015 Final Office Action (“Final Act.”).

We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

¹ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies “Pay It Simple Ltd.” as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

Introduction

According to the Specification, Appellant's invention "relates to a system and method for facilitating financial credit installments." (March 25, 2014 Specification ("Spec.") ¶ 2.) Claim 1 is illustrative, and is reproduced below (with minor reformatting):

1. A method for facilitating credit, said method comprising:
receiving, by processing circuitry, over a data network, using communication circuitry:

- (i) a request for credit or funds for a party having a credit line with one or more credit providers,

- (ii) an amount of the credit or funds and

- (iii) details of the credit lines;

automatically generating, using the received details, one or more first credit requests for the amount;

securitizing, by the processing circuitry, over the data network, an amount of the credit or funds, against one or more credit lines provided by the one or more credit providers to the party by transmitting the generated first credit requests to the one or more credit providers and receiving from the one or more credit providers authorizations of the requests;

upon successful securitization, granting the requested credit or funds;

storing a first record of the granted credit or funds within one or more data storages adapted to store a record for each of multiple credit or fund grants, which records include, for each given grant of credit or funds: the received details of the given grant, details of a latest received authorization relating to the given grant, terms of payment of the given granted credit or funds and a current outstanding

balance of the given granted credit or funds;
monitoring, using monitoring circuitry functionally associated with the data storages, dates of expiration of latest received authorizations stored in said records;

triggering, by the monitoring circuitry, a re-securitization module to re-securitize a given grant of credit or funds prior to expiration of a latest received authorization relating to the given grant of credit or funds; and

prior to expiration of a securitization of the credit resulting from said securitizing, automatically re-securitizing, by the processing circuitry, an outstanding balance of the granted credit or funds by:

(i) automatically generating, upon being triggered by the monitoring circuitry, a second set of one or more credit requests for a current outstanding balance of the granted credit or funds, based on the data stored in said records,

(ii) transmitting the second set of credit requests to the one or more credit providers and

(iii) receiving from the one or more credit providers second authorizations of the second set of credit requests.

Rejection on Appeal

Claims 1–13 and 17–24 stand rejected under 35 U.S.C. § 101 as not being directed to patent-eligible subject matter. (*See* Final Act. 2–3.)

ANALYSIS

We have reviewed the Examiner's rejection in light of Appellant's arguments that the Examiner has erred. We are not persuaded the Examiner erred in rejecting the claims on appeal.

101 Rejection Legal Framework

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. *E.g.*, *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, our inquiry focuses on 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, 69 (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 176; *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 (internal 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.*

The Office recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance* (“Memorandum”), 84 Fed. Reg. 50.

Under that 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); and
- (2) additional elements that integrate the judicial exception into a practical application (*see* MPEP § 2106.05(a)–(c), (e)–(h)).

Only if a claim recites a judicial exception and 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.

See generally Memorandum.

Applying the guidance set forth in the Memorandum, we conclude that claims 1–13 and 17–24 do not recite patent-eligible subject matter.

Step 1 – Statutory Claims and Memorandum

Alice involves determining whether the claims recite an exception to an otherwise statutory category under 35 U.S.C § 101. *See Alice*, 573 U.S. at 216–17. Similarly, under the Memorandum, the PTO first determines “whether the claim is to a statutory category (Step 1).” Memorandum, 84 Fed. Reg. at 53. Here, the challenged claims recite a method, namely a method “for facilitating credit.”

Step 2a Prong 1 – Abstract Idea

The Memorandum instructs us first to determine whether each claim recites any judicial exception to patent eligibility. 84 Fed. Reg. at 54. The Memorandum identifies three judicially-expected groupings: (1) mathematical concepts, (2) certain methods of organizing human activity such as fundamental economic practices, and (3) mental processes. *Id.* at 52.

The Examiner finds that “the claims are directed towards the abstract idea of facilitating financial credit installments [and because f]acilitating financial credit installments is a fundamental economic practice[], claims 1–13 [and] 17–24[, therefore,] include an abstract idea.” (Final Act. 2; Ans. 3.) Appellant contends that claim 1 is “not directed to an abstract idea.” (App. Br. 12.) According to Appellant:

The pending claims are not directed to facilitating credit, as the Examiner alleges. Facilitating credit is a byproduct of the claimed invention. The pending are directed to a novel interface/proxy between a merchant payment system and automated credit provider systems (e.g., credit card provider automated systems), which novel interface/proxy is designed to improve the fund security service provided to consumers by the automated credit provider systems. This is accomplished by the novel interface/proxy using a uniquely configured database,

server(s) and associated communication circuitry all designed to interface between the merchant payment system and the credit provider systems and enable an extended automated fund securitization, based on a calculated series of properly timed short term automated fund securitizations provided by the automated systems of the primary credit providers. . . .

(*Id.* at 13.) When analyzing a claim under section 101, it is imperative to “ensure . . . that we articulate what the claims are directed to with enough specificity to ensure the . . . inquiry is meaningful.” *Thales Visionix Inc. v. U.S.*, 850 F.3d 1343, 1347 (Fed. Cir. 2007). Further, “it is not enough to merely identify a patent-ineligible concept underlying the claim[s]; we must determine whether the patent-ineligible concept is what the claim is ‘directed to.’” *Id.* at 1349, internal citation omitted.

Claim 1 recites “[a] method for facilitating credit.” Specifically, claim 1 recites steps for (step a) “*receiving* [] (i) a request for credit or funds for a party having a credit line with one or more credit providers, (ii) an amount of the credit or funds and (iii) details of the credit lines;” (step b) “*automatically generating*, using the received details, one or more first credit requests for the amount;” (step c) “*securitizing* [] an amount of the credit or funds, against one or more credit lines provided by the one more credit providers to the party by *transmitting* the generated first credit requests to the one or more credit providers and *receiving* from the one or more credit providers authorizations of the requests;” (step d) “upon successful securitization, *granting* the requested credit or funds;” (step e) “*storing* a first record of the granted credit or funds . . . ;” (step f) “*monitoring* [] dates of expiration of latest received authorizations stored in said records;” (step g) “*triggering* [] a re-securitization module to *re-securitize* a given grant of credit or funds prior to expiration of a latest

received authorization relating to the given grant of credit or funds;” and (step h) “prior to expiration of a securitization of the credit resulting from said securitizing, *automatically re-securitizing* [] an outstanding balance of the granted credit or funds by (i) *automatically generating* [] a second set of one or more credit requests for a current outstanding balance of the granted credit or funds, based on the data stored in said records, (ii) *transmitting* the second set of credit requests to the one or more credit providers and (iii) *receiving* from the one or more credit providers second authorizations of the second set of credit requests.”

In applying guidance to the claims on appeal, we determine that the independent claims recite an abstract idea in the recited steps a–h. These steps, individually and collectively, recite certain methods of organizing human activity such as fundamental economic practices. Appellant’s Step a—receiving a request for credit or funds for a party having a credit line with one or more credit providers—is a step of receiving a request for credit or funds, which is a fundamental economic practice. Step b— automatically generating, using the received details, one or more first credit requests for the amount— is a step of requesting for credit or funds, which is a fundamental economic practice. Step c—securitizing [] an amount of the credit or funds, against one or more credit lines provided by the one more credit providers to the party by transmitting the generated first credit requests to the one or more credit providers and receiving from the one or more credit providers authorizations of the requests—is a step of securitizing and transmitting a credit request and receiving authorization of the request, is a step of requesting and receiving authorization for credit or funds, which is a fundamental economic practice. Step d—upon successful securitization,

granting the requested credit or funds—is a step of granting the requested credit, which is a fundamental economic practice. Step e— storing a first record of the granted credit or funds . . .—is a step of storing the data relating to the request and authorization for credit or funds, which is a fundamental economic practice. Step f—monitoring [] dates of expiration of latest received authorizations stored in said records—is a step of monitoring the expiration date of authorization for credit or funds, which is a fundamental economic practice. Steps g and h—triggering [] a re-securitization module to re-securitize a given grant of credit or funds prior to expiration of a latest received authorization relating to the given grant of credit or funds; prior to expiration of a securitization of the credit resulting from said securitizing, automatically re-securitizing [] an outstanding balance of the granted credit or funds by (i) automatically generating [] a second set of one or more credit requests for a current outstanding balance of the granted credit or funds, based on the data stored in said records, (ii) transmitting the second set of credit requests to the one or more credit providers and (iii) receiving from the one or more credit providers second authorizations of the second set of credit requests—are steps of restarting a new request for credit or funds prior to expiration of the credit or funds authorization (*i.e.*, repeating the previous steps prior to expiration of the credit or funds authorization), which is a fundamental economic practice. Facilitating credit by requesting credit and securitizing the requested credit is analogous to processing of financial transactions found to be fundamental economic practices. *See e.g., Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1371–72 (Fed. Cir. 2017) (“Taken together, the Asserted Claims are directed to the formation of financial transactions in

a particular field . . . and data collection related to such transactions,” which is “an abstract idea under Alice step one.”); *Content Extraction & Transmission LLC v. Wells Fargo Bank, Nat’l Ass’n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (summarizing precedent in which “claims directed to the performance of certain financial transactions” involve abstract ideas and holding that claims drawn to the abstract concept of financial transaction-related “data collection, recognition, and storage is undisputedly well-known.”); *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352–54 (Fed. Cir. 2014) (Claims reciting sending and receiving communications over a computer network to facilitate online commercial transactions are directed to “contractual relations, which are intangible entities” and “constitute[] a fundamental economic practice long prevalent in our system of commerce.”). In sum, steps a–h recite a certain method of organizing human activity such as fundamental economic practices. As such, the claimed steps recite a patent-ineligible abstract idea.

*Step 2a Prong 2 – Integration of the Judicial Exception
into a Practical Application*

In applying step 2a, prong 2 of the Memorandum, we determine that the independent claims do not integrate the recited judicial exception into a practical application because the claims do not apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the exception. Memorandum, 84 Fed. Reg. at 54–55; *see also* MPEP § 2106.05(a)–(c), (e)–(h).

If a claim recites a judicial exception, 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. If the recited judicial exception is integrated into a practical application, the claim is not directed to the judicial exception. “[T]he term ‘additional elements’ . . . refer[s] to claim features, limitations, and/or steps that are recited in the claim *beyond the identified judicial exception*.” Memorandum, 84 Fed. Reg. at 55, n.24, emphasis added.

Claim 1, directed to a method for facilitating credit, recites additional elements beyond the steps that constitute the identified abstract idea, namely, the additional elements of a data network, data storages, processing and monitoring circuitries, and a securitization module. As set forth in the Specification, the method steps are processes of a computer or computing system and the “apparatuses for performing the operations [] may be specially constructed for the desired purposes, or it may comprise a general-purpose computer selectively activated or reconfigured by a computer program stored in the computer.” *See, e.g.*, Spec. ¶¶ 43–44, 46. The Specification further states that “[s]uch a computer program may be stored in a computer readable storage medium” and the processes “are not inherently related to any particular computer or other apparatus,” “are not described with reference to any particular programming language [and] a variety of programming languages may be used to implement the teachings of the inventions.” *Id.* ¶ 46. In other words, these additional elements are software modules (*e.g.*, processing and monitoring circuitries and the securitization module) or generic components (*e.g.*, the data network and data storages of a computer systems). Hence, these additional components

are not distinguishable from a general purpose computer system and do not integrate the exception into a practical application.²

We are also not persuaded by Appellant’s contention that “if these claims were patented, Visa would not be infringing them in any way.” App. Br. 13–15. Appellant’s pre-emption arguments are not persuasive. First, the abstract idea encompasses what Appellant sets forth as additional elements in that Appellant’s proposed additional elements encompass the abstract idea. *See id.* Second, the question of pre-emption is not grounded on whether all methods for accomplishing the intended goal are pre-empted, but rather on whether the claim pre-empts application of the abstract idea embodied in the claim. *See id.* It is, accordingly, of no import that the claims do not read on existing, conventional methods. Third, the absence of complete pre-emption does not demonstrate patent eligibility because even though the principle of pre-emption is the basis for the judicial exceptions to patentability, the concern is fully addressed and rendered moot where the claim is determined to disclose patent ineligible subject matter under the two-part framework described in *Mayo* and *Alice*. *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015). As explained in *Alice*, “the prohibition against patenting abstract ideas cannot be circumvented by attempting to limit the use of [the idea] to a particular technological environment.” *Alice*, 573 U.S. at 222–23 (internal citations and quotations omitted).

² We agree with the Examiner’s finding that “the recited ‘computing system,’ ‘data network’ and ‘processing and monitoring circuitry’ are recited at a high level of generality to simply perform the generic computer functions of receiving, processing, calculating, transmitting and storing information.” Ans. 3–4.

Furthermore, the alleged improvement (“monitoring expiration dates of securitizations and automatically generating and transmitting a new request prior to the expiration of the old one”) does not improve the functioning of a computer itself. App. Br. 16. For claims directed to computer software, the issue is whether “the focus of the claims is on [a] 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.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016), emphasis added. Here, the computer capabilities are not improved. Rather, any alleged improvement is still using the computer as a tool. Therefore, unlike the claims in *Enfish*, which were directed to a “self-referential table for a computer database” that operated differently from conventional databases and improved the computer’s function, claim 1, in contrast, is merely implemented on a general purpose computer and does not provide an improvement in the function of the computer.

For these reasons, we determine that claim 1 does not integrate the recited abstract idea into a practical application.

Step 2b – Inventive Concept

Because we agree with the Examiner that claim 1 is directed to an abstract idea, we consider whether an additional element (or combination of elements) adds a limitation that is not well-understood, routine, conventional (“WURC”) activity in the field or whether the additional elements simply append WURC activities previously known to the industry, specified at a high level of generality, to the judicial exception. Memorandum, 84 Fed. Reg. at 56. The Examiner’s finding that an additional element (or

combination of elements) is WURC activity must be supported with a factual determination. *Id.* (citing MPEP § 2106.05(d), as modified by the *Berkheimer* Memorandum³).

Whether the additional elements are WURC activity is a question of fact. *See Berkheimer v. HP Inc.*, 881 F.3d 1360, 1369 (Fed. Cir. 2018) (“Whether something is well-understood, routine, and conventional to a skilled artisan . . . is a factual determination.”).

Here, Appellant contends that the “‘*transmitting*,’ ‘*storing*,’ ‘*monitoring*,’ and ‘*triggering*’ steps recited in the pending claims are clearly **not** merely applying the abstract idea in a well-known and conventional manner[, and] the steps are clearly not known and unconventional. In fact, they have **never** been practiced in this fashion before, making them clearly **unconventional**.” App. Br. 16. Appellant further contends that “monitoring expiration dates of securitizations and automatically generating and transmitting a new request prior to the expiration of the old one was not performed by anyone in this field prior to the present application (hence the lack of prior art rejections), thereby this is clearly not a conventional, nor well known, manner.” *Id.*

The Examiner disagrees and notes that:

the recited “computing system,” “data network” and “processing and monitoring circuitry” are recited at a high level of generality to simply perform the generic computer functions of receiving, processing, calculating, transmitting and storing information. (i.e., That is, the computer processor is provided to process certain instructions or data; input from the user is received to

³ R. W. Bahr, Changes in Examination Procedure Pertaining to Subject Matter Eligibility, Recent Subject Matter Eligibility Decision (*Berkheimer v. HP, Inc.*) (2018) (hereinafter “*Berkheimer* Memorandum”).

provide an indication of a first consideration to be applied in the process and to indicate an expression of interest by the user in certain types of the descriptive material; a particular display of information is presented based upon the first consideration and the indication of expressed interest received; and a provision is made to allow the user to complete an instance or session of the process). Thus, generic computer components recited as performing generic computer functions that are well-understood, routine and conventional activities amount to no more than implementing the abstract idea with a computerized system. Thus, taken alone, the additional elements do not amount to significantly more than the above-identified judicial exception (the abstract idea). Looking at the limitations as an ordered combination of elements add nothing that is not already present when looking at the elements taken individually. There is no indication that the combination of the elements improves the functioning of a computer or improves any other technology. Their collective functions merely provide conventional computer implementation.

Id. at 3–4.

We agree with the Examiner’s findings. Appellant’s arguments are not persuasive because they address the recited judicial exception itself, rather than any additional element. The analysis in the second step of the *Alice/Mayo* framework is a search for “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*, 573 U.S. at 217–18, internal citation omitted.

Furthermore, even if novel, judicial exceptions are patent ineligible absent further elements amounting to significantly more that transforms them into eligible subject matter. *Flook*, 437 U.S. at 591–92 (“[T]he novelty of the mathematical algorithm is not a determining factor at all.”); *Ass’n for Mol. Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013)

(“Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the § 101 inquiry.”); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018) (“No matter how much of an advance in the finance field the claims recite, the advance lies entirely in the realm of abstract ideas, with no plausibly alleged innovation in the non-abstract application realm.”); *Genetic Techs. Ltd. v. Merial L.L.C.*, 818 F.3d 1369, 1376 (Fed. Cir. 2016) (“[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.”); *Synopsys, Inc. v. Mentor Graphics Corp.*, 839 F.3d 1138, 1151 (Fed. Cir. 2016) (“[A] claim for a new abstract idea is still an abstract idea.”). The relied upon steps Appellant contends are not conventional do not, accordingly, transform the ineligible subject matter, because they are not something more than, but are, rather, part of the ineligible concept.

Accordingly, we sustain the Examiner’s rejection of claims 1–13 and 17–24 under 35 U.S.C. § 101 as directed to patent-ineligible subject matter.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–13	101		1–13	
Overall Outcome			1–13	

DECISION

Appeal 2018-001052
Application 14/224,129

We affirm the Examiner's rejection of claims 1–13 and 17–24 under 35 U.S.C. § 101.

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

AFFIRMED