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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEMIHA ECE KAMRA, ERIC HORVITZ,
CHRISTOPHER A. MEEK,
and STEPHEN LOMBARDI

Appeal 2018–001113
Application 12/492,861¹
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

FETTING, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ Oral arguments were presented February 3, 2020.

STATEMENT OF THE CASE²

Semiha Ece Kamra, Eric Horvitz, Christopher A. Meek, and Stephen Lombardi (Appellant³) seeks review under 35 U.S.C. § 134 of a non-final rejection of claims 1–18 and 20, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b).

The Appellant invented a way of improving the selection and presentation of advertisements in mobile contexts with variable routes. Specification para. 4.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below (bracketed matter and some paragraphing added).

1. A method of generating an advertisement plan for a user of a computer having a processor and having access to an advertisement set comprising advertisements provided by respective advertisers, the method comprising:

executing upon the processor instructions configured to:

[1] predict at least one potential predicted route of the user;

² Our decision will make reference to the Appellant’s Appeal Brief (“App. Br.,” filed December 21, 2016) and Reply Brief (“Reply Br.,” filed November 8, 2017), and the Examiner’s Answer (“Ans.,” mailed September 8, 2017), and Non-Final Action (“Non-Final Act.,” mailed July 21, 2016).

³ We use the word “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Appellant identifies the real party in interest as Microsoft, Inc. (Appeal Br. 3).

[2] for respective predicted routes, predict along the predicted route at least one position presenting an advertisement opportunity where the user may have at least partial attention availability;

and

[3] for respective advertisement opportunities, select at least one advertisement from the advertisement set to be presented at the advertisement opportunity.

Claims 1–18 and 20 stand rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

Claims 1–18 and 20 stand rejected under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure.

Claims 1, 12, 17 and 20 stand rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention.

ISSUES

The issues of eligible subject matter turn primarily on whether the claims recite more than abstract conceptual advice of results desired.

The issues of written description matter turn primarily on whether the originally filed disclosure supports the claims.

The issues of indefiniteness matter turn primarily on whether one of ordinary skill would understand the metes and bounds of the claims.

ANALYSIS

Claims 1–18 and 20 rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more

STEP 1⁴

Claim 1, as a method claim, nominally recites one of the enumerated categories of eligible subject matter in 35 U.S.C. § 101. The issue before us is whether it is directed to a judicial exception without significantly more.

STEP 2

The Supreme Court

set forth a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts. First, . . . determine whether the claims at issue are directed to one of those patent-ineligible concepts. If so, we then ask, “[w]hat else is there in the claims before us? To answer that question, . . . consider the elements of each claim both individually and “as an ordered combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application. [The Court] described step two of this analysis as a search for an “inventive concept”—*i.e.*, an element or combination of elements that is “sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.”

Alice Corp. v. CLS Bank Int’l, 573 U.S. 208, 217–18 (2014) (citations omitted) (*citing Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 566 U.S. 66 (2012)). To perform this test, we must first determine what the claims are directed to. This begins by determining whether the claims recite

⁴ For continuity of analysis, we adopt the steps nomenclature from 2019 Revised Patent Subject Matter Eligibility Guidance, 84 Fed. Reg. 50 (Jan. 7, 2019) (“Revised Guidance”).

one of the judicial exceptions (a law of nature, a natural phenomenon, or an abstract idea). Then, if the claims recite a judicial exception, determining whether the claims at issue are directed to the recited judicial exception, or whether the recited judicial exception is integrated into a practical application of that exception, i.e., that the claims “apply, rely on, or use the judicial exception in a manner that imposes a meaningful limit on the judicial exception, such that the claim is more than a drafting effort designed to monopolize the judicial exception.” Revised Guidance, 84 Fed. Reg. at 54. If the claims are directed to a judicial exception, then finally determining whether the claims provide an inventive concept because the additional elements recited in the claims provide significantly more than the recited judicial exception.

STEP 2A Prong 1

At a high level, and for our preliminary analysis, we note that method claim 1 recites predicting route and position data and selecting ad data. Predicting and selecting data are forms of analyzing data. Thus, claim 1 recites analyzing data. None of the limitations recite technological implementation details for any of these steps, but instead recite only results desired by any and all possible means.

From this we see that claim 1 does not recite the judicial exceptions of either natural phenomena or laws of nature.

Under Supreme Court precedent, claims directed purely to an abstract idea are patent in-eligible. As set forth in the Revised Guidance, which extracts and synthesizes key concepts identified by the courts, abstract ideas

include (1) mathematical concepts⁵, (2) certain methods of organizing human activity⁶, and (3) mental processes⁷. Among those certain methods of organizing human activity listed in the Revised Guidance are commercial or legal interactions. Like those concepts, claim 1 recites the concept of advertising management. Specifically, claim 1 recites operations that would ordinarily take place in advising one to select an ad based on predicted route and position data. The advice to select an ad based on predicted route and position data involves generating an advertisement plan, which is an economic act, and selecting an advertisement, which is an act ordinarily performed in the stream of commerce. For example, claim 1 recites “generating an advertisement plan,” which is an activity that would take place whenever one is managing an advertising plan. Similarly, claim 1 recites “select at least one advertisement,” which is also characteristic of managing advertising.

The Examiner determines the claims to be directed to generating an advertisement plan for a user and having access to an advertisement set provided by respective advertisers. Final Act. 2

⁵ See, e.g., *Gottschalk v. Benson*, 409 U.S. 63, 71–72 (1972); *Bilski v. Kappos*, 561 U.S. 593, 611 (2010); *Mackay Radio & Telegraph Co. v. Radio Corp. of Am.*, 306 U.S. 86, 94 (1939); *SAP America, Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1163 (Fed. Cir. 2018).

⁶ See, e.g., *Bilski*, 561 U.S. at 628; *Alice*, 573 U.S. at 219-20; *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed Cir. 2014); *Smart Sys. Innovations, LLC v. Chicago Transit Auth.*, 873 F.3d 1364, 1383 (Fed. Cir. 2017); *In re Marco Guldenaar Holding B.V.*, 911 F.3d 1157, 1160–61 (Fed. Cir. 2018).

⁷ See, e.g., *Benson*, 409 U.S. at 67; *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1371–72 (Fed. Cir. 2011); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1318 (Fed. Cir. 2016).

The preamble to claim 1 recites that it is a method of generating an advertisement plan. The steps in claim 1 result in selecting an ad based on predicted route and position data absent any technological mechanism other than a conventional computer for doing so.

As to the specific limitations, limitations 1–3 recite generic and conventional analyzing of route and ad data, which advise one to apply generic functions to get to these results. The limitations thus recite advice for selecting an ad based on predicted route and position data. To advocate selecting an ad based on predicted route and position data is conceptual advice for results desired and not technological operations.

The Specification at paragraph 4 describes the invention as relating to improving the selection and presentation of advertisements in mobile contexts with variable routes. Thus, all this intrinsic evidence shows that claim 1 recites advertising management. This is consistent with the Examiner's determination.

This in turn is an example of commercial or legal interactions as a certain method of organizing human activity because advertising management is a commercial interaction for inducing people to make purchases. The concept of advertising management by selecting an ad based on predicted route and position data is one idea for inducing based on locale. The steps recited in claim 1 are part of how this might conceptually be premised.

Our reviewing court has found claims to be directed to abstract ideas when they recited similar subject matter. *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715 (Fed. Cir. 2014)(advertising).

Alternately, this is an example of concepts performed in the human mind as mental processes because the steps of analyzing data mimic human thought processes of observation, evaluation, judgment, and opinion, perhaps with paper and pencil, where the data interpretation is perceptible only in the human mind. *See In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016); *FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016). Claim 1, unlike the claims found non-abstract in prior cases, uses generic computer technology to perform data analysis and does not recite an improvement to a particular computer technology. *See, e.g., McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314–15 (Fed. Cir. 2016) (finding claims not abstract because they “focused on a specific asserted improvement in computer animation”). As such, claim 1 recites analyzing data, and not a technological implementation or application of that idea.

From this we conclude that at least to this degree, claim 1 recites advertising management by selecting an ad based on predicted route and position data, which is a commercial and legal interaction, one of certain methods of organizing human activity identified in the Revised Guidance, and, thus, an abstract idea.

STEP 2A Prong 2

The next issue is whether claim 1 not only recites, but is more precisely directed to this concept itself or whether it is instead directed to some technological implementation or application of, or improvement to, this concept i.e. integrated into a practical application.⁸

⁸ *See, e.g., Alice*, 573 U.S. at 223, discussing *Diamond v. Diehr*, 450 U.S. 175 (1981).

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. At some level, “all inventions ... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. “[A]pplication[s]” of such concepts “ ‘to a new and useful end,’ ” we have said, remain eligible for patent protection. Accordingly, in applying the § 101 exception, we must distinguish between patents that claim the “ ‘buildin[g] block[s]’ ” of human ingenuity and those that integrate the building blocks into something more.

Alice, 573 U.S. at 217 (citations omitted).

Taking the claim elements separately, the operation performed by the computer at each step of the process is expressed purely in terms of results, devoid of implementation details. Steps 1–3 recite generic computer processing expressed in terms of results desired by any and all possible means and so present no more than conceptual advice. All purported inventive aspects reside in how the data is interpreted and the results desired, and not in how the process physically enforces such a data interpretation or in how the processing technologically achieves those results.

Viewed as a whole, Appellant’s claim 1 simply recites the concept of advertising management by selecting an ad based on predicted route and position data as performed by a generic computer. This is no more than conceptual advice on the parameters for this concept and the generic computer processes necessary to process those parameters, and do not recite any particular implementation.

Claim 1 does not, for example, purport to improve the functioning of the computer itself. Nor does it effect an improvement in any other technology or technical field. The Specification only spells out different

generic equipment⁹ and parameters that might be applied using this concept and the particular steps such conventional processing would entail based on the concept of advertising management by selecting an ad based on predicted route and position data under different scenarios. It does not describe any particular improvement in the manner a computer functions. Instead, claim 1 at issue amounts to nothing significantly more than an instruction to apply advertising management by selecting an ad based on predicted route and position data using some unspecified, generic computer. Under our precedents, that is not enough to transform an abstract idea into a patent-eligible invention. *See Alice*, 573 U.S. at 225–26.

None of the limitations reflect an improvement in the functioning of a computer, or an improvement to other technology or technical field, applies or uses a judicial exception to effect a particular treatment or prophylaxis for a disease or medical condition, implements a judicial exception with, or uses a judicial exception in conjunction with, a particular machine or manufacture that is integral to the claim, effects a transformation or reduction of a particular article to a different state or thing, or applies or uses 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.

We conclude that claim 1 is directed to achieving the result of advertising management by advising one to select an ad based on predicted route and position data, as distinguished from a technological improvement

⁹ The Specification describes a workstation or server, a notebook, palmtop, or cellphone. Spec. para. 34.

for achieving or applying that result. This amounts to commercial or legal interactions, which fall within certain methods of organizing human activity that constitute abstract ideas. The claim does not integrate the judicial exception into a practical application.

STEP 2B

The next issue is whether claim 1 provides an inventive concept because the additional elements recited in the claim provide significantly more than the recited judicial exception.

The introduction of a computer into the claims does not generally alter the analysis at *Mayo* step two.

the mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention. Stating an abstract idea “while adding the words ‘apply it’” is not enough for patent eligibility. Nor is limiting the use of an abstract idea “to a particular technological environment.” Stating an abstract idea while adding the words “apply it with a computer” simply combines those two steps, with the same deficient result. Thus, if a patent’s recitation of a computer amounts to a mere instruction to “implement[t]” an abstract idea “on . . . a computer,” that addition cannot impart patent eligibility. This conclusion accords with the preemption concern that undergirds our § 101 jurisprudence. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of “additional feature[e]” that provides any “practical assurance that the process is more than a drafting effort designed to monopolize the [abstract idea] itself.”

Alice, 573 U.S. at 223–24 (citations omitted).

“[T]he relevant question is whether the claims here do more than simply instruct the practitioner to implement the abstract idea [] on a generic computer.” *Alice*, 573 U.S. at 225. They do not.

Taking the claim elements separately, the function performed by the computer at each step of the process is purely conventional. Using a computer for analyzing data amounts to electronic data query and retrieval—one of the most basic functions of a computer. All of these computer functions are generic, routine, conventional computer activities that are performed only for their conventional uses. *See Elec. Power Grp. LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016). *See also In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1316 (Fed. Cir. 2011) (“Absent a possible narrower construction of the terms ‘processing,’ ‘receiving,’ and ‘storing,’ . . . those functions can be achieved by any general purpose computer without special programming”). None of these activities is used in some unconventional manner nor does any produce some unexpected result. Appellant does not contend it invented any of these activities. In short, each step does no more than require a generic computer to perform generic computer functions. As to the data operated upon, “even if a process of collecting and analyzing information is ‘limited to particular content’ or a particular ‘source,’ that limitation does not make the collection and analysis other than abstract.” *SAP America, Inc. v. InvestPic LLC*, 898 F.3d 1161, 1168 (Fed. Cir. 2018).

Considered as an ordered combination, the computer components of Appellant’s claim 1 add nothing that is not already present when the steps are considered separately. The sequence of data analysis is equally generic and conventional. *See Ultramercial*, 772 F.3d at 715 (sequence of receiving, selecting, offering for exchange, display, allowing access, and receiving payment recited an abstraction), *Inventor Holdings, LLC v. Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) (sequence of data

retrieval, analysis, modification, generation, display, and transmission), *Two-Way Media Ltd. v. Comcast Cable Communications, LLC*, 874 F.3d 1329, 1339 (Fed. Cir. 2017) (sequence of processing, routing, controlling, and monitoring). The ordering of the steps is therefore ordinary and conventional.

We conclude that claim 1 does not provide an inventive concept because the additional elements recited in the claim do not provide significantly more than the recited judicial exception.

REMAINING CLAIMS

Claim 1 is representative. The remaining method claims merely describe process parameters. We conclude that the method claims at issue are directed to a patent-ineligible concept itself, and not to the practical application of that concept.

As to the structural claims, they

are no different from the method claims in substance. The method claims recite the abstract idea implemented on a generic computer; the system claims recite a handful of generic computer components configured to implement the same idea. This Court has long “warn[ed] ... against” interpreting § 101 “in ways that make patent eligibility ‘depend simply on the draftsman’s art.’”

Alice, 573 U.S. at 226. Although the sole article of manufacture claim 20 is more detailed than claim 1, it is similar in substance to claims depending from claim 1. As a corollary, the claims are not directed to any particular machine.

A final determination as to computer-readable storage device claim 20. First, although nominally a storage device claim, all of the substantive limitations are process steps that instructions on the device dictate. Claim

20 is therefore substantively a process claim though drafted as a device claim. Although claim 20 contains 14 steps contrasted with the 3 steps of claim 1, claim 20 recites steps of monitoring, storing, detecting, predicting, selecting, identifying, predicting, selecting, identifying, detecting, monitoring, monitoring, computing, and identifying advertising related data. Detecting, predicting, selecting, identifying, and computing are all rudimentary forms of data analysis. Monitoring data is receiving data. Thus, claim 20 recites receiving, analyzing, and storing data. Such a sequence and the individual operations are shown to be conventional supra. The analysis supra as applied to claim 20 shows the claim to also be directed to the commercial and legal interaction of advertising management by advising one to select an ad based on predicted route and position data, without significantly more.

LEGAL CONCLUSION

From these determinations we further determine that the claims do not recite an improvement to the functioning of the computer itself or to any other technology or technical field, a particular machine, a particular transformation, or other meaningful limitations. From this we conclude the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the commercial and legal interaction of advertising management by advising one to select an ad based on predicted route and position data, without significantly more.

APPELLANT'S ARGUMENTS

We are not persuaded by Appellant's argument that choosing opportunities to interact with the user in a manner that avoids dangerous interruption, and/or that avoids interrupting the user in ways that are irritating, is not fairly or even remotely

captured by the overgeneralized description of “generating an advertisement plan for a user and having access to an advertisement set provided by respective advertisers.”

App. Br. 17. At best, claim 1 is directed to the commercial and legal interaction of advertising management by advising one to select an ad based on predicted route and position data, without significantly more. See the analysis *supra*. Appellant contends that the Specification describes how a user reacts to such interaction during travel. But this is no more than speculative behavioral description and not technological implementation or application details.

Appellant goes on to contend that “the prediction of routes of a user is not fundamentally an ‘economic practice.’ Route prediction is used in many contexts.” *Id.* Perhaps. But, the claims recite no more than performing prediction, absent any further technological implementation details. The claims are therefore in no way directed to such predictions. Instead, the claim are directed to managing advertising along routes, and advertising is a major economic practice to encourage commercial sales.

We are not persuaded by Appellant's argument that

the entirety of the analysis presented in the Non-Final Office Action is a characterization of the claimed technique as “directed toward a fundamental economic practice.” No further clarification or explanation is provided. No attempt is made to “explain why” the technique is interpreted as such - it has simply been summarily characterized as such and therefore rejected.

App. Br. 19. Again, we support the determination *supra* that the claims are directed to the judicial exception of the abstract idea of certain methods of organizing human activity as exemplified by the commercial and legal

interaction of advertising management by advising one to select an ad based on predicted route and position data, without significantly more.

Appellant further argues that the asserted claims are akin to the claims found patent-eligible in *DDR Holdings, LLC v. Hotels.com, L.P.* 773 F.3d 1245 (Fed. Cir. 2014). App. Br. 19. In *DDR Holdings*, the Court evaluated the eligibility of claims “address[ing] the problem of retaining website visitors that, if adhering to the routine, conventional functioning of Internet hyperlink protocol, would be instantly transported away from a host’s website after ‘clicking’ on an advertisement and activating a hyperlink.” *Id.* at 1257. There, the Court found that the claims were patent eligible because they transformed the manner in which a hyperlink typically functions to resolve a problem that had no “pre-Internet analog.” *Id.* at 1258. The Court cautioned, however, “that not all claims purporting to address Internet-centric challenges are eligible for patent.” *Id.* For example, in *DDR Holdings* the Court distinguished the patent-eligible claims at issue from claims found patent-ineligible in *Ultramercial*. *See id.* at 1258–59 (citing *Ultramercial*, 772 F.3d at 715–16). As noted there, the *Ultramercial* claims were “directed to a specific method of advertising and content distribution that was previously unknown and never employed on the Internet before.” *Id.* at 1258 (quoting *Ultramercial*, 772 F.3d at 715–16). Nevertheless, those claims were patent ineligible because they “merely recite[d] the abstract idea of ‘offering media content in exchange for viewing an advertisement,’ along with ‘routine additional steps such as updating an activity log, requiring a request from the consumer to view the ad, restrictions on public access, and use of the Internet.’” *Id.*

Appellant's asserted claims are analogous to claims found ineligible in *Ultramercial* and distinct from claims found eligible in *DDR Holdings*. The ineligible claims in *Ultramercial* recited "providing [a] media product for sale at an Internet website;" "restricting general public access to said media product;" "receiving from the consumer a request to view [a] sponsor message;" and "if the sponsor message is an interactive message, presenting at least one query to the consumer and allowing said consumer access to said media product after receiving a response to said at least one query." 772 F.3d at 712. Similarly, Appellant's asserted claims recite analyzing data. This is precisely the type of Internet activity found ineligible in *Ultramercial*.

We are not persuaded by Appellant's argument that "[t]he rejection makes no attempt to correlate the claims with an 'abstract idea' that the courts have recognized." App. Br. 20. See the court citations *supra*.

We are not persuaded by Appellant's argument that "the rejection fails to identify the additional elements individually and/or in combination." App. Br. 21. See the analysis under Steps 2A and 2B *supra*.

We are not persuaded by Appellant's argument that "[g]eneric boilerplate, cited without any attempt to tie such blanket statements to the claims at issue, cannot be interpreted as satisfying the requirements of the *Interim Eligibility Guidance*." App. Br. 22. See the analysis under Steps 2A and 2B *supra*.

We are not persuaded by Appellant's argument that "[t]he rejection fails to evaluate *any of the dependent claims, or claim 20*." *Id.* Appellant next repeats the Examiner's determinations of such claims, disproving the contention. To the extent Appellant is desirous of a more detailed

explanation, such is not required where summarization is adequate to meaningful review. Appellant does not offer any claim and limitation specific arguments to dependent claim particularized limitations, leaving us with no specific arguments to review.

Appellant's Reply Brief arguments are almost entirely procedural or directed to cases the Examiner cites. The analysis *supra* therefore responds to such arguments.

As to claim 20, Appellant only recites the claim limitation and concludes that "examiner's conclusion that all of these claim elements are 'well-understood, generic, conventional activities... presented at a high level of generality' is believed to requires [sic] no further comment." Reply Br. 11. This is insufficient to act as a separate argument under 37 C.F.R. § 41.37. As our reviewing court held,

we hold that the Board reasonably interpreted Rule 41.37 to require more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art.

In re Lovin, 652 F.3d 1349, 1357 (Fed Cir 2011).

Claims 1–18 and 20 rejected under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure

We are persuaded by Appellant's argument that there are numerous examples to support the claim limitations. App. Br. 23–31.

Claims 1, 12, 17 and 20 rejected under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention

We are persuaded by Appellant's argument that the metes and bounds are sufficiently understood by one of ordinary skill and Appellant clarified

the portions of the claims that may have been difficult to read. App. Br. 33–37; Reply Br. 17–20.

CONCLUSIONS OF LAW

The rejection of claims 1–18 and 20 under 35 U.S.C. § 101 as directed to a judicial exception without significantly more is proper.

The rejection of claims 1–18 and 20 under 35 U.S.C. § 112(a) as lacking a supporting written description within the original disclosure is improper.

The rejection of claims 1, 12, 17 and 20 under 35 U.S.C. § 112(b) as failing to particularly point out and distinctly claim the invention is improper.

CONCLUSION

The rejection of claims 1–18 and 20 is affirmed.

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1–18, 20	101	Eligibility	1–18, 20	
1–18, 20	112(a)	Written Description		1–18, 20
1, 12, 17, 20	112(b)	Indefiniteness		1, 12, 17, 20
Overall Outcome			1–18, 20	

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) (2011).

Appeal 2018-001113
Application 12/492,861

AFFIRMED