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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte KRISTEN J. FLANAGAN, KEVIN McHUGH,
AISLING GRANT, and PAUL MACRORY

Appeal 2018-002212
Application 14/024,056¹
Technology Center 3600

Before JASON V. MORGAN, HUNG H. BUI, and MICHAEL M. BARRY,
Administrative Patent Judges.

BUI, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 1–12 and 19–24, all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.²

¹ According to Appellants, the real party in interest is Oracle International Corporation. App. Br. 2.

² Our Decision refers to Appellants' Appeal Brief filed June 19, 2017 ("App. Br."); Reply Brief filed December 26, 2017 ("Reply Br."); Examiner's Answer mailed October 24, 2017 ("Ans."); Final Office Action mailed January 11, 2017 ("Final Act."); and original Specification filed September 11, 2013 ("Spec.").

STATEMENT OF THE CASE

Appellants' invention is directed to "a computer system that provides electronic commerce catalog pricing," i.e., an e-commerce catalog pricing "system that prices products of a catalog of an e-commerce web site." Spec. ¶¶ 1, 4. According to Appellants, "the pricing system allows a product to be specified as 'non-discountable' to assure that the product is not inadvertently discounted as part of a promotion or other mechanism." *Id.* ¶ 11.

Claims 1, 7, and 19 are independent. Independent claim 1, reproduced below, is exemplary of the subject matter on appeal.

1. A non-transitory computer readable medium having instructions stored thereon that, when executed by a processor, cause the processor to price products of a product catalog of an e-commerce web site, the pricing comprising:
 - designating a first product in the product catalog as non-discountable, the product catalog providing product information to users of the e-commerce web site;
 - during interaction by any of the users of the e-commerce web site with a user interface corresponding to the e-commerce web site, receiving a request to discount the first product as part of a first promotion in conjunction with a purchase of one or more products in the product catalog; and
 - preventing the discount of the first product in response to accessing the product catalog, the preventing comprising generating a message on the user interface in response to a selection of the first product in response to an interaction with the user interface, the message indicating that the first product is not discountable and the message displayed before generating a shopping cart, the preventing further comprising not including the first product in an order total within the shopping cart when determining the discount within the shopping cart.

App. Br. 11 (Claims App.).

REJECTION

The Examiner rejected claims 1–12 and 19–24 under 35 U.S.C. § 101 because the claimed invention is directed to an abstract idea without significantly more. Final Act. 2–4, 6.

ANALYSIS

In rejecting claims 1–12 and 19–24 under 35 U.S.C. § 101, the Examiner determines these claims are directed to “designating a first product as non-discountable” and “preventing the discount of the first product” which fall into multiple categories of abstract ideas, including: (1) “certain methods of organizing human activity,” and (2) “mental processes [that could be performed in the human mind or by a human using a pen and paper].” Ans. 4. According to the Examiner, these claims also include limitations that are analogous or similar to: (1) concepts of comparing new and stored information and using rules to identify options as discussed in *SmartGene*; (2) concepts of using categories to organize, store, and transmit information as discussed in *Cyberfone*; and (3) concepts of delivery of free content in exchange for viewing ads as discussed in *Ultramercial*. Final Act. 2; see *SmartGene, Inc. v. Advanced Biological Labs., SA*, 852 F. Supp. 2d 42 (D. D.C. 2012), *aff’d*, 555 F. App’x 955 (Fed. Cir. 2014) (holding that claims directed to “comparing new and stored information and using rules to identify medical options” are not patent-eligible); *Cyberfone Sys., LLC v. CNN Interactive Grp.*, 558 F. App’x 988, 992 (Fed. Cir. 2014) (holding that claims directed to “using categories to organize, store, and transmit information is well-established . . . the idea of collecting information in

classified form, then separating and transmitting that information according to its classification” are not patent-eligible); *Ultramerical, Inc. v. Hulu, LLC*, 772 F.3d 709, 715–16 (Fed. Cir. 2014) (holding that claims directed to “showing an advertisement before delivering free content” are not patent-eligible); *see also CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d 1366, 1372 (Fed. Cir. 2011) (holding that claims directed to “[a] method . . . [that] can be performed in the human mind, or by a human using a pen and paper” are not patent-eligible).

The Examiner also determines the claims fail to amount to “significantly more than the judicial exception” or contain an “inventive concept” because the additional elements recited: (1) “represent generic computer components that operate using well-understood, routine, and conventional functions” (Final Act. 3) and (2) do not improve the functioning of a computer or improve any other technology. Ans. 5.

Appellants argue independent claims 1, 7, and 19 as a group. *See* App. Br. 3–7. We select independent claim 1 as exemplary of the group. *See* 37 C.F.R. § 41.37(c)(1)(iv) (2016). Claims 2–6, 8–12, and 20–24 stand or fall with claim 1 (*see id.*).

Legal Framework

To determine whether claims are patent eligible under § 101, we apply the U.S. Supreme Court’s two-step framework articulated in *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208 (2014). First, we determine whether the claims are directed to a patent-ineligible concept: laws of nature, natural phenomena, and abstract ideas. *Id.* at 216–17. If so, we then proceed to the second step to consider the elements of the claims “individually and ‘as an ordered combination’” to determine whether there are additional elements

that “‘transform the nature of the claim’ into a patent-eligible application.” *Id.* at 217. In other words, the second step is to “search for an ‘inventive concept’—*i.e.*, an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.* (alteration in original).

The Federal Circuit has described the *Alice* step-one inquiry as looking at the “focus” of the claims, their “character as a whole,” and the *Alice* step-two inquiry as looking more precisely at what the claim elements add—whether they identify an “inventive concept” in the application of the ineligible matter to which the claim is directed. *See Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335–36 (Fed. Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015).

Because there is no single definition of an “abstract idea” under *Alice* step 1, the Federal Circuit has adopted the common law, analogy-driven approach (*i.e.*, the “analogous claim” test) to determine whether a claim is directed to an abstract idea, and has instructed us “to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.” *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp.*, 830 F.3d at 1353–54).

The Office sought to apply the Federal Circuit’s common law “analogous claim” test in the aftermath of *Alice* (*see* USPTO Memorandum, *July 2015 Update: Subject Matter Eligibility*, 3 (July 30, 2015), <https://www.uspto.gov/sites/default/files/documents/ieg-july-2015-update.pdf> (“a claimed concept is not identified as an abstract idea unless it is similar to at least one

concept that the courts have identified as an abstract idea”)). But recently, the Office concluded that having examiners seek analogous claims had since become impractical and unpredictable in light of the growing body of Federal Circuit precedent. Thus, the Office has issued a new § 101 Memorandum interpreting governing case law and establishing a framework for patent-eligibility analysis under *Alice* and § 101 effective as of January 7, 2019. See USPTO, *2019 Revised Patent Subject Matter Eligibility Guidance*, 84 Fed. Reg. 50, 52 (Jan. 7, 2019) (“Revised Guidance”).

Revised Guidance

In the Revised Guidance, the Office has identified, for purposes of clarity, predictability, and consistency, key concepts identified by the courts as abstract ideas to explain that the “abstract idea” exception. According to the Revised Guidance and under *Alice* step 1 (abstract idea), we first look to whether the claim recites:

(1) any judicial exceptions, including certain groupings of abstract ideas (i.e., [i] mathematical concepts, [ii] mental processes, or [iii] 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

See Revised Guidance, 84 Fed. Reg. at 51–52, 55, Revised Step 2A, Prong One (Abstract Idea) and Prong Two (Integration into A Practical Application).

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

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 drafting effort designed to monopolize the judicial exception. *See Revised Guidance*, 84 Fed. Reg. 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.* “Integration into a practical application” requires an additional element or a combination of additional elements in the claim to 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 exception. *Id.* at 53, 55.

For example, 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, 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 mere 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 Revised Guidance, 84 Fed. Reg. at 54–55 (“Prong Two”).

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” under *Alice* step 2. *See* Revised Guidance at 56; *Alice*, 573 U.S. at 217–18. For example, we look to whether the claim:

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

See Revised Guidance, 84 Fed. Reg. at 56.

Alice/Mayo—Step 1 (Abstract Idea)

Step 2A—Prongs 1 and 2 identified in the Revised Guidance

Step 2A, Prong One

Turning to the first step of the *Alice* inquiry, we determine if the claims recite a judicial exception. Appellants argue claim 1 is not directed to an abstract idea because: (1) “the Examiner **NEVER** identifies ‘the abstract idea as it is recited (i.e., set forth or described) in the claim’”; (2) the Examiner fails to explain “why any identified abstract idea . . . ‘corresponds to a concept that the courts have identified as an abstract idea’”; and (3) the Examiner’s reliance on *SmartGene*, *Cyberfone*, and *Ultramercial* is misplaced because (i) *SmartGene* and *Cyberfone* are non-precedential decisions, and (ii) *Ultramercial* is not related to pricing products for a

product catalog of an e-commerce web site without discount prevention.
App. Br. 3–5.

At the outset, we note Appellants’ arguments regarding *SmartGene*, *Cyberfone*, and *Ultramercial* are not persuasive and are no longer applicable because the Revised Guidance now governs all patent-eligibility analysis under *Alice* and § 101 effective as of January 7, 2019. Moreover, the Examiner determines, and we agree that Appellants’ claims are directed to “designating a first product as non-discountable” and “preventing the discount of the first product” are descriptive of a “certain method[] of organizing human activity,” which includes fundamental economic practices, specifically, marketing, sales, and advertising (Ans. 4), as set forth in the Revised Guidance because “designating a first product as non-discountable,” according to Appellants’ Specification, is necessary to ensure that “the product is not inadvertently discounted as part of a promotion or other mechanism.” Spec. ¶ 11. Such activities are squarely within the realm of abstract ideas, like: (1) the risk hedging in *Bilski v. Kappos*, 561 U.S. 593 (2010); (2) the intermediated settlement in *Alice*, 573 U.S. at 219–22; (3) verifying credit card transactions in *CyberSource*, 654 F.3d at 1370; (4) guaranteeing transactions in *buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354 (Fed. Cir. 2014); (5) distributing products over the Internet in *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709 (Fed. Cir. 2014); (6) determining a price of a product offered to a purchasing organization in *Versata Dev. Grp., Inc. v. SAP Am., Inc.*, 793 F.3d 1306 (Fed. Cir. 2015); and (7) pricing a product for sale in *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359 (Fed. Cir. 2015). Designating a product as non-discountable for future sale activities is also a building block of a market economy and,

like risk hedging and intermediated settlement, is an “abstract idea” beyond the scope of § 101. *See Alice*, 573 U.S. at 219–20.

The Examiner also determines, and we agree, that Appellants’ claims also include a mental process that could be performed in the human mind or by a human mind or using a pen and paper as the claims also require an observation or evaluation (“designating a first product in the product catalog as non-discountable”; “receiving a request to discount the first product as part of a first promotion in conjunction with a purchase of one or more products in the product catalog;” and “preventing the discount of the first product in response to accessing the product catalog.”). That is, before computers were used, a marketing department of a company would designate certain products as “non-discountable” and notify a customer if those products are not discountable when the customer was ready to make payment. Mental processes remain unpatentable even when automated to reduce the burden on the user of what once could have been done with pen and paper. *See CyberSource*, 654 F.3d at 1375 (“That purely mental processes can be unpatentable, even when performed by a computer, was precisely the holding of the Supreme Court in *Gottschalk v. Benson*.”); *see also In re Salwan*, 681 F. App’x 938, 941 (Fed. Cir. 2017) (claims for organizing patient health information, transferring patient health information to a patient network, and billing insurance companies held patent-ineligible).

Thus, under Step 2A, Prong One, we agree with the Examiner the claims fall within judicial exceptions listed in the Revised Guidance.

Step 2A, Prong Two (Integration into a Practical Application)

Under Prong Two of the Revised Guidance, we must determine if the claims (i.e., additional limitations beyond the judicial exception) integrate

the judicial exception into a practical application. However, we discern no additional elements (or combination of elements) recited in Appellants' claims 1, 7, and 19 (e.g., a processor and storage device) that integrate the judicial exceptions into a practical application. *See Revised Guidance, Revised Step 2A, Prong Two.* For example, Appellants' claimed additional elements (e.g., processor and storage device) recited in claims 1, 7, and 19 do not: (1) improve the functioning of a computer or other technology; (2) are not applied with any particular machine (except for a generic computer); (3) do not effect a transformation of a particular article to a different state; and (4) are not applied in any 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(a)–(c), (e)–(h).*

For business-centric inventions such as Appellants' invention involving designating products as “non-discountable” for sales, the “integration into a practical application” prong further requires consideration of whether the claims purport to provide “a technical[] solution to a technical[] problem” as required by the Federal Circuit’s precedential decisions in (1) *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014) and (2) *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1301 (Fed. Cir. 2016). *See MPEP § 2106.05(a).*

Appellants argue their claims, similar to the claims in *DDR Holdings*, are fundamentally directed to a technical solution to a technical problem that is “*necessarily rooted in computer technology* in order to overcome a problem specifically arising in the realm of computer networks.” App. Br. 6–7 (citing *DDR*, 773 F.3d at 1257) (emphasis added); Ans. 2.

Appellants’ argument is not persuasive, however. Appellants’ Specification and claims describe “an electronic commerce (‘e-commerce’) catalog pricing system” that enables a user to designate a product as “non-discountable” for sales in order to ensure that “the product is not inadvertently discounted as part of a promotion or other mechanism.” Spec. ¶ 11. “[D]esignating a . . . product in the product catalog as non-discountable” is a fundamental economic practice long prevalent in our system of commerce. Such a method of “designating a . . . product in the product catalog as non-discountable” does not provide a technical solution to a technical problem unique to the Internet, i.e., a “solution . . . necessarily rooted in computer technology in order to overcome a problem specifically arising in the realm of computer networks.” *DDR*, 773 F.3d at 1257. Nor does Appellants’ invention entail, like *Amdocs*, any “unconventional technological solution (enhancing data in a distributed fashion) to a technological problem (massive record flows which previously required massive databases)” and “improve the performance of the system itself.” *Amdocs*, 841 F.3d at 1300, 1302. Instead, the solution proposed by Appellants is a business solution, implemented with a general purpose computer, rather than a technological solution.

Thus, under Step 2A, Prong Two, we determine the judicial exception is not integrated into a practical application under the Revised Guidance

Alice/Mayo—Step 2 (Inventive Concept)
Step 2B identified in the Revised Guidance

In the second step of the *Alice* inquiry, Appellants argue claims 1, 7, and 19 contain an “inventive concept” because: (1) “elements of the present claims are nonconventional and non-obvious” (i.e., claims contain allowable subject matter (*see* Final Act. 7)); (2) pending claims recite a ‘non-

conventional and non-generic arrangement of known, conventional pieces” similar to the claims in *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016); and (3) “the claims do not preempt an abstract idea.” App. Br. 7–9 (emphasis omitted).

Appellants’ arguments are not persuasive. At the outset, we note that (1) “the concept of inventiveness is distinct from that of novelty” and (2) “[t]he inventiveness inquiry of § 101 should therefore not be confused with the separate novelty inquiry of § 102 or the obviousness inquiry of § 103.” *Amdocs*, 841 F.3d at 1311. We may even assume that the techniques claimed are “[g]roundbreaking, innovative, or even brilliant,” but that is not enough for eligibility. *Ass’n for Molecular Pathology v. Myriad Genetics, Inc.*, 569 U.S. 576, 591 (2013); *accord buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1352 (Fed. Cir. 2014). Nor is it enough for subject-matter eligibility that claimed techniques be novel and nonobvious in light of prior art, passing muster under 35 U.S.C. §§ 102 and 103. *See Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 89–90 (2012); *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 search for a § 101 inventive concept is thus distinct from demonstrating § 102 novelty.”); *Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1315 (Fed. Cir. 2016) (same for obviousness) (“*Symantec*”). The claims here are ineligible because their innovation is an innovation in ineligible subject matter. Their subject is nothing but “designating a first product as non-discountable” and “preventing the discount of the first product.” Spec. ¶¶ 1, 4, 11. An advance of that nature is ineligible for patenting.

We also note that, as the *McRO* court explicitly recognized, “the absence of complete preemption does not demonstrate patent eligibility.” *See McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1315 (Fed. Cir. 2016) (quoting *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)). “Where a patent’s claims are deemed only to disclose patent ineligible subject matter” under the *Alice/Mayo* framework, “preemption concerns are fully addressed and made moot.” *Ariosa*, 788 F.3d at 1379.

Lastly, Appellants’ reliance on *Bascom* is also misplaced. For example, the patent at issue in *Bascom* (U.S. Patent No. 5,987,606 (“*Bascom* ’606 patent”)) describes a particular arrangement of filtering software at a specific location, remote from the end-users, with customizable filtering features specific to each end user. The filtering software enables individually customizable filtering at the remote ISP server by taking advantage of the technical ability of the ISP server to identify individual accounts and associate a request for Internet content with a specific individual account. *Bascom* ’606 patent, 4:35–38.

The Federal Circuit recognized that *Bascom*’s installation of an Internet content filter at a particular network location is “a technical improvement over prior art ways of filtering such content” because such an arrangement advantageously allows the Internet content filter to have “both the benefits of a filter on a local computer and the benefits of a filter on the ISP server” and “give[s] users the ability to customize filtering for their individual network accounts.” *Bascom*, 827 F.3d at 1350, 1352. According to the panel, *Bascom*’s claims “do not preempt the use of the abstract idea of filtering content on the Internet or on generic computer components

performing conventional activities.” *Id.* Instead, *Bascom*’s claims “carve out a specific location for the filtering system (a remote ISP server) and require the filtering system to give users the ability to customize filtering for their individual network accounts.” *Id.* As such, “an inventive concept can be found in the non-conventional and non-generic arrangement of known, conventional pieces.” *Id.* at 1350.

In contrast to *Bascom*, Appellants’ claims and Specification are directed to “a computer system that provides electronic commerce catalog pricing,” i.e., an e-commerce catalog pricing “system that prices products of a catalog of an e-commerce web site.” Spec. ¶¶ 1, 4. According to Appellants, “the pricing system allows a product to be specified as ‘non-discountable’ to assure that the product is not inadvertently discounted as part of a promotion or other mechanism.” *Id.* ¶ 11. There is no evidence in the record to support the contention that Appellants’ claimed system includes any non-conventional and non-generic arrangement of known, conventional components similar to *Bascom*.

As recognized by the Revised Guidance, an “inventive concept” under *Alice* Step 2 can also be evaluated based on whether an additional element or combination of elements:

- (1) [a]dds a specific limitation or combination of limitations that are not well-understood, routine, conventional activity in the field, which is indicative that an inventive concept may be present; or
- (2) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception, which is indicative that an inventive concept may not be present.

See Revised Guidance, 84 Fed. Reg. at 56.

We find no element or combination of elements recited in Appellants' claims 1 and 22 that provide any "inventive concept" or add anything "significantly more" to transform the abstract concept into a patent-eligible application. *Alice*, 573 U.S. 208 at 221. Rather, Appellants' invention uses generically-claimed computer components (a processor and storage device) to perform the abstract idea. As our reviewing court has observed, "after *Alice*, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible." *DDR*, 773 F.3d at 1256 (citing *Alice*, 573 U.S. at 223). As Appellants' claims recite only the using generic computer components to accomplish the identified abstract idea, the claims only limit the abstract idea to a particular technological environment. Spec. ¶¶ 24, 64, 101; *see* MPEP § 2106.05(h).

Because Appellants' independent claims 1, 7, and 19, when considered as a whole, are directed to a patent-ineligible abstract idea that do not integrate into a practical application and do not recite an "inventive concept," we sustain the Examiner's rejection of claims 1–12 and 19–24 under 35 U.S.C. § 101.

DECISION

The Examiner's decision rejecting claims 1–12 and 19–24 is affirmed.

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

AFFIRMED