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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte ANDREW G. BOSWORTH,
WILLIAM BLAKELEY CHANDLEE,
and RAVI MAHESH DASWANI BUXANI

Appeal 2018-002476
Application 13/611,522
Technology Center 3600

Before ANTON W. FETTING, JOSEPH A. FISCHETTI, and
NINA L. MEDLOCK, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner’s final rejection of claims 1, 3–12, and 17–21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED INVENTION

Appellant’s claimed invention “relates generally to social networking systems and, in particular, to distributing messages and advertisements to social networking system users based on connections between social networking system users” (Spec. ¶ 1).

Claims 1, 19, and 20 are the independent claims on appeal. Claim 1, reproduced below with bracketed notations added, is illustrative of the claimed subject matter:

1. A method comprising:
 - [(a)] storing, in a social networking system, a user profile for a person, the user profile associated with a first set of objects stored by the social networking system;
 - [(b)] storing, in the social networking system, entity pages associated with entities, each entity page including content associated with an entity of the entities and associated with a second set of objects stored by the social networking system;
 - [(c)] receiving, by the social networking system, a request to establish a partnership between the person and the entity, the request subject to approval by the entity;

¹ We use the term “Appellant” to refer to “applicant” as defined in 37 C.F.R. § 1.42. Our decision references Appellant’s Appeal Brief (“Appeal Br.,” filed June 14, 2017) and Reply Brief (“Reply Br.,” filed January 2, 2018), and the Examiner’s Answer (“Ans.,” mailed November 2, 2017) and Final Office Action (“Final Act.,” mailed October 12, 2016). Appellant identifies the real party in interest as Facebook, Inc. Appeal Br. 1.

[(d)] storing, in the social networking system, a bilateral connection between the entity page and the user profile, the bilateral connection having a partnership connection type;

[(e)] associating, by the social networking system, the user profile and the entity page with each other to provide access to the content associated with the entity or rewards to the person;

[(f)] identifying, from the user profile, an additional person having a connection to the person in the social networking system; and

[(g)] selecting advertisements for presentation to the additional person based at least in part on the stored bilateral connection having the partnership connection type between the entity page and the user profile, wherein selecting advertisements comprises prioritizing presentation to the additional person of advertisements associated with the entity relative to presentation of advertisements associated with another entity, another entity page associated with the entity and the user profile not connected by another bilateral connection having the partnership connection type.

REJECTION

Claims 1, 3–12, and 17–21 are rejected under 35 U.S.C. § 101 as directed to a judicial exception without significantly more.

ANALYSIS

Appellant argues the pending claims as a group (Appeal Br. 5–15). We select independent claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and

abstract ideas” are not patentable. *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Laboratories, Inc.*, 566 U.S. 66 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp.*, 573 U.S. at 217. The first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts.” *Id.* If the claims are not directed to a patent-ineligible concept, e.g., an abstract idea, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “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.* (quoting *Mayo*, 566 U.S. at 79, 78). This is “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.’” *Id.* at 217–18 (alteration in original).

We are not persuaded, as an initial matter, by Appellant’s argument that the Examiner has failed to establish a *prima facie* case of patent eligibility (Appeal Br. 6–10). The Federal Circuit has observed repeatedly that “the *prima facie* case is merely a procedural device that enables an appropriate shift of the burden of production.” *Hyatt v. Dudas*, 492 F.3d 1365, 1369 (Fed. Cir. 2007) (citing *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992)). The court has, thus, held that the USPTO carries its procedural burden of establishing a *prima facie* case when its rejection

satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for the rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011) (alteration in original). Thus, what is required of the Office is that it sets forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of § 132. *Id.*; *see also Chester v. Miller*, 906 F.2d 1574, 1578 (Fed. Cir. 1990) (“Section 132 is violated when a rejection is so uninformative that it prevents the applicant from recognizing and seeking to counter the grounds for rejection.”).

Here, in rejecting the pending claims under 35 U.S.C. § 101, the Examiner analyzed the claims in accordance with the *Mayo/Alice* two-step framework, and consistently with the USPTO guidance in effect at the time the Final Office Action was mailed. The Examiner, thus, notified Appellant that the claims are directed to “selecting an advertisement for presentation based upon a social network connection,” which the Examiner concluded is similar to other concepts that the courts have held abstract, and that the claims do not include additional elements or a combination of elements sufficient to amount to significantly more than the abstract idea itself (Final Act. 2–8). The Examiner, in our view, set forth the statutory basis of the rejection in a sufficiently articulate and informative manner as to meet the notice requirement of 35 U.S.C. § 132. And we find that, in doing so, the Examiner established a *prima facie* case of patent ineligibility.

After Appellant’s briefs were filed in this appeal, and the Examiner’s Answer mailed, the U.S. Patent and Trademark Office (the “USPTO”) published revised guidance for use by USPTO personnel in evaluating

subject matter eligibility under 35 U.S.C. § 101. 2019 REVISED PATENT SUBJECT MATTER ELIGIBILITY GUIDANCE, 84 Fed. Reg. 50, 57 (Jan. 7, 2019) (the “2019 Revised Guidance”). That guidance revised the USPTO’s examination procedure with respect to the first step of the *Mayo/Alice* framework by (1) providing groupings of subject matter that is considered an abstract idea; and (2) clarifying that a claim is not “directed to” a judicial exception if the judicial exception is integrated into a practical application of that exception. *Id.* at 50. The 2019 Revised Guidance, by its terms, applies to all applications, and to all patents resulting from applications, filed before, on, or after January 7, 2019. *Id.*²

Step One of the Mayo/Alice Framework (2019 Revised Guidance, Step 2A)

The first step in the *Mayo/Alice* framework, as mentioned above, is to determine whether the claims at issue are “directed to” a patent-ineligible concept, e.g., an abstract idea. *Alice Corp.*, 573 U.S. at 217. This first step, as set forth in the 2019 Revised Guidance (i.e., Step 2A), is a two-prong test; in Step 2A, Prong One, we look to whether the claim recites a judicial exception, e.g., one of the following three groupings of abstract ideas: (1) mathematical concepts; (2) certain methods of organizing human activity, e.g., fundamental economic principles or practices, commercial or

² The 2019 Revised Guidance supersedes MANUAL OF PATENT EXAMINING PROCEDURE (“MPEP”) § 2106.04(II) and also supersedes all versions of the USPTO’s “Eligibility Quick Reference Sheet Identifying Abstract Ideas.” *See* 2019 Revised Guidance, 84 Fed. Reg. at 51 (“Eligibility-related guidance issued prior to the Ninth Edition, R-08.2017 of the MPEP (published Jan. 2018) should not be relied upon.”). Accordingly, Appellant’s arguments challenging the sufficiency of the Examiner’s rejection will not be addressed to the extent those arguments are based on now superseded USPTO guidance.

legal interactions; and (3) mental processes. 2019 Revised Guidance, 84 Fed. Reg. at 54. If so, we next consider whether the claim includes additional elements, beyond the judicial exception, that “integrate the [judicial] exception into a practical application,” i.e., that 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 (“Step 2A, Prong Two”). *Id.* at 54–55. Only if the claim (1) recites a judicial exception and (2) does not integrate that exception into a practical application do we conclude that the claim is “directed to” the judicial exception, e.g., an abstract idea.

We are not persuaded by Appellant’s arguments that the Examiner erred in determining that the claims are directed to an abstract idea (Appeal Br. 6–11). The Federal Circuit has explained that “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) (quoting *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1346 (Fed. Cir. 2015)). It asks whether the focus of the claims is on a specific improvement in relevant technology or on a process that itself qualifies as an “abstract idea” for which computers are invoked merely as a tool. *See id.* at 1335–36. Here, it is clear from the Specification, including the claim language, that the claims focus on an abstract idea, and not on any improvement to technology and/or a technical field.

The Specification is entitled “ADVERTISEMENT SELECTION BASED ON USER SELECTED AFFILIATION WITH BRANDS IN A SOCIAL NETWORKING SYSTEM,” and states that the application relates,

in particular, to “distributing messages and advertisements to social networking system users based on connections between social networking system users” (Spec. ¶ 1). The Specification describes, in the Background section, that social networking systems typically “maintain connections among their users and allow express or implied identification of content that is interesting and relevant to individual users” (*id.* ¶ 2). These social networking systems also collect and maintain information about their users — information that may be static, e.g., geographic location, employer, age, or dynamic, e.g., tracking a user’s actions within the social network (*id.*).

The Specification describes that although users can take advantage of the information maintained in the social networking system, existing social network systems are limiting in terms of delineating between different types of users, e.g., individuals and entities (businesses) (*id.* ¶¶ 3, 4). “Hence, current social networking systems do not leverage connections between persons and entities in a meaningful way” (*id.* ¶ 4).

The claimed invention is ostensibly intended to address this issue by allowing individual users, i.e., people, to partner, or otherwise express an interest in or affiliation with, users that are non-person entities (*id.* ¶ 5). The partnership allows both users to customize the presentation of their respective profiles and pages to other social networking system users, thereby allowing persons and entities to differently convey their identities in the social networking system (*id.*).

The Specification describes that, in one embodiment, the partnership provides the person with enhanced interactions with the social networking system, e.g., access to content associated with the entity that is not accessible to persons who are not partnered with the entity (*id.* ¶ 6); the

person also may receive rewards from the entity, such as access to the entity's loyalty or rewards program (*id.* ¶ 7). From the entity perspective, the partnership allows an entity to preferentially advertise to users associated with it through partnerships (*id.* ¶ 9). An entity also may receive preferential treatment for advertisements presented to other users connected to a user, who partnered with the entity; thus, advertisements associated with the entity are more likely to be selected for presentation to other users connected to the partnered user (*id.*).

Consistent with this disclosure, claim 1 recites a method comprising: (1) storing a user profile for a person in a social networking system, i.e., “storing, in a social networking system, a user profile for a person, the user profile associated with a first set of objects stored by the social networking system” (step (a)); (2) storing entity pages associated with entities in the social networking system, i.e., “storing, in the social networking system, entity pages associated with entities, each entity page including content associated with an entity of the entities and associated with a second set of objects stored by the social networking system” (step (b)); (3) receiving a request to establish a partnership between the person and the entity, i.e., “receiving, by the social networking system, a request to establish a partnership between the person and the entity, the request subject to approval by the entity” (step (c)); (4) storing a bilateral partnership connection in the social networking system between the person and the entity and associating the user profile and entity page with each other, i.e., “storing, in the social networking system, a bilateral connection between the entity page and the user profile, the bilateral connection having a partnership connection type” and “associating, by the social networking system, the user

profile and the entity page with each other to provide access to the content associated with the entity or rewards to the person” (steps (d) and (e)); (5) identifying additional persons having a connection to the person, i.e., “identifying, from the user profile, an additional person having a connection to the person in the social networking system” (step (f)); and (6) selecting advertisements for presentation to the additional persons, i.e.,

selecting advertisements for presentation to the additional person based at least in part on the stored bilateral connection having the partnership connection type between the entity page and the user profile, wherein selecting advertisements comprises prioritizing presentation to the additional person of advertisements associated with the entity relative to presentation of advertisements associated with another entity, another entity page associated with the entity and the user profile not connected by another bilateral connection having the partnership connection type.

(step (g)). We agree with the Examiner that these limitations, when given their broadest reasonable interpretation, recite “selecting an advertisement for presentation based upon a social network connection,” i.e., targeted advertising, which a method of organizing human activity, and, therefore, an abstract idea. *See* 2019 Revised Guidance, 84 Fed. Reg. at 52.

Targeting customers with particular targeted marketing material is a longstanding marketing and advertising practice. *See Tuxis Techs., LLC v. Amazon.com, Inc.*, No. CV 13-1771-RGA, 2014 WL 4382446, at *5 (D. Del. Sept. 3, 2014) (Matching consumers with a given product or service “has been practiced as long as markets have been in operation.”). It also is substantially similar to other practices that the courts have held abstract. *See, e.g., Morsa v. Facebook, Inc.*, 77 F. Supp. 3d 1007, 1013 (C.D. Cal. 2014), *aff’d*, 622 F. App’x 915 (Fed. Cir. 2015) (concluding that targeting

advertisements to certain consumers is no more than an abstract idea); *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 713 (Fed. Cir. 2014) (offering media content in exchange for viewing an advertisement); *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (tailoring information presented to a user based on particular information); *Affinity Labs of Texas, LLC v. Amazon.com, Inc.*, 838 F.3d 1266, 1271 (Fed. Cir. 2016) (customizing a user interface to have targeted advertising based on user information).

Having concluded that claim 1 recites a judicial exception, i.e., an abstract idea (Step 2A, Prong 1), we next consider whether the claim recites additional elements that integrate the judicial exception into a practical application (Step 2A, Prong 2).

The Examiner determined, and we agree, that the only additional element recited in claim 1, beyond the abstract idea, is the claimed “social networking system” that performs the method steps — an element that the Examiner observes is “recited at a high level of generality and only performs generic [computer] functions of collecting / receiving / gathering data, storing data, communicating / transmitting data, and displaying data” (Final Act. 5–6). We find no indication in the Specification, nor does Appellant direct us to any indication, that the operations recited in claim 1 require any specialized computer hardware or other inventive computer components, i.e., a particular machine, invoke any assertedly inventive programming, or that the claimed invention is implemented using other than generic computer components to perform generic computer functions. *See DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014) (“[A]fter

Alice, there can remain no doubt: recitation of generic computer limitations does not make an otherwise ineligible claim patent-eligible.”).

We also find no indication in the Specification that the claimed invention effects a transformation or reduction of a particular article to a different state or thing. Nor do we find anything of record, short of attorney argument, that attributes an improvement in technology and/or a technical field to the claimed invention or that otherwise indicates that the claimed invention integrates the abstract idea into a “practical application,” as that phrase is used in the 2019 Revised Guidance.³

Appellant asserts that the Federal Circuit, in *McRO, Inc. v. Bandai Namco Games America, Inc.*, 837 F.3d 1299 (Fed. Cir. 2016), “established that claims are not directed to an abstract idea when they recite a method that is a specific application that improves on a broader concept” (Appeal Br. 10 (citing *McRO*, 837 F.3d at 1316)). And Appellant argues that the pending claims are not directed to an abstract idea because, as in *McRO*, the claims do not “merely claim ‘the idea of a solution or outcome’ for establishing bilateral connections or selecting advertisements based on bilateral connections” but instead “recite a specific, discrete implementation of storing user profiles, storing entity pages, establishing and storing bilateral connections between entity pages and user profiles, [and] selecting

³ The 2019 Revised Guidance references MPEP § 2106.05(a)–(c) and (e) in describing the considerations that are indicative that an additional element or combination of elements integrates the judicial exception, e.g., the abstract idea, into a practical application. 2019 Revised Guidance, 84 Fed. Reg. at 55. If the recited judicial exception is integrated into a practical application, as determined under one or more of these MPEP sections, the claim is not “directed to” the judicial exception.

and prioritizing presentation of advertisements” (*id.* at 11; *see also* Reply Br. 5).

Appellant’s argument is not persuasive at least because the Federal Circuit premised its determination that the claims in *McRO* were patent eligible, not merely on the specificity of the claimed animation scheme, but on the fact that the claims, when considered as a whole, were directed to a technological improvement over existing, manual 3-D animation techniques and used limited rules in a process specifically designed to achieve an improved technological result in conventional industry practice.

We are not persuaded that the pending claims achieve a comparable improved technological result. To the contrary, the claimed invention, when considered in light of the Specification, clearly appears to be focused on achieving a commercial objective, i.e., leveraging the connection between persons and the entities with which they are partnered for the commercial benefit of both parties (*see* Spec. ¶¶ 21, 22, 59, 64, 68, 69), and not on any claimed means for accomplishing that goal that improves technology.

We conclude, for the reasons outlined above, that claim 1 recites a method of organizing human activity, i.e., an abstract idea, and that the additional elements recited in the claim, i.e., elements of the claimed “social networking system,” are no more than generic computer components used as tools to perform the abstract idea of targeted advertising. As such, they do not integrate the recited abstract idea into a practical application. *See Alice Corp.*, 573 U.S. at 223–24 (“[W]holly 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.’” (quoting *Mayo*, 566 U.S. at 77)).

Accordingly, we agree with the Examiner that claim 1 is directed to an abstract idea.

Step Two of the Mayo/Alice Framework (USPTO Guidance, Step 2B)

Having determined under step one of the *Mayo/Alice* framework that claim 1 is directed to an abstract idea, we next consider under Step 2B of the 2019 Revised Guidance, the second step of the *Mayo/Alice* framework, whether claim 1 includes additional elements or a combination of elements that provides an “inventive concept,” i.e., whether the additional elements amount to “significantly more” than the judicial exception itself.

2019 Revised Guidance, 84 Fed. Reg. at 56.

Citing the Federal Circuit’s holding, in *BASCOM Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016), that an inventive concept can be found in the non-conventional and non-generic arrangement of known conventional pieces, Appellant argues that even if claim 1 is directed to an abstract idea, the claim is nonetheless patent eligible because it includes significantly more than an abstract idea (Appeal Br. 12–14). Appellant asserts that “the ordered combination of the steps in claim 1 is directed to a specific, discrete implementation of storing user profiles, storing entity pages, establishing and storing bilateral connections between entity pages and user profiles, [and] selecting and prioritizing presentation of advertisements” (*id.* at 13). And Appellant argues that, like *BASCOM*, “this ordered combination of steps is a very specific and technology based solution of improving social networking systems that is significantly more than any abstract idea” (*id.* at 13–14).

Appellant’s reliance on *BASCOM* is misplaced. In *BASCOM*, the Federal Circuit determined that the claimed installation of a filtering tool at a

specific location, remote from the end-users, with customizable filtering features specific to each end user provided an inventive concept in that it gave the filtering tool both the benefits of a filter on a local computer and the benefits of a filter on the ISP server. *BASCOM*, 827 F.3d at 1350. The court, thus, held that the second step of the *Mayo/Alice* framework was satisfied because the claimed invention “represents a ‘software-based invention[] that improve[s] the performance of the computer system itself.’” *Id.* at 1351 (stating that like *DDR Holdings*, where the patent “claimed a technical solution to a problem unique to the Internet,” the patent in *BASCOM* claimed a “technology-based solution . . . to filter content on the Internet that overcomes existing problems with other Internet filtering systems . . . making it more dynamic and efficient”) (internal citations omitted).

Here, Appellant does not identify, and we do not find, any improvement to computer technology analogous to the ordered combination described in *BASCOM* or any additional element or elements recited in claim 1 that yield an improvement in the functioning of a computer, or an improvement to another technology or technical field.

Appellant argues that claim 1 improves the technical field of social networking systems “by enabling creation and storage of user profiles for users, entity pages for entities, and bilateral connections between a user and an entity” and further “by selecting advertisements for presentation to another user having a connection to the user based at least in part on the stored bilateral connection having the partnership connection type between the entity page and the user profile” (*id.* at 13–14). Yet, we are not persuaded that this is a technological improvement, as opposed to an

improvement in a business practice. As described above, it appears clear from the Specification that claim 1 is focused on achieving a commercial objective, i.e., leveraging the connection between persons and the entities with which they are partnered for their mutual commercial benefit, and not on any claimed means for accomplishing this goal that improves technology.

We also do not agree with Appellant that the claim limitations “provide significantly more than an abstract idea for at least reciting a method that is inherently tied to computer technology” (Appeal Br. 14). Neither are we persuaded that there is any parallel here between claim 1 and the claims at issue in *DDR Holdings* (*id.* at 14–15).

Appellant asserts that the claimed process is “undeniably tied to a social networking system,” and, similar to *DDR Holdings*, addresses a problem faced by social networking systems that is particular to the Internet (*id.* at 14). Appellant notes that claim 1 “allows distinguishing human users and non-human users, allows a human user and a non-human user to establish a partnership relationship, and regulates presentation of information based at least in part on an established relationship between the human user and the non-human user” (*id.*). And Appellant argues that “[t]he specific features of selecting advertisements for presentation to another user and prioritizing presentation of selected advertisements is [sic] one of the solutions that are rooted in the computer technology to overcome the Internet-centric issues of social networking systems” (*id.* at 14–15).

Appellant’s argument is not persuasive. Although social networking may be Internet-centric, selecting advertisements for presentations to particular users is not a problem rooted in technology or one arising out of computer networks, like the problem in *DDR Holdings*. Targeted

advertising existed before and still exists outside of computer technology and computer networks. And the purported solution here of, at best, generic computer components performing generic computer functions, is not necessarily rooted in computer technology.

The Federal Circuit, in *DDR Holdings*, moreover, expressly cautioned that “not all claims purporting to address Internet-centric challenges are eligible for patent.” *DDR Holdings*, 773 F.3d at 1258. And the court contrasted the claims in *DDR Holdings* to those at issue in *Ultramercial*, in that, in *DDR Holdings*, the computer network was not operating in its “normal, expected manner” and the claims did not “recite an invention that is . . . merely the routine or conventional use of the Internet.” *Id.* at 1258–59.

Here, we do not find, and Appellant does not identify, any analogous modification to the routine and conventional functioning of computer network technology. At best, the claimed invention appears to use generic computer components to perform an abstract business practice (i.e., “selecting an advertisement for presentation based upon a social network connection”).

We are not persuaded, on the present record, that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 101. Therefore, we sustain the Examiner’s rejection of claim 1, and claims 3–12, and 17–21, which fall with claim 1.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Basis	Affirmed	Reversed
1, 3–12, 17–21	101	Eligibility	1, 3–12, 17–21	

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