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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* STEPHEN CAPPS, DANIEL J. SHADER,  
and KURT T. THAMS

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Appeal 2018-002938  
Application 14/450,043  
Technology Center 3600

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Before JOHN C. KERINS, EDWARD A. BROWN, and  
ANNETTE R. REIMERS, *Administrative Patent Judges*.

KERINS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Stephen Capps et al. (Appellants) appeal under 35 U.S.C. § 134(a) from the Examiner's final decision rejecting claims 1–23. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

CLAIMED SUBJECT MATTER

Appellants' invention relates to methods and systems for facilitating payment from a branded stored-value account. Spec. para. 1.

Claims 1 and 12 are independent. Claim 1 is illustrative and is reproduced below:

1. A method for facilitating payment from a branded stored-value account comprising the steps of:

receiving, with a communications interface of a service provider system, a confirmation that a stored-value account, branded for a first merchant, contains a value;

receiving, with the communications interface of the service provider system, a request to enable a payment using the value from the first-merchant-branded stored-value account at a second merchant;

transmitting, with the communications interface of the service provider system, a request to the first-merchant-branded stored-value account for an amount from the first merchant-branded stored-value account;

receiving, with the communications interface of the service provider system, the requested amount from the first-merchant-branded stored-value account;

placing, with the communications interface and a processor of the service provider system, the amount in a virtual account; and

initiating, with the communications interface of the service provider system, a display showing the amount in the virtual account as a branded stored-value account for the second merchant indicating that the second merchant is responsible for customer service for purchases made with the second-merchant branded stored-value account.

## THE REJECTIONS

The Examiner has rejected:

(i) claims 1–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter;

(ii) claims 1–4, 7, 10–15, 18, and 21–23 under 35 U.S.C. § 103 as being unpatentable over Dessert (US 2011/0166992 A1, published July 7, 2011) in view of Yun (US 2002/0069122 A1, published June 6, 2002);

(iii) claims 5, 6, 16, and 17 under 35 U.S.C. § 103 as being unpatentable over Dessert in view of Yun and Lamarche (US 2011/0208550 A1, published Aug. 25, 2011); and

(iv) claims 8, 9, 19, and 20 under 35 U.S.C. § 103 as being unpatentable over Dessert in view of Yun and Zacarias (US 2013/0073459 A1, published Mar. 21, 2013).

## ANALYSIS

### *Claims 1–23—Patent-Ineligible Subject Matter*

Appellants argue claims 1–23 together. *See* Appeal Br. 7–18; Reply Br. 2–5. We select claim 1 as the illustrative claim, and claims 2–23 stand or fall with claim 1.

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: “[I]aws of nature, natural phenomena, and abstract ideas” are not patentable. *E.g.*, *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

In determining whether a claim falls within an excluded category, we are guided by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id.* at 217–18 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566 U.S. 66, 75–77 (2012)). In accordance with that framework, we first determine what concept the claim is “directed to.” *See Alice*, 573 U.S. at 219 (“On their face, the claims before us are drawn to the concept of intermediated settlement, *i.e.*, the use of a third party to mitigate settlement risk.”); *see also Bilski v. Kappos*, 561 U.S. 593, 611 (2010) (“Claims 1 and 4 in petitioners’ application explain the basic concept of hedging, or protecting against risk.”).

Concepts determined to be abstract ideas, and thus patent ineligible, include certain methods of organizing human activity, such as fundamental economic practices (*Alice*, 573 U.S. at 219–20; *Bilski*, 561 U.S. at 611); mathematical formulas (*Parker v. Flook*, 437 U.S. 584, 594–95 (1978)); and mental processes (*Gottschalk v. Benson*, 409 U.S. 63, 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, 192 (1981)); “tanning, dyeing, making waterproof cloth, vulcanizing India rubber, smelting ores” (*id.* at 184 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 192 (“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 (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 PTO recently published revised guidance on the application of § 101. USPTO’s January 7, 2019 Memorandum, *2019 Revised Patent Subject Matter Eligibility Guidance* (“Memorandum”). 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 interactions 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 (1) recites a judicial exception and (2) does not integrate that exception into a practical application, do we then look to whether the claim:

(3) adds a specific limitation beyond the judicial exception that is not “well-understood, routine, conventional” in the field (*see* MPEP § 2106.05(d)); or

(4) simply appends well-understood, routine, conventional activities previously known to the industry, specified at a high level of generality, to the judicial exception.

*See* Memorandum.

The Examiner determines that claim 1 is directed to patent-ineligible subject matter based on a judicial exception without adding significantly more to the judicial exception. Final Act. 2. More specifically, the Examiner determines that claim 1 is directed to an abstract idea involving organizing human activity relating to fundamental economic practices—facilitating payment from a branded stored-value account. *Id.* at 2–3 (citing *Bilski v. Kappos*, 561 U.S. 593 (2010)). The Examiner further notes that the claimed steps of receiving a confirmation, receiving a request, transmitting a request, receiving an amount, placing the amount in a virtual account, and initiating a display, are also similar to the basic concept of manipulating information using mathematical relationships, that was determined to be an abstract idea. *Id.* at 3 (citing *Gottschalk v. Benson*, 409 U.S. 63 (1972)).

The Examiner determines that claim 1 does not include additional elements that are sufficient to amount to significantly more than the judicial exception because the additionally recited elements, which include using computers and a network for receiving, transmitting, storing, and displaying data, are generic computing elements that are known and conventional, and perform the basic functions of a computer that would be needed to apply the abstract idea. *Id.* at 4. According to the Examiner, the claimed steps involving collection, manipulation, and display of information do not require “non-conventional and non-generic arrangement of known, conventional pieces” that would transform the claimed subject matter into patent-eligible applications. *Id.* at 5 (citing *Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350 (Fed. Cir. 2016)). The Examiner also explains that unlike the claims in *Enfish*, the recited steps in Appellants’ claim 1 do not improve the functioning of the computers themselves, including the processors or the network elements. *Id.* at 5, 8 (citing *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327 (Fed. Cir. 2016)). As such, the Examiner determines that, considering the additional elements individually and in combination, there is no inventive concept sufficient to transform the claimed subject matter into a patent-eligible application. *Id.* at 10–11.

Appellants contend that claim 1 is not directed to an abstract idea. Appeal Br. 7–13; Reply Br. 2–3. More particularly, Appellants argue that:

- claim 1 is directed to a technical solution to overcome a problem with computerized systems for closed-loop stored value accounts and knowing which party is responsible for an account after a purchase is made (Appeal Br. 7; *see also id.* at 12–13);

- claim 1 does not merely recite a practice known from the pre-computer world but relates to a solution necessarily rooted in computer technology (*id.* at 8; *see also id.* at 9–10); and
- claim 1 is similar to the claims in *DDR Holdings*,<sup>1</sup> which were determined not to be abstract, in that there is no possibility of the problem that Appellants are solving in the physical world because a physical card branded for a first merchant will never automatically change to a physical card branded for a second merchant (*id.* at 9).

We are not persuaded that the Examiner failed in the respects alleged by Appellants, and instead find that the Examiner treated claim 1 and the limitations consistent to the *Bilski* decision, and that claim 1 is distinguishable from those in *Enfish* and *DDR Holdings*. As the Examiner advises:

- in *Enfish*, the claims provide specific improvements in computer capabilities and a solution in the software arts; whereas, claim 1 recites computers as tools because providing an indication of a merchant’s responsibility for an account or customer services does not improve computer operation such as causing the computer to operate faster (Ans. 5–6; *see also id.* at 7–8 (explaining that the Specification discloses business-related benefits for business-related challenges of identifying a merchant responsible for issues resulting from purchases (citing Spec. paras. 12–13))); and
- in *DDR Holdings*, the claims recite a specific way to automate the creation of a composite Web page by an outsource provider that

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<sup>1</sup> *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

incorporates elements from multiple sources in order to solve a problem faced by Web sites on the Internet; whereas, claim 1 is drawn to the application of principles outside the scientific realm—such as principles related to commercial and business interaction (*id.* at 10).

The Examiner further points out that the Examiner’s position is bolstered by Appellants’ remarks that claim 1 addresses the business challenge of “rebranding a value in an account for a first merchant so that it appears to the customer as an account branded for a second merchant and indicating that the second merchant is responsible for customer service for purchases made with the second-merchant branded stored-value account.” *Id.* at 10–11 (citing Amendment 5 (filed Jan. 3, 2017); *see also* Reply Br. 6–8. We thus are not persuaded by Appellants’ argument that providing a computerized system for closed-loop stored value accounts and knowing which party is responsible for an account after a purchase constitute a technical solution that is necessarily rooted in computer technology.

Because claim 1 is drawn to a method for facilitating payment from a branded stored-value account and does not provide specific improvements in computer capabilities and a solution in the software arts, we agree with the Examiner that claim 1 is directed to an abstract idea, in the form of human activity relating to commercial practices. This determination fulfills the first step of the *Alice* framework in that we conclude claim 1 is directed to an abstract idea.

Further, claim 1 does not integrate the judicial exception into a practical application. As explained above or further explained below, (a) claim 1 does not provide specific improvements in computer capabilities or functioning to other technology or technical fields, (b) the judicial exception

is not applied with, or by use of, a particular machine, (c) claim 1 does not effect a transformation or reduction of a particular article to a different state or thing, (d) claim 1 does not include additional features to ensure that the claim describes a process or product that applies the exception in a meaningful way, such that it is more than a drafting effort designed to monopolize the exception, (e) claim 1 does not recite additional elements that amount to more than a recitation of the words “apply it” (or an equivalent) or are more than mere instructions to implement an abstract idea or other exception on a computer, and (f) claim 1 does not recite additional elements that amount to more than generally linking the use of a judicial exception to a particular technological environment or field of use.<sup>2</sup>

Appellants next contend that, when viewed as a whole, claim 1 provides a specific and discrete implementation for facilitating a payment. Appeal Br. 17. Appellants argue that claim 1 is similar to the claims in *Bascom*<sup>3</sup> because the limitations of claim 1 provide “something more” than just “concepts involving human activity relating to commercial practices.” *Id.* at 18. As such, Appellants contend that “step 2B of the *Alice* test confirms [claim 1 is] patent eligible.” *Id.* at 15; *see also* Reply Br. 5.

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<sup>2</sup> We acknowledge that some of these considerations may be properly evaluated under Step 2 of *Alice* (Step 2B of Office guidance). Solely for purposes of maintaining consistent treatment within the Office, we evaluate it under Step 1 of *Alice* (Step 2A of Office guidance). *See* USPTO’s January 7, 2019 Memorandum, “2019 Revised Patent Subject Matter Eligibility Guidance.”

<sup>3</sup> *BASCOM Global Internet v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016).

Appellants' attempt to analogize claim 1 to the claims of *Bascom* is unavailing. The Examiner advises that in *Bascom*, the Federal Circuit found that the inventive concept as claimed is the installation of a filtering tool at an ISP server, remote from the end-users, and a filter installed on a local computer with customizable filtering features specific to each end user.

Ans. 8. As such, the particular arrangement in *Bascom*'s claims involves the filtering tools that provides a technical improvement. *Id.* at 8–9. In contrast, the Examiner advises that claim 1 does not recite non-conventional or non-generic arrangement of additional elements, and using a virtual account does not make the arrangement of elements in claim 1 unique. *Id.* at 9. Thus, we are not apprised of any error in the Examiner's position.

Appellants also contend that claim 1 is not attempting to tie up any judicial exception so that others cannot practice it. Appeal Br. 15; *see also* Reply Br. 4. However, as the Examiner points out, “although preemption may be the concern driving the exclusion of abstract ideas from patent-eligible subject matter, preemption is not the test for eligibility.” Ans. 14 (citing *Alice*, 134 S. Ct. at 2354 and *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir. 2015)).

For these reasons, we sustain the Examiner's decision rejecting claim 1, and claims 2–23 which fall therewith, as being directed to patent-ineligible subject matter.

*Claims 1–4, 7, 10–15, 18, and 21–23—Obviousness—Dessert/Yun*  
Claims 1–4, 7, 12, 14, 15, and 18

Appellants present the same arguments for independent claims 1 and 12. *See* Appeal Br. 18–21; Reply Br. 5–6. Appellants do not present

separate arguments directed to dependent claims 2–4, 7, 12, 14, 15, and 18. *Id.* We thus regard claims 1–4, 7, 12, 14, 15, and 18 as being argued as a group. We take claim 1 as representative of this group, and claims 2–4, 7, 12, 14, 15, and 18 stand or fall with claim 1.

The Examiner finds that the combination of Dessert and Yun discloses all limitations of claim 1. Final Act. 12–15. Of particular significance in this appeal, the Examiner finds that Dessert discloses a method for facilitating payment from a branded stored-value account comprising: (1) receiving, with a communications interface of a service provider system, a confirmation that a stored-value account, branded for a first merchant, contains a value; and (2) initiating, with the communications interface of the service provider system, a display showing an amount in a virtual account as a branded stored-value account for a second merchant. *Id.* at 12–13 (citing Dessert Figs. 2, 8A, 9–15, 19C; paras. 4, 7, 38, 53, 56–59, 60–63). The Examiner points out that Dessert discloses: (1) “the recipient client device 102B may be provided with the capability of exchanging stored value accounts 142 associated with various different merchants 120”; and (2) “the recipient client device 102B may take all or some of the value of a first stored value account 142 associated with a first merchant 120 in order to purchase and/or fund a second stored value account associated with a second merchant 120 which is different from the first merchant 120.” *Id.* at 13 (quoting Dessert para. 53). The Examiner acknowledges that Dessert does not disclose indicating that a second merchant is responsible for customer service for purchases made with a second-merchant branded stored-value account. *Id.* at 14. The Examiner finds, however, that Dessert discloses providing billing statements. *Id.* (citing Dessert para. 76). The Examiner

reasons that because a billing statement includes a merchant identifier, it would have been obvious to modify the method for facilitating payment from a branded stored-value account of Dessert to include an indication that a second merchant is responsible for customer service for purchases made with a second-merchant branded stored-value account, for the benefit of keeping customers with the business. *Id.* at 14–15.

Appellants contend that Dessert “does not disclose branding or rebranding the account to indicate the merchant who is responsible for customer service for purchases made with the branded or rebranded stored-value account (without transferring funds between the merchants).” Appeal Br. 20; *see also* Reply Br. 5–6.

Appellants’ contentions are unpersuasive. We first note that claim 1 does not exclude a transferring of funds between merchants. We further note that the Specification does not provide a special definition for “branding.” *See Spec., passim.* The term “branding” is defined as “[t]he marketing practice of creating a name, symbol or design that identifies and differentiates a product from other products.”<sup>4</sup> As such, anything that identifies and differentiates a product from other products, including a name of a merchant, constitutes “branding.” Figures 14 and 15 of Dessert disclose exchanging a gift card of Merchant #7 for a gift card of Merchant #2. *See* Dessert, Figs. 14–15. Thus, as there is a change in the name or identification of the merchant in relation to a particular account, i.e., the account of

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<sup>4</sup> *See* <https://www.entrepreneur.com/encyclopedia/branding> (last accessed Nov. 27, 2018)

Merchant #7 to Merchant #2, Dessert discloses branding or rebranding an account. *See* Ans. 16–17.

As to the limitation “*indicating that the second merchant is responsible for customer service for purchases made with the second-merchant branded stored-value account,*” the Examiner acknowledges that Dessert does not disclose this limitation. Appellants do not explain why the Examiner’s modification of the method of Dessert to include this limitation, for the benefit of keeping customers with the business, lacks rational underpinning. *See* Ans. 18.

Thus, none of Appellants’ contentions apprise us of Examiner error. Accordingly, we sustain the rejection of claims 1–4, 7, 12, 14, 15, and 18 as being unpatentable over Dessert and Yun.

#### Claims 10 and 21

Claims 10 and 21 recite “the request to make the payment using the value from the first-merchant-branded stored-value account at the second merchant is an automatic request based on geolocation information.”

Appeal Br. ii, iv (Claims App.).

The Examiner finds that paragraph 178 of Dessert discloses this limitation. Final Act. 15–16.

Appellants contest this finding. Appeal Br. 20–21. We agree with Appellants that although paragraph 178 of Dessert discloses associating discount rates based on the relative location of a recipient client device, there

is no disclosure of “an automatic request based on geolocation information,” as claimed. *See id.*

We thus do not sustain the rejection of claims 10 and 21 as being unpatentable over Dessert and Yun.

Claims 11 and 22

Claim 11 recites “the display showing the amount in the virtual account as a branded stored-value account for the second merchant also shows contact information for the second merchant” and claim 22 includes a similar limitation. Appeal Br. ii, iv (Claims App.).

The Examiner finds that although Dessert discloses a display showing an amount in a virtual account as a branded stored-value account for a second merchant, Dessert does not disclose showing contact information for the second merchant. Final Act. 16. The Examiner, however, reasons that it would have been obvious to modify the method of Dessert to include showing contact information for the second merchant, for the advantage of providing customer service benefits. *Id.*

Appellants point out that claims 11 and 22 require showing contact information for the *second* merchant and that because of their dependencies, claims 11 and 22 also require branding or rebranding the account to indicate the merchant is responsible for customer service for purchases made with the branded or rebranded stored-value account (without transferring funds between the merchants), as discussed *supra* for parent claims 1 and 12. Appeal Br. 21–22; *see also* Reply Br. 7–8.

These arguments are unpersuasive. First, the Examiner acknowledges that Dessert does not disclose showing contact information for the *second* merchant and Appellants do not explain why the Examiner’s modification of

the method of Dessert to include this limitation, for the advantage of providing customer service benefits, lacks rational underpinning. *See* Ans. 19. Second, as explained *supra*, we are not persuaded by Appellants' contention that Dessert fails to disclose branding or rebranding the account as required for claims 1 and 12.

Accordingly, we sustain the rejection of claims 11 and 22 as being unpatentable over Dessert and Yun.

### Claim 13

Claim 13 recites "the request to enable a payment is initiated by the second merchant." Appeal Br. iii (Claims App.).

The Examiner finds that Dessert discloses this limitation because Dessert discloses purchasing items from a second merchant. Final Act. 16–17.

Appellants contest this finding. Appeal Br. 22; *see also* Reply Br. 8 (noting that the payment would use the value from the first-merchant-branded stored account).

We agree with the Examiner that the method of Dessert would necessarily require an initiation by the second merchant when a later purchasing is from the second merchant. *See* Ans. 19. Further, because Figures 14 and 15 of Dessert disclose exchanging a gift card of Merchant #7 for a gift card of Merchant #2, the payment would thus use the value from the first-merchant-branded stored account. *See* Dessert Figs. 14–15.

Accordingly, we sustain the rejection of claim 13 as being unpatentable over Dessert and Yun.

Claim 23

Claim 23 recites “displaying, on the display of the mobile device, the amount in the first merchant-branded stored-value account with a first skin for the first merchant” and “on the display of the mobile device, the amount in the virtual account as the branded stored-value account for the second merchant comprises displaying a second skin for the second merchant.”

Appeal Br. iv (Claims App.).

Appellants argue that Dessert does not disclose these limitations. Appeal Br. 22–23; *see also* Reply Br. 8–10.

However, as the Examiner explains, Figure 8A of Dessert discloses displaying a first appearance for a first merchant and the merchant identification and balance value are unique for each merchant. Ans. 20. In other words, when Figure 8A shows the identification and balance value for a second merchant, then Dessert discloses displaying a second skin for the second merchant.

Thus, Appellants do not apprise us of Examiner error. Accordingly, we sustain the rejection of claim 23 as being unpatentable over Dessert and Yun.

*Claims 5, 6, 16, and 17—Obviousness—Dessert/Yun/Lamarche*

*Claims 8, 9, 19, 20—Obviousness—Dessert/Yun/Zacarias*

For dependent claims 5, 6, 8, 9, 16, 17, 19, and 20, Appellants do not provide any substantive arguments and thus rely on the same arguments as those presented for parent claims 1 and 12. Appeal Br. 18–23; Reply Br. 5–10. As Appellants do not apprise us of any error in the rejection of claims 1 and 12, we, accordingly, sustain the rejection of claims 5, 6, 16, and 17 over

Dessert, Yun, and Lamarche, and sustain the rejection of claims 8, 9, 19, and 20 over Dessert, Yun, and Zacarias, for the same reasons as for claims 1 and 12.

#### DECISION

The rejection of claims 1–23 under 35 U.S.C. § 101 as being directed to patent-ineligible subject matter is affirmed.

The rejection of claims 1–4, 7, 11–15, 18, 22, and 23 under 35 U.S.C. § 103 as being unpatentable over Dessert and Yun is affirmed.

The rejection of claims 10 and 21 under 35 U.S.C. § 103 as being unpatentable over Dessert and Yun is reversed.

The rejection of claims 5, 6, 16, and 17 under 35 U.S.C. § 103 as being unpatentable over Dessert, Yun, and Lamarche is affirmed.

The rejection of claims 8, 9, 19, and 20 under 35 U.S.C. § 103 as being unpatentable over Dessert, Yun, and Zacarias 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).

AFFIRMED